

Bank Julius Baer: Grand Larceny via Grand Cayman

From Wikileaks

The Baer essentials, part 1

RUDOLF ELMER with **ANDREAS MISSBACH** (Bern. Decl., editor) & **DANIEL SCHMITT** (WikiLeaks, editor)
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The following is the first of three written statements by Rudolf Elmer, the former Chief Operating Officer of Bank Julius Baer in the Cayman Islands. This first letter details the offshore structures of the Bank Julius Baer group, explains workings of several of Baer's hedge funds and outlines how Julius Baer employs these to avoid paying taxes in the homecountry of the group.

It is the account of a whistleblower stepping forward to talk about unlawful and unethical behaviour.

Wikileaks has verified the material on a preliminary basis, coordinating efforts with the Bern Declaration, and is now asking financial specialists to have a look and verify the substance of the published statements of Mr. Elmer.

A full translation of the german paper is printed below, the original paper itself can be found [HERE](#) (Translation). Attachments coming with the letter as well as the letter and its translation in pdf format can be found [HERE](#).

The german version of this article can be found [HERE](#)

Letter from Rudolf Elmer

As an insider (whistleblower) I am able to disclose certain statements of affairs of Bank Julius Baer. The main intention of this letter is to disclose methods used and still being used by Bank Julius Baer to avoid or decrease tax payments.

I have been the Chief Operational Officer (COO) of Bank Julius Baer & Trust Ltd, Cayman. I have been asked to transact unethical and immoral business for the bank. I have cooperated firstly out of naivite and then for an annual salary of CHF 220,000.

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Fact is, that tax fraud evasion as well as massive aiding hereunto are part of the repertoire of this Cayman Bank owned by the Swiss. It succeeds to:

- unjustifiably minimize taxes via Julius Baer and Trust Co Ltd, Cayman Islands and the Julius Baer Holding AG, Zuerich.
- unethically and immorally deprive the Swiss people of tax funds.
- evade banking regulations.

This report intends to protect my family, as the public needs to know that I want to contribute to:

- the Swiss people understanding the operations of Bank Julius Baer,
- bringing tax evaders and defrauders to light in that their methods will be revealed, stopped and no longer be treated as a peccadillo.
- a reconsideration of the interpretation of tax evasion, fraud and the planning of this, and maybe qualify it as ex-officio matter for the future,
- tax evasion and fraud being treated as a preliminary stage for money-laundering, as this is the case in the US and Germany,
- more money flowing to the Swiss and other state's tax entities for them to achieve their tasks.
- the Swiss banking commission reconsidering and tightening their regulations and practices,
- the Swiss financial world by my account becoming more honest, ethical and moral,
- Offshore investors becoming more aware of the risks they are running into, as seen with Swisspartner and other vehicles,
- my wife and child not longer having to fear stalking by Bank Julius Baer and threats from third persons.

What is this about

Bank Julius Baer is systematically moving taxable funds to the offshore-island Cayman Islands (as well as Luxemburg or the tax-haven Guernsey), to minimize or reduce to zero their tax burden and that of their customers. I call such entities "*bellevue-griten (little whores)*". I sometimes felt like the guard of those "*ladies*" who essentially are being abused. The story is about the following limited liability companies of the Julius Baer Holding AG, which offer their services as offshore-entities of Julius Baer Holding AG in the Caymans Islands:

- Julius Baer Bank and Trust Co. Ltd, Cayman Islands (the bank)
- Julius Baer Trust Co Ltd, Cayman Islands (the administrative company)
- URSA Ltd., Cayman Islands (the insurance company)
- Baer Select Management Ltd, Cayman Islands (the investment manager)

- CreInvest Ltd, Cayman Islands (the hedge fund)
- shaPE Ltd, Cayman Islands (the private equity company)

The common goal of these companies is to:

- establish transactions only possible because of the lack of financial regulation and jurisdiction on the Caymans, as compared with well-regulated countries,
- reduce the taxable revenues of the Julius Baer groups in Switzerland and other countries for itself and its customers,
- offer vehicles to Swiss and foreign customers for tax evasion or even tax fraud,
- offer the ability to Swiss and foreign trustees to found companies on the Caymans (as well as Guernsey and Luxemburg) in order to profit from this situation,
- protect investors,
- and naturally reduce taxes for the Julius Baer group.

Only the mother company Julius Baer Bank and Trust Co Ltd, Cayman Islands (the bank) is owned directly by Julius Baer Holding AG, Zurich. All other companies are owned by Julius Baer Bank and Trust Ltd, (directly or indirectly) and therefore only Julius Baer Bank and Trust Co Ltd., Cayman Islands (the bank) appears to the outside. This is effective, as all other companies stay hidden. Neither the Eidgenoessische Banken Kommission (Swiss federal banking commission) nor the tax administration are ever shown the balances or profit calculations of these companies due to the Confidentiality Law on the Caymans (similar to the Swiss banking law), under which there is no right for examination.

The estimated quantum of the tax reduction can be determined from the calculations at the end of this document. This is not about an exact figure of the loss of tax revenue in Switzerland but an order of magnitude and especially the methodology of offshore entities. The numbers presented represent the beginning of this decade and are very likely much higher today in light of the growth of the group.

Julius Baer Bank and Trust Co. Ltd, Cayman Islands

Sole shareholder of Julius Baer Bank and Trust Co. Ltd, Caymans Islands (the bank) is the Julius Baer Holding AG, Zurich. This banked finances itself from Switzerland via Callmoney (up to CHF 1,600,000,000.00 during my time) of clients. It invests this money into the corporate bond portfolio, which is actively managed from Switzerland via the Asset & Liability Management (the decision maker) in Zurich. All investment decisions are made in Zurich, financing of bond purchases (including assignment of customer call money) is made and controlled in Zurich, Buy and Sell decisions are made in Zurich and the risk management is de facto exercised in Zurich.

Nevertheless it is feigned that the management had made decisions on the Caymans. I had to allot orders via Lotus Notes e-Mail (an internal communication system), even though the orders had long been placed. The climax was that the bank kept these transactions in management protocols of Julius Baer and Trust Co. Ltd, Cayman Islands, formulating them to appear as if the decision making for buying and selling had taken place in the Caymans. This added up with my e-Mail order to originating the decision to the Caymans. These weekly management protocols had to be sent to Zurich to the general administration. The further proceedings with those protocols are not known to me.

The bond portfolio not only holds long-term investments (obligations of *International Financial Reporting Standards (IRFS)* category *Hold to Maturity*), but also is a trading book (for instance *Liquibaer*, a Julius Baer fund or also the legendary *Long Term Capital Fund* (see attachment LINK). The frequent acquisitions and sales of *Liquibaer* shares were not to be booked. Only at the end of the month was the stock reconciled. Naturally no fees were calculated on these acquisitions and sales (foreign transactions) even though all transactions were made via an account in Zurich with Bank Julius Baer (account number 726.5062). The acquisitions and sales generally pertained to accounts in Zurich. Account- and bond-administration is thus also done in Zurich.

Violation of tax laws

Swiss banking law clearly states that when administrative tasks are being accomplished in Switzerland and an organization's only purpose is to circumvent tax regulations, the organization is to be treated as a Swiss entity under Swiss tax laws. To avoid such treatment, the business activity of the organization has to be independent, and either investment decisions or strategic investment planning has to be performed by the foreign organization.

Foreign organizations are only not subject to Swiss tax laws if the following criteria is met (taken from an english text):

- *An independent business activity should be performed at the foreign domicile in which either decisions for investments are made in person or that at least strategic investment plans are developed there in order to prepare respective decisions of other companies.*

Julius Baer Bank and Trust Co. Ltd., Caymans (the bank) is not acting independently in a foreign domicil and thus is not subject to tax exemption, as the decision takers for i.e. bond acquisitions and sales are domiciled in Switzerland (Asset & Liabilty Management of Julius Baer AG, Zurich). The professional know-how is non-existent in the Caymans and thus no real administration is done there. In reality, only a shadow-accounting is in place at Julius Baer Bank and Trust Co. Ltd., Cayman; the bond portfolio and the financing of the portfolio are held in Zurich.

The profits of Julius Baer Bank and Trust Co. Ltd., Cayman Islands (the bank) and its daughter organizations, roughly CHF 10-30,000,000 per year and probably much more today, flow back as a dividend to Julius Baer Holding, Zurich. The holding allowance is applied and the Cayman's interest yield is not taxed.

- *The foreign domicile should be furnished with infrastructure.*
- *The offshore-company must hire own staff, which in act is working at the foreign domicile and possesses the required professional qualifications so that thereby the management of the offshore-company on site is ensured. Not sufficient is this respect is the engagement of loan staff by the offshore-company.*
- *The offshore-company has to obtain all necessary approvals and licenses with regard to the local legislation for its business.*
- *The sole purpose of the vehicle/construction should not be to minimise tax exposure in the home country.*

If only one of the above-mentioned criteria cannot be proved, then the offshore company is qualified as a passive investment entity. This classification leads to extensive tax consequences (i.e. direct federal taxes, state- and local taxes, withholding taxes) in Switzerland.

Violation of matching maturities

Bank Julius Baer and Trust Co. Ltd., Cayman Islands (the bank) is financing a long-term bond portfolio (obligations with bonds of IFRS category "Hold to Maturity") as well as a speculative trading-book with customer- and bank-owned call-money (callable in 2-3 days). In Switzerland, holding short-term financing such as call-money in amounts as Julius Baer Bank & Trust Co. Ltd., Caymans Islands (the bank) is unlawful, especially under Swiss banking law, and therefore not possible to do legally. It is ridiculous that Cayman banking-law allows for short-term financing (customer call-money up to 90% of the balance) and long-term (obligations) and speculative (trading-book) investments of that money. That customer call-money is being used for financing of a long-term bond portfolio is clearly in violation of Swiss bank-law matching maturities. Naturally Bank Julius Baer argues that things need to be regarded from the perspective of the holding, not a single organization or offshore entity. In bankruptcy cases there is no corporate liability, which causes a higher risk on the offshore investment. It has never been the idea of the Swiss legislator that short-term investments (call-money) should reside with 100% controlled group organizations. The idea was to manifest a risk distribution, which means the money was supposed to be invested with third banks and not holding-internal offshore organizations. That a renowned private bank is holding an offshore trading-book is certainly despicable. This is very risky as clear banking regulations regarding risk management can be avoided. There is no professional risk management in the Caymans.

URSA Ltd., Cayman Islands

(100% shareholder: Julius Baer Bank and Trust Co. Ltd., Cayman Islands)

URSA is a group internal insurance pseudo-company of the bank, in place to reduce tax liabilities in Switzerland and other countries by deducting insurance premiums as business expenses of Bank Julius Baer, Zurich and other group organizations. This concerns insurance premiums of ca. CHF 500,000 per year (probably more today). The benefits from the bond portfolio and the gains from pseudo insurance premiums of group organizations make up the equity capital of URSA of around CHF 25,000,000. URSA has not paid for one group-internal insurance claim in the last 15 years, as all losses are directly charged to the Baer organizations, which furthermore lead to local tax liability reduction. The company has no real administrative efforts and no operative costs, as it has no employees. Decisions on the bond portfolio are made in Zurich and London. These services are not invoiced and therefore neither London nor Zurich generates any incomes or tax liability. Moreover no value-added tax is being applied to the premiums, even though URSA is indirectly held by Julius Baer Holding AG, Zurich (renderer and beneficiary of service are both in Switzerland). URSA is an instrument with the sole purpose of minimizing and evading taxes.

Baer Select Management Ltd, Cayman Islands

(100% shareholder: Julius Baer Bank and Trust Co. Ltd., Cayman Islands)

The purpose of this organization is to act as an investment manager and employee investment advisors to delegate investment decisions to professional managers.

This is the height of tax minimization, as the management fees, investment advisory fees and partly the performance fees of Swiss stock-notated companies (CreInvest AG, Zug and shaPE AG, Zug/Freienbach) are collected tax free offshore. The company holds no employees or furniture, but manages the Investment Management Mandate of diverse Baer funds (CreInvest, shaPE, Fixed Income Hedge Funds and newly diverse other Hedge Funds). Baer Select Management Ltd., Caymans Islands (investment manager) has the mandate to perform Investment Management Services via an Investment Advisor, for instance for CreInvest Ltd, Cayman, which is held by CreInvest AG, Zug. The services are charged with CreInvest Ltd, Cayman (holding a bond portfolio in Zurich and New York at Julius Baer companies), so tax-free profits can be generated in the Cayman Islands. CreInvest AG, Zug, holds just enough dividend that operation costs can be covered and only a very small profit is made in Switzerland (profit-manipulation).

Naturally CreInvest Ltd., Cayman is profiting as the offshore entity from the acquisitions and sales with many fewer charges and sketchy legal regulations in the Cayman Islands. While Swiss law for investment funds is rigorous, such laws are non-existent in the Caymans.

Also shaPE, Cayman and shaPE, Freienbach (Kanton Schwyz, the Swiss tax haven) are structured in the same manner. CreInvest AG, Zug and ShaPE AG, Freienbach are assigned to the Swiss stock exchange, but the investment management appears to be moved to the Caymans. As a result, Investment Management Fees and Performance Shares can be collected offshore by Baer Select Management Ltd., Cayman. This again reduces taxable earnings due to Switzerland and other countries.

Further funds like Julius Baer Diversified Fixed Income Hedge Fund, Cayman, JB Black Sea Frontier Fund 2007 and Julius Baer Equity Hedge Fund, Cayman are structured in the same way. The Management, Performance and Investment Management fees accumulate offshore with Baer Select Management Ltd., Cayman. It also has to be regarded that CreInvest AG, Zug, as well as shaPE AG, Freienbach, are using Swiss infrastructure as they are listed on the Swiss stock exchange (SWX). The profits are entirely made by Baer Select Management Ltd., Caymans Islands (please see below), These profits flow back as a dividend to the Julius Baer Holding AG, Zurich, via Julius Baer Bank and Trust Co Ltd, Cayman. The fact is that the Win/fee ratio (Definition: difference between charged fees for Investment Management Mandates and paid fees to so-called Investment Advisors) that are economically generated by Switzerland or another country accumulate offshore and are then transferred back to Zurich to Julius Baer Holding AG. In this process the holding allowance is asserted and therefore profits are never taxed.

The rip-off

Especially the case of shaPE is a violation of Corporate Governance. The majority of customers who have invested in this product are customers of Bank Julius Baer. These customers gave a mandate for asset management to the bank. The management has exploited this and indirectly forced their own consultants to buy shaPE bonds for the customers. This amounts to CHF 130,000,000 that has forcibly been invested to make a success of the shaPE entity in respectively generating more fees offshore. The shaPE stock is an *underperformer* compared to the market. The bank profits around 1.5% from the CHF 130,000,000 though, which equals to 2,000,000 annually. It generates untaxed profits from its suffering customer's assets.

Calculation of fees for both organizations

CreInvest, Zug, respectively Cayman:

- fund volume: USD 340,000,000
- fees: range of 2% Investment Management / Advisory Fees, Custodian Fees for investments, Transaction Fees, Performance Fees.
- The offshore organization Baer Select Management Ltd., Cayman, gained around the year 2000 ca. USD 12,000,000 per year, tax-exempt.

shaPE, Zug/Freienbach, respectively Cayman:

- fund volume: CHF 130,000,000 (mainly customers with asset management mandates)
- fees: up to 2% Investment Management / Advisory Fees, Custodian Fees 0,2%, Transaction Fees
- a 10% Performance Fee is a farce, the performance is rarely, if at all achieved.
- The offshore organization Baer Select Management Ltd., Cayman, generates ca. 3,700,000 per year,

tax-exempt. [IS THIS US DOLLARS OR CHF?]

Besides CreInvest Ltd., Cayman and shaPE Ltd., Cayman, the Baer-owned Hedge Funds pay fees to Baer Select Management. Consequently Baer Select Management is an actual *cash cow* that produces tax-exempt profits offshore and moves these back to Zurich.

Julius Baer Trust and Co Ltd. Cayman Islands

The purpose of this organization is to offer the following services:

- Administration of Mutual Funds
- Administration of Trusts & Companies

Principally this organization also offers services to independent Swiss asset managers who exploit the holes arising from the lack of knowledge of the Cayman legislation and also generate certain Management Fees offshore that the Swiss federal tax can be deprived of. A classic example is that of Mr. C. L. Jr., the former representative of Julius Baer, Mexico City and former member of the advisory board of Julius Baer, Cayman. The Julius Baer corporation had to do a moonlight flit there because of C. L. Jr.'s involvement in the Salinas story. The Swiss criminal prosecution has been investigating C. L. Jr. since 1995 for money-laundering, drug-trafficking, misappropriation of funds, and other criminal matters (in detail: BGE 125 IV 165). On the 15th of November 1995 C. L. Jr.'s assets in Zurich were seized due to preliminary proceedings initiated by Swiss authorities. He was the trusted investment advisor to members of former Mexican president Raul Salinas' family and had also been involved with the assets of Salinas' brother at Bank Julius Baer, Zurich. It is known from reliable sources that the proceedings against him and the bank closed: the Due Dilligence investigation in the Salinas case was *sloppy* and is thus not punishable. This leads to the assumption that *sloppy* Due Dilligence is treated as a peccadillo in Switzerland.

The Cayman unit also offers Trust & Company services, to ascribe money back to Switzerland via detours, i.e. in forms of grants and thereby generate tax-exempt interest from the credits offshore.

The concept of these FINTEX corporations is that money can be deposited on the account of a customer's offshore company with Julius Baer in Zurich. This offshore company is administered by the Julius Baer Bank and Trust Co. Ltd., Cayman. To make the money usable for the mother company, the Cayman corporation grants a credit with a profitable interest rate. The expenses for interest are now declared justifiable as pertaining to business expenses, and again Swiss tax revenues are reduced. Julius Baer is aiding here actively to avoid taxes. This offshore entity is also needed to make payments to third parties that are not liked by corporate accounting. The question remains as to what return services are offered by the receiver. In fact, this company is a *bellevue grite*.

Julius Baer Bank & Trust Co. Ltd., Cayman has also been used for course maintenance of the CreInvest AG, Zurich stock. CreInvest stock was purchased in large volume to keep the stock up. The company's own stock was up 40% at certain points in time. Bank Julius Baer, Zurich would not have been allowed to hold more than a certain amount of stocks without involving the federal tax office. Thus the major part was transacted via Julius Baer Bank & Trust Co. Ltd., Cayman.

Calculation of Swiss tax losses due to activities of Bank Julius Baer on the Caymans

estimated Swiss tax loss

	Yearly average	Tax burden Zurich	Tax-reduction/- resp.
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	profit in Mio. CHF	and dBSt. ca 35%	fraud per year
Julius Baer Bank and Trust Co. Ltd., Cayman Islands	CHF 15 - 20,000,000	CHF 7,000,000	CHF 7,000,000
Julius Baer Trust Co. Ltd., Cayman Islands	CHF 3,000,000	CHF 1,000,000	CHF 1,000,000
Baer Select Management Ltd., Cayman Islands	CHF 8 - 9,000,000	CHF 3,000,000	CHF 3,000,000
URSA Ltd., Cayman Islands	CHF 500,000	CHF 200,000	CHF 200,000
Total per year	CHF 26,5 - 32,500,000		CHF 10,2 - 11,200,000

The CHF 26,5 - 32,500,000 provide for an estimated taxable profit of ca. CHF 38 - 45,000,000 in Switzerland. Normally this would be applicable to Direct Federal Tax (Direkte Bundessteuer), state and local taxes (Staats- und Gemeindesteuer) as well as withholding tax in case of payout of dividends. These payouts would also be taxed as income if pertaining to a human person. All these tax burdens are not there for the offshore entity.

These numbers are based on experience from 1997 to 2003 and it is therefore clear that the massive growth of the Baer group (Asset under Management 2002 ca. CHF 170,000,000,000 and 1900 employees versus CHF 400,000,000,000 and 4100 employees in 2008) must mean these numbers are pretty conservative and today are a multiple due to higher transaction volumes and further funds on the Caymans.

Handling of offshore constructs by the cantonal tax office of canton Zurich

The responsible people with Julius Baer will respond to the facts presented in this report that all efforts have in detail been coordinated with the tax authorities. The intermingling of the cantonal tax authorities with the Zurich finance world has to be assessed critically from my perspective. It is understandable that the canton Zurich does not want to disgruntle the big tax payer Julius Baer and therefore grants so-called "tax rulings". But when the Zurich tax authorities have once agreed to an offshore entity, a lot is needed before coming back to this decision. The dimension of the profit that is generated offshore is not revealed when presenting the construct initially. This would raise questions about the construct. The cantonal tax authority thus grants a permit without being able to know the dimension of tax loss. Furthermore, as soon as a construct has been acknowledge by the tax authorities (via a written acknowledgement), it is protected by Cayman banking secrecy. The tax authorities can then no longer ask for disclosure. The tax authorities therefore also never see balances of profit calculations from the Cayman corporations and will never know the degree of "tax-savings". Also interesting is that neither the Confederate Tax Administration (Eidgenoessische Steuerverwaltung), nor the Confederate Withholding-tax authority or department for added-value taxes ever are consulted for such "tax-ruling" negotiations, or have any right of co-determination. It is the sole realm of the cantonal Tax Authority to pass such rulings.

Julius Baer argues that these offshore entities have been agreed upon with the tax administration and there also would be the "Arm's Length Principle", and therefore all is lawfully sound. Nevertheless the effect is that:

- Julius Baer pays massively reduced taxes
- Swiss small- and medium-sized businesses can not afford such entities

- the people and the state lose tax revenue

Tax authorities are not allowed to use data

Cayman-data that has **lawfully** come into my possession can not be used by the Confederate Tax Administration for investigation. As the responsible person for the bank I had to take a tape copy home with me, to make sure bank data could be reconstructed timely in case of a fire. This would also have been the case for a hurricane, in which case I had to fly the data out of the island, which I have done a couple of times.

My employment contract was been cancelled while I was on holidays in the hospital in Zurich for a spinal surgery. Therefore no one has asked for this data. I therefore assert that I have lawfully obtained the data from the Caymans, there can be no talk of theft. This has also been stated in written form by the Zurich prosecutor. Also the Cayman jurisdiction has not accused me, but the Weltwoche (Lukas Haessig) and "Sonntagszeitung" (Meinrad Ballmer) started a media campaign against me as a data-thief. Ballmer went as far as to calling me a psychically suffering person. Even more aggravating is that the Zurich judges denied the Confederate Tax Administration the right to analyze the related files, therefore making an investigation into Baer-Cayman-customers and the bank itself impossible. This has been confirmed by the Confederate Tax Administration (ESTV) in a letter:

"The ESTV has been denied access to records of the criminal prosecutor of the canton Zurich against Rudolf Elmer. This has been justified with the claim that the by the prosecutor illegally obtained files from Bank Julius Baer are still subject to Swiss banking secrets. In a "proper" criminal investigation the prosecutor would not have been able to seize customer data from a daughter company of Bank Julius Baer in a foreign country. As Rudolf Elmer is still subject to the banking secrecy, the ESTV can not use any oral or written statements from you in any investigation against particular persons or organizations, as this information would have been obtained illegally by us." This justification is ridiculous and only an argument pushed forward to deny access to records.

In contrast, the prosecutor has granted access to even those files to the compensation fund of the banks (Ausgleichskasse der Banken), which lead to the bank having to remargin thousands of franks of social security payments. Obviously the rights of the Confederate Department of Finance and the Confederate Department of Social Insurance to access the files are being judged differently by the Zurich judges.

This shows clearly that the Swiss legislation is just not sufficient in such cases. The bank can optimize its tax evasion and the state can not call this bank to account when it learns about it. The wrongly manifested statements in the management protocols on the Cayman's, that "account" for acquisition and sales decisions being taken in the Cayman's 6-7 hours after the actual transaction occurred, can thus not be prosecuted. A discussion about the ethics and morality of such behaviour/decision is superfluous.

Responsibilities

The following people know about and have the responsibility for the activities of Bank Baer on the Cayman Islands:

- Raymond Baer, VR President of Julius Baer Holding AG, former VR President of of CreInvest AG, Zug and former Business Line Responsible for Julius Baer, Cayman
- Rudolf E. Baer, former CEO of Julius Baer Holding AG, former VR of Julius Baer Bank and Trust Co. Ltd., Cayman
- Walter Knabenhans, former CEO Julius Baer Holding AG, Zurich, former President of the Advisory

Board Julius Baer Bank and Trust Co. Ltd., Cayman Islands

- Michael Vukotic, Bankdirector Julius Baer Bank AG, Zurich, Advisory Board Julius Baer Bank and Trust Co. Ltd., Cayman Islands
- Martin Vogel, Advisory Board Julius Baer Bank and Trust Co. Ltd., Cayman Islands
- Fabio Oetterli, Director Baer Select Management Ltd., Caymans Islands, Director Bank Julius Baer & Co AG, Zurich

Protection of the investor

This example shows how important it is that the investor have control over his offshore vehicle and does not give a full management mandate to an unprofessional consultant. This pertains to the Offshore product *Swisspartner*. An example (in english language):

A United States resident claims he lost \$22 million as a result of the mis-handled restructuring of his offshore account made necessary by Swiss banks agreeing to co-operate with the IRS.

At the center of the allegations are Bank Julius Baer and Dexia Private Bank, both of Switzerland, and investment firms controlled by Liechtensteinische Landesbank Ltd., of Liechtenstein.

Anthony Defries, of Berryville, Virginia, alleges the value of his securities portfolio plummeted after he was induced by his advisers to give up direct control in order to comply with U. S. tax laws.

Four months later, the portfolio had lost \$22 million as his money managers failed to implement a limit strategy or obtain insurance, as they should have, it was alleged.

In an effort to recoup his losses, Defries filed a civil complaint at the U. S. District Court for the Eastern District of Virginia on October 29, 2003, alleging "securities and insurance fraud".

Defendants are Swiss Partners Investment Network Ltd., of Liechtenstein; Swiss Partners Insurance Company SPC Ltd., of Switzerland; Liechtensteinische Landesbank Ltd., of Liechtenstein; Karp & Genauer PA, of Florida; Bank Julius Baer & Company Ltd., of Switzerland; Dexia PrivatBank, of Switzerland; Rainer H. Moses, a Swiss national; Martin P. Egli, a Swiss national residing in Monaco; Simon Newson, a Swiss national; Benno K. Raeber, a Swiss national; Anthony B. Stelling, a British national residing in the Cayman Islands; Elfried Hasler, residing in Switzerland; Norman Oehri, residing in Switzerland; Joel J. Karp, residing in Florida; Raymond J. Baer, residing in Switzerland; Armin Weber, a Swiss national; Marcel Wieduwilt, a Swiss national; Sigrid Baur, residing in Switzerland; and Alfons Widmer, residing in Switzerland.

Defries indicated his lawsuit may turn into a class action on behalf of "any policyholder who participated in or purchased insurance products from Swiss Partners Insurance Company SPC during the relevant period".

"The Defendants have been requested to provide details of the holders of optional variable annuities so that those holders might be asked if they wished to pursue such a class action, but the Defendants have failed and refused to provide any such information," he alleged.

Defries claims that, from 1997 to 2001, the defendants "dealt in unregistered securities in violation of the Securities Act 1933 and sought to pass off those securities as unlicensed insurance products". "Defendants further engaged in a conspiracy with each other to set up, market, disseminate and sell unregistered securities and unlicensed insurance products and so-called purported deferred variable annuity insurance

policies in the USA and in Switzerland and carried out a course of conduct involving such fraud, conspiracy, reckless behavior and attendant actions, occurred in the period between 1997 and 2001."

Defries claims that his own problems began in April, 2000 when Rainer Moser, of SPIN/SPC, advised him of "a new IRS ruling under which all US equity holders who were US residents would be required to pay full withholding tax and penalties".

"Moser said that the Swiss banking community had agreed to cooperate with the IRS and disclose the US resident owners of all Swiss accounts.

"The deadline for such disclosures and penalties was December 2000. SPIN advised Defries that reconstruction of the portfolio and the necessary insurance protection in the form of a Deferred Variable Annuity would have to be implemented before that date.

"They insisted that the account management be made entirely local at SPIN, with no direction from Defries or the US. They specifically described insurance guidelines and restrictions as requiring a complete cutout of any US direction, management, or control."

Defries claims that he relinquished direct control of his account in July, 2000 and that, by November, 2000, his securities portfolio had suffered losses of approximately \$22 million.

Much of the loss was incurred in the stock of Bookham Technology PLC, whose shares are listed on the London Stock Exchange and Nasdaq, stated Defries.

He said he made a profit of \$15 million on an initial investment of \$500,000 in Bookham in 1999 when it conducted "a very successful" IPO in 2000.

"The bulk of this profit was subsequently lost by failure of SPIN to take required and requested action to protect the stock," he alleged, as Bookham's share price fell from \$40 to \$12.

SPIN failed to act on Defries' request to "establish a limit strategy for Bookham to protect the entire position at \$35 to \$40".

This is only one example of many incidents within Julius Baer Group. It can be acknowledged here that Julius Baer warned the customer.

The second whistleblower letter will be dedicated to the topic of "tax-ruling" of the Zurich tax department and the role of a well-known law firm in the Bahnhofstrasse, Zurich in this.

The third whistleblower letter will deal with the topic of "practices" pertaining to single formerly existant cases to demonstrate in what ways external asset managers use offshore vehicles.

Rudolf Elmer, February 2008

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