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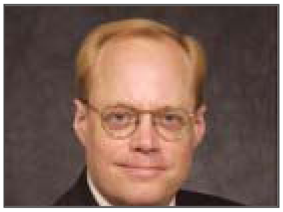

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Swiss Bank Frey To Close Over IRS Investigation

(Photo credit: Wikipedia)

Bank Frey's "Truly Swiss, Truly Private" slogan could soon be "Truly Closed." The bank is one of 14 under investigation for allegedly helping Americans evade taxes. The bank's statement says its shareholders want to cease operations. The bank cites tighter rules on U.S. clients and its dispute with U.S. authorities.

Bank Frey says it is "financially healthy and will not be liquidated." The 14 Swiss banks under investigation include Credit Suisse and Julius Baer. Wegelin & Co. was indicted, plead guilty and closed. While no charges have been filed against Bank Frey, the U.S. indicted Stefan Buck, the bank's former head of private banking.

Edgar Paltzer, an attorney at Swiss law firm Niederer Kraft & Frey Ltd. was named in the same indictment. Mr. Paltzer pleaded guilty to conspiracy and is scheduled for sentencing next year. Mr. Frey founded Bank Frey in 2000 and resigned from Niederer Kraft & Frey this April.

UBS paid $780 million in fines but did not plead guilty to a crime. The older Wegelin pleaded guilty and was sentenced to pay $58 million for conspiring to evade taxes. With $20 million of restitution, a $22 million fine and $15.8 million in fees Wegelin earned on the undeclared accounts, the U.S. recovered about $74 million.

Announced in August of this year, Switzerland and the U.S. now have a program for Swiss banks. They must disclose undeclared American assets on their books and pay related penalties. Hundreds of banks are expected to participate, but banks already under investigation–including Bank Frey–are not eligible. See Signed Joint Statement and Program.

The banks that take part are required to provide details on accounts for Americans. They must inform on banks that transferred money into secret accounts or that accepted money when secret accounts were closed. They must reveal all cross-border activities and close accounts of Americans evading taxes. The fines for banks are set in tiers based on time.

Banks that held accounts as of August 1, 2008, must pay a fine equal to 20% of the top dollar value of all non-disclosed accounts. That goes up to 30% for secret accounts opened after August 1, 2008 but before March 2009. The highest tier of penalties is 50% for accounts opened after that. See Every American With Money Abroad–Anywhere Abroad–Is Impacted By Massive Bank Deal.

The 3-tier penalty of the new deal punishes the more recent violators most harshly. The Department of Justice has not tallied the total the U.S. expects to collect, but it will be a big payday for the U.S. Yet as painful as the deal may be for Switzerland and its banks, the new deal averts an even deeper crisis there.

The new deal enables Swiss banks not under criminal investigation to get non-prosecution agreements that don't involve guilty pleas or criminal penalties. But some Swiss banks–presumably some of the 14–may still face indictment. Meanwhile, account holders remain in the crosshairs.

For Americans holding undisclosed funds in Switzerland or anywhere else, account holders have few choices remaining. Increasingly, that is also true of their professional advisers. The IRS and DOJ already have a treasure trove of data about foreign accounts and entities. Add to that the details from deals done by banks and insiders, and a stream of IRS whistleblowers.

It all makes the IRS voluntary disclosure program today even more compelling. Now with FATCA taking effect and the capitulation of what amounts to all of Switzerland, the world is a different place. In it, it seems clear that disclosure–everywhere and of everything–is inevitable.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.