PRESS RELEASE

Internal Revenue Service - Criminal Investigation
Chief Richard Weber

Date: Dec. 23, 2015

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

CI Release #: CI-2015-12-23-B

Justice Department Announces Four Banks Reach Resolutions Under Swiss Bank Program

The Department of Justice announced today that Bank J. Safra Sarasin AG (Safra Sarasin), Coutts & Co Ltd (Coutts), Gonet & Cie (Gonet) and Banque Cantonal du Valais (BC Valais) reached resolutions under the department's Swiss Bank Program. These banks collectively will pay penalties of more than $178 million.

"The end of the year does not signal the end to our enforcement efforts to bring to justice those who would circumvent our nation's tax laws by hiding their money overseas," said Chief Richard Weber of IRS Criminal Investigation (CI). "In fact, with the wealth of information gathered from the Swiss Bank Program, we have already begun to track those individuals who think they are above the law and continue to hide their money offshore. The decision to evade taxes will certainly be one they regret when they face criminal sanctions."

"With today's resolutions under the Swiss Bank Program, the department has reached agreements with 75 Swiss banks, imposed penalties in excess of $1 billion, and secured voluminous and detailed information regarding the illegal conduct of financial institutions, professionals and accountholders around the world," said Acting Assistant Attorney General Caroline D. Ciraolo of the Justice Department's Tax Division. "Building on the success of the Swiss Bank Program, the civil and criminal offshore enforcement efforts of the department and its partners in the IRS will be a top priority in 2016."

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.

Safra Sarasin is a Swiss bank with its head office in Basel. Safra Sarasin was formed in June of 2013 through the merger of two Swiss banks, Banque J. Safra (Suisse) SA (Safra) and Bank Sarasin & Cie AG (Sarasin). In Switzerland, Safra Sarasin has branches in Berne, Geneva, Lucerne, Lugano and Zurich. Safra Sarasin specializes in providing investment advice and asset management services to private and institutional clients, as well as to investment funds. It offers clients portfolio management, secured lending and financial analysis, among other services.

In 2001, Safra and Sarasin each entered into a Qualified Intermediary (QI) Agreement with the Internal Revenue Service (IRS). The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. After signing their respective QI Agreements, Safra and Sarasin continued to service certain U.S. customers without disclosing the customers' identity to the IRS and without regard for the impact of U.S. criminal law on that decision.

Through at least 2014, Safra Sarasin knew that it was highly probable that some U.S. taxpayers who had opened and maintained accounts at Safra Sarasin were not complying with their U.S. income tax and reporting obligations. Safra and Sarasin took the position that they could service U.S. clients that they knew or had reason to believe were engaged in tax evasion so long as Safra and Sarasin prohibited their accountholders from trading in U.S.-based securities or required that the account be nominally structured in the name of a non-U.S.-based entity.

With respect to structured accounts, U.S. clients would create an entity, such as a Liechtenstein foundation, a Panama corporation or a British Virgin Islands corporation, and pay a fee to third parties to act as corporate directors. Those third parties, at the direction of the U.S. client, would then open an account at Safra or Sarasin in the name of the entity or transfer a pre-existing Swiss bank account from another Swiss bank. In certain cases that involved a non-U.S.-based entity, Safra or Sarasin was aware that a U.S. taxpayer was the true beneficial owner of an account. Despite this, the respective bank would obtain from the entity's directors an IRS Form W-8BEN or equivalent bank document in which the directors falsely declared that the beneficial owner was not a U.S. taxpayer. Although it was highly probable that in such cases the U.S. taxpayer was avoiding U.S. taxes, some of these accounts were permitted to trade in U.S. securities without the respective bank reporting account earnings or transmitting any withholding taxes to the IRS, as required by its QI Agreement.

In some instances, relationship managers at Safra and Sarasin met with or took directions or instructions from the U.S. taxpayer beneficial owner of an offshore structure account, instead of the directors or other authorized parties on the account. Some of these relationship managers interacted with corporate service providers, including Swiss lawyers, who assisted U.S. taxpayers in setting up nominee entities for their undeclared accounts. In some instances, relationship managers referred U.S. clients who were interested in creating nominee offshore entities to these corporate service providers. After these entities were created, relationship managers assisted these clients in opening and maintaining accounts at Safra Sarasin.

For example, a Geneva-based lawyer assisted U.S. clients in opening undeclared accounts in the names of Panama corporations. These accounts had high balances totaling approximately $250 million during the period since Aug. 1, 2008. The Geneva-based lawyer had signature authority and power of attorney over these accounts and was a director of some of these entities. With respect to one of these accounts, the lawyer signed an IRS Form W-8BEN falsely certifying that a Panama entity was the taxpayer, and not the U.S. client. In December 2010, in connection with the closing of one of these accounts, the lawyer assisted a U.S. client in transferring the funds to a bank in Hong Kong. During 2011, in connection with the closing of seven of these accounts, the lawyer assisted the U.S. clients in transferring the funds to a Swiss bank under investigation by the department.

Safra Sarasin assisted some U.S. clients in other ways, in concealing assets and income from the IRS upon the closure of their accounts. Approximately 20 percent of the funds in U.S.-related accounts closed by Safra Sarasin were transferred to banks in countries other than Switzerland and the United States, including Israel, Hong Kong and Liechtenstein. In one instance, Safra Sarasin assisted a U.S. client, whose account was held in the name of a Panama company, to withdraw $2.9 million in gold at the account closing. In another instance, Safra Sarasin processed five cash withdrawals of $190,000 each for a U.S. client, comprising a total aggregate amount of $950,000 in cash over a two-day period.

A number of U.S.-related accounts held at Sarasin were managed by external asset managers. From June through August 2008, one of these external asset managers used intermediary accounts at Sarasin to assist five U.S. clients in transferring $21.1 million from a large Swiss bank into undeclared bank accounts at Sarasin. These intermediary accounts were opened in the name of the external asset manager's company and were used when a U.S. client wanted to deposit funds into his or her account or transfer funds to a third party. This added a layer of concealment when transferring the assets of a client or third party to or from the U.S. client's bank account at Sarasin. In 2012, this same external asset manager was charged, in a U.S. federal court, with conspiring to impede and impair the IRS in the ascertainment, computation, assessment and collection of U.S. income taxes, in connection with the external asset manager's activities at Swiss banks other than Safra Sarasin.

In the period since Aug. 1, 2008, Sarasin maintained six accounts, with an aggregate value of $24 million, that were owned by insurance companies and held assets relating to insurance products that were issued to U.S. taxpayer clients of the respective insurance companies. Such accounts, known commonly as "insurance wrappers," were titled in the names of insurance companies but funded with assets that were transferred to the accounts for the beneficial owners of the insurance products. Two of the six insurance wrapper accounts were held in the name of a Cayman Islands corporation, and another account was held in the name of a Singapore company.

Since Aug. 1, 2008, Safra Sarasin had 1,275 U.S.-related accounts with an aggregate maximum value of approximately $2.2 billion. Safra Sarasin will pay a penalty of $85.809 million.

Coutts is a Swiss private bank headquartered in Zurich with branches in Geneva, Hong Kong, Monaco and Singapore. Coutts also has operating subsidiaries in Geneva and on the Isle of Man. During the period since Aug. 1, 2008, Coutts was part of the international Wealth Management Division of The Royal Bank of Scotland Group plc, which is majority-owned by the United Kingdom government, and had no offices, branches or subsidiaries in the United States. Coutts closed its New York branch in 1997, and the bank closed its representative office in Florida in 2005, shortly after Coutts had acquired the Florida office as part of its acquisition of Bank von Ernst & Cie AG in 2003.

Coutts was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on all of their income, including income earned in accounts that these U.S. taxpayers maintained at Coutts. Coutts nonetheless opened, serviced and profited from accounts for U.S. clients who Coutts knew or had reason to know were likely not complying with these obligations. Since August 2008, Coutts has accepted over $150 million in inflows from other Swiss banks that were being investigated by the department, and Coutts opened 465 accounts for U.S. clients, some of whom did not comply with their obligations regarding U.S. tax or Reports of Foreign Bank and Financial Accounts (FBARs).

Prior to December 2008, several relationship managers from the Coutts private banking desks traveled to the United States to maintain existing relationships with U.S. clients and recruit new clients. After 2008, Coutts relationship managers continued to travel to the United States to meet with clients, including three relationship managers employed by other group entities located outside of Switzerland who made 11 trips to the United States.

Coutts relationship managers in Switzerland aided and assisted certain U.S. clients with undeclared accounts at Coutts to evade their income taxes by placing their assets in the names of structures formed, maintained and managed by various subsidiary trust companies of Coutts. Coutts has operated its own trust companies in Liechtenstein and Switzerland. These companies provided structuring services to Coutts clients, including the creation of foundations, trusts and companies incorporated or based in offshore locations such as the Bahamas, British Virgin Islands, Channel Islands, Liechtenstein and Panama. By operation of Swiss bank secrecy laws, the U.S. client's ownership of these structures would not be disclosed to U.S. authorities. In all, more than 500 of the 1,337 U.S. client accounts held at Coutts since August of 2008, with more than $1 billion in assets under management, had some type of structure with a U.S. beneficial owner.

In addition to the relationships they had with affiliated trust companies, Coutts relationship managers coordinated with external trust companies to create and administer offshore structures for its U.S. clients that were incorporated or based in offshore locations such as the British Virgin Islands, Liechtenstein and Panama. For example, one relationship manager had three U.S. clients with undeclared accounts held in the names of British Virgin Islands companies. These three accounts totaled approximately $130 million.

Because Swiss law requires Coutts to identify the true beneficial owner of structures on a document called a Form A, it knew that these were U.S. client accounts. Nonetheless, for numerous such accounts, Coutts relationship managers and other employees knowingly accepted and included in Coutts' account records IRS Forms W-8BEN or equivalent bank documents provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners, for U.S. income tax purposes, of the assets in the Coutts accounts. This aided and assisted the U.S. clients in concealing these assets and income from the IRS.

Coutts also assisted U.S. clients in concealing the assets and income in their undeclared accounts by processing requests from U.S. taxpayers to transfer assets from accounts being closed to non-U.S.-related Coutts accounts, or to Coutts accounts that were restructured to eliminate the U.S. connection. For example, in one instance in 2001, a joint account was opened by couple living in Singapore. The husband was a U.S. citizen, and the wife was a French citizen. After Coutts asked the accountholder to provide an IRS Form W-9, the husband instructed Coutts to close the joint account and internally transfer assets totaling $15.1 million to a Coutts account held jointly by his wife and children. The husband had signatory authority over the newly opened account based on a general power of attorney, and he continued to manage the assets and was the only contact person for Coutts with respect to this account. In another case, between July 2011 and April 2014, Coutts assisted a U.S. client in transferring $33 million from an undeclared account held in the name of a Belize corporation to 11 other accounts at Coutts held in the names of nominee entities.

Since Aug. 1, 2008, Coutts held and managed 1,337 U.S.-related accounts, which included both declared and undeclared accounts, with a peak of assets under management of approximately $2.1 billion. Coutts will pay a penalty of $78.484 million.

Gonet is a family-owned private bank headquartered in Geneva, Switzerland. Gonet operates a branch office in Lausanne, Switzerland, which was opened in 2011, and a representative office in Abu Dhabi, United Arab Emirates, which was opened in 2014. In 1982, Gonet opened a subsidiary in Nassau, Bahamas, which offers traditional private banking services. In 2008, Gonet acquired a minority interest in an entity in Monaco, and three years later Gonet established a subsidiary in Singapore. In 2014, Gonet sold the entities in Monaco and Singapore.

Gonet enabled some U.S. taxpayers to evade their U.S. tax and filing obligations, resulting in the filing of false income tax returns with the IRS and allowing U.S. taxpayers to hide offshore assets from the IRS. Gonet opened accounts for U.S. taxpayers who had left other Swiss banks that were known targets of investigations by the department, including UBS and Credit Suisse. With respect to the majority of these accounts, Gonet knew or should have known that the beneficial owners were attempting to evade U.S. taxes and foreign account reporting requirements. Gonet also opened and maintained a number of U.S.-related accounts held by non-U.S. entities with the knowledge that U.S. persons were the true beneficial owners of the assets maintained in the accounts. Two of the accounts held by non-U.S. entities were insurance wrapper accounts.

With respect to structured accounts, U.S. clients, with the assistance of their external advisors, would create an entity, such as a Liechtenstein foundation, Panamanian corporation or British Virgin Islands corporation, and pay a fee to third parties to act as corporate directors. Those third parties, at the direction of the U.S. client, would then open a bank account at Gonet in the name of the non-U.S. entity or transfer funds from a pre-existing account from another bank. Gonet employees provided prospective U.S. clients with referrals to external advisors who could assist with the creation and management of such an entity. In certain cases, Gonet was aware that a U.S. client was the true beneficial owner of the account. Despite this, Gonet would sometimes obtain from the entity's directors an IRS Form W-8BEN or equivalent bank document that falsely declared that the beneficial owner was not a U.S. taxpayer.

Since Aug. 1, 2008, Gonet held 150 U.S.-related accounts with an aggregate maximum balance of approximately $254.5 million. Gonet will pay a penalty of $11.454 million.

BC Valais, founded in 1917, is headquartered in the Canton of Valais, Switzerland. BC Valais was founded by the government of the Canton of Valais to provide banking services to assist in the development of the regional economy and to provide credit services to residents of the Canton of Valais. As a cantonal bank, the Canton of Valais is BC Valais' majority shareholder, and pursuant to cantonal law, the Canton of Valais guarantees all of the bank's liabilities.

In 2001, BC Valais entered into a QI Agreement with the IRS. If an accountholder wanted to trade in U.S. securities without being subjected to mandatory U.S. tax withholding, the agreement required BC Valais to obtain the consent of the accountholder to disclose the client's identity to the IRS. In the years following the signing of its QI Agreement, BC Valais' position was that it could service U.S. clients that it knew or had reason to believe were non-compliant with their U.S. tax obligations as long as the account did not trade or hold U.S. securities. For example, an internal memorandum written to BC Valais' board of directors in October 2009 stated that BC Valais had 63 American clients whose accounts traded securities, but only seven of those 63 clients submitted Forms W-9 to BC Valais that authorized income generated from those securities to be reported to the IRS. The other 56 American clients had not authorized their names to be disclosed to the IRS and, because of the QI Agreement, "[t]he other clients [did] not hold any American securities."

Prior to the time that BC Valais signed its QI Agreement in 2001, BC Valais requested that its accountholders sign an IRS Form W-9 if they wished to continue to trade in U.S. securities. One accountholder, who lived in

New York and had an open BC Valais account for more than 25 years, signed a form declaring that "I am an American taxpayer … [and I] prohibit the Bank from divulging my name and authorize it to sell in the course of the year 2000 all of my American securities held by the Bank. I take note of the fact that the Bank will not invest in American securities for me anymore."

Since Aug. 1, 2008, BC Valais maintained 185 U.S.-related accounts with a maximum aggregate value of approximately $72 million. BC Valais will pay a penalty of $2.311 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.

"Today's resolutions reflect the continued, strong progress of the Department of Justice's Swiss Bank Program," said acting Deputy Commissioner International David Horton of the IRS Large Business & International Division (LB&I). "Financial institutions that aided non-compliance and evasion are putting this conduct behind them and cooperating, leading us to those U.S. taxpayers who have failed to report their foreign accounts and pay their income taxes."

Acting Assistant Attorney General Ciraolo thanked the IRS and in particular, IRS-CI and the IRS LB&I Division for their substantial assistance. Acting Assistant Attorney General Ciraolo also thanked the counsel on these matters, John E. Sullivan, Mark W. Kotila, Thomas G. Voracek and Thomas J. Sawyer, who serves as Senior Counsel for International Tax Matters and Coordinator of the Swiss Bank Program, as well as Senior Litigation Counsel Nanette L. Davis and Attorney Kimberle E. Dodd of the Tax Division.

# # #