UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-v.-	:	S1 12 Cr. 02 (JSR)
WEGELIN & CO., *et al.*,	:	
Defendants.	:	

GOVERNMENT'S SENTENCING MEMORANDUM

PREET BHARARA
United States Attorney
Southern District of New York

Of Counsel:
Daniel W. Levy
David B. Massey
Jason H. Cowley
Assistant United States Attorneys

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 25, 2013

By Hand
The Honorable Jed S. Rakoff
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1340
New York, New York 10007-1312

Re: United States v. Wegelin & Co., *et al.*
S1 12 Cr. 02 (JSR)

Dear Judge Rakoff:

In advance of the sentencing of defendant Wegelin & Co. ("Wegelin" or the "defendant"), currently scheduled for March 4, 2013, at 4 p.m., the Government respectfully submits this Sentencing Memorandum.

For the reasons set forth below, the Government respectfully requests that the Court:

(1) impose a fine of $22,050,000, which is the midpoint of the applicable Sentencing Guidelines fine range, and impose a short term of probation;

(2) order the defendant to pay $20,000,001 in restitution to the victim of its illegal conduct, representing the approximate unpaid taxes as of the date of sentencing; and

(3) enter the proposed Final Order of Forfeiture of $15,821,000, representing what counsel for Wegelin has stated are the gross fees earned by Wegelin as a result of its illegal conduct.

I. Wegelin's Criminal Conduct

A. The Conspiracy to Defraud the IRS and to Evade Taxes

Starting in the early 2000's and continuing well into 2011, Wegelin engaged in a wide-ranging conspiracy with, among others, hundreds of U.S. taxpayers to evade taxes, file false tax returns, and defraud the Internal Revenue Service (the "IRS"). As demonstrated by the facts in the Superseding Indictment (the "Indictment") returned on February 2, 2012 (attached hereto as Exh. A), the civil forfeiture Complaint (the "Complaint") filed by the Government on the same day (attached hereto as Exh. B), and the Presentence Report, dated February 25, 2013 (the "PSR"), Wegelin's conduct was extraordinarily willful and caused substantial harm to the United States Treasury.

As set forth more fully below, Wegelin's extraordinarily willful conduct includes:

(1) the use of sham structures to hold accounts at Wegelin;

(2) the use by Wegelin of its U.S. correspondent bank account to help U.S. taxpayers repatriate funds hidden in undeclared accounts; and

(3) Wegelin's affirmative efforts to capture undeclared U.S. taxpayer business from UBS AG ("UBS") , another Swiss bank that engaged in similar conduct, after it became public that UBS was being investigated by the Department of Justice.

B. The Use of Sham Structures to Hold Accounts at Wegelin

Wegelin facilitated the opening of accounts in the names of sham foreign corporations and other entities, such as Liechtenstein-based foundations (an entity akin to a trust under U.S. law), including with the express approval of Wegelin management. The purpose of this conduct was, of course, to insulate the U.S. clients who were the beneficial owners of the assets and income in these accounts from scrutiny by the IRS. In conjunction with the opening of some of these accounts, Wegelin knowingly accepted forms -- sometimes executed by external asset managers on behalf of U.S. clients -- certifying that a foreign corporation or other entity was the beneficial owner of the account. As Wegelin was well aware, the forms were false and, in fact, the U.S. taxpayers were the beneficial owners of the accounts. In some instances, Wegelin employees enlisted the help of outside professionals to assist U.S. taxpayers in forming sham entities. See Indictment ¶ 82. There can be little doubt, and it had to have been obvious to Wegelin, that U.S. taxpayers would not spend substantial fees on lawyers and other professionals to create and maintain these structures, see, e.g., Indictment ¶¶ 54, 81-82, but for the desire to evade taxes.

The Liechtenstein foundations and corporations formed under the laws of Hong Kong, the British Virgin Islands, the Cayman Islands, and Panama were the typical offshore structures used by U.S. tax evaders. These entities were a sham not so much because the formalities of these structures were not obeyed (in many instances these formalities were respected). Rather, they were a front used for tax evasion and a fig leaf for the U.S. taxpayers' failure to disclose the account to the IRS. Of course, the rules requiring disclosure of foreign bank accounts are specifically drafted to preclude U.S. taxpayers from erecting sham entities as a way of avoiding their obligations to disclose offshore bank accounts to the IRS:

> A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section [requiring generally the disclosure of offshore financial accounts containing over $10,000 and over which a U.S. taxpayer has signature or other authority] shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

31 C.F.R. § 1010.350(e)(3). Over the course of the conspiracy, approximately 30% of the undeclared accounts held by U.S. taxpayers at Wegelin were in the name of these sham structures.

C. Wegelin Used Its U.S. Correspondent Bank Account to Help U.S. Taxpayers Repatriate Funds Hidden in Undeclared Accounts

Some of the hundreds of U.S. taxpayers who conspired with Wegelin to evade taxes wanted funds from their accounts hidden in Switzerland made available to them in the United States, that is, to repatriate money from their undeclared Swiss accounts. Wegelin assisted these taxpayers by sending checks drawn on its U.S.-based correspondent bank account to the taxpayers in the U.S. or to payees designated by the taxpayers. In some instances, Wegelin transferred funds via wires. Some of the U.S. taxpayers who took advantage of this service selected amounts for the checks designed to conceal their undeclared accounts from the IRS, a fact that was obvious to Wegelin from the circumstances surrounding the requests.

Furthermore, Wegelin also permitted other Swiss banks -- described in the Indictment and Complaint as Swiss Bank C and Swiss Bank D -- to use Wegelin's correspondent bank account in similar fashion, which had the effect of further insulating the U.S. taxpayers holding undeclared accounts at Swiss Bank C and Swiss Bank D from scrutiny by U.S. law enforcement. Swiss Bank C and D had what is typically referred to as a "nested correspondent bank" relationship with Wegelin. See Complaint ¶ 23. Nested correspondent bank accounts "pose a further money-laundering risk because they provide additional foreign financial institutions access to the U.S. financial system and make it more difficult to identify the source and nature of the funds being sent to or from a correspondent account at a U.S. financial system." Complaint ¶ 20.

Rather than one large check or wire for these checks, it was often the case that batches of multiple checks (or wires) in smaller amounts were prepared by Wegelin on the same day in order to minimize the risk of scrutiny or detection of the transaction by U.S. financial institutions or government authorities and the discovery of the U.S. taxpayer-clients' undeclared accounts. See Indictment ¶¶ 32, 98, 115, 126, 137; Complaint ¶¶ 51, 62, 78-82. Below is one example of a series of checks drawn on Wegelin's correspondent bank account that were all payable to the same U.S. taxpayer with an undeclared account at Wegelin, see Complaint ¶¶ 43-44.

Wegelin Correspondent Bank Account Check No.	**Approximate Date of Issue**	**Approximate Date of Negotiation**	**Approximate Amount**
3416	11/25/2008	1/7/2009	$8,500
3417	11/25/2008	12/24/2008	$8,500
3418	11/25/2008	12/11/2008	$8,500
3468	1/5/2009	1/30/2009	$8,500
3469	1/5/2009	2/12/2009	$8,500
3470	1/5/2009	3/5/2009	$8,500
3510	2/26/2009	3/10/2009	$8,500
3511	2/26/2009	4/21/2009	$8,500
3512	2/26/2009	4/6/2009	$8,500
3552	4/21/2009	5/8/2009	$8,500
3553	4/21/2009	5/20/2009	$8,500
3554	4/21/2009	6/16/2009	$8,500
3659	8/25/2009	10/26/2009	$8,500
3660	8/25/2009	3/4/2010	$8,500
Total:			**$119,000**

The same sort of suspicious pattern -- multiple checks, each in amounts less than $10,000, and requested on the same day -- occurred for customers of Swiss Bank C. For example, one U.S. taxpayer with an account at Swiss Bank C asked his client advisor there to have checks issued to a company controlled by the client in the following manner:

> Please send in batches of three, USD cheques made in favor of [an entity controlled by the client] (our subchapter S corporation) as follows:
>
> One month after the inception of the account, $4788, $4908, $4889.
>
> Two months later, $4833, $4805, $4922
>
> Three months later, $3555, $4245, $4010

> Three months later. $4909, $4554, $4650
>
> . . . .
>
> Each of these cheques will be cashed over a period of time following receipt which might be up to five months unless you have a rule precluding holding them open that long

Complaint ¶ 79; see also id. ¶¶ 80-81.

Checks were sometimes made payable to corporate entities affiliated with the U.S. taxpayer-client, family members of the U.S. taxpayer, or other designated payees, rather than the U.S. taxpayer himself or herself, which also helped to obscure the relationship between the U.S. taxpayer-client and the undeclared funds. See, e.g., Indictment ¶ 131; Complaint ¶ 51.

At the request of U.S. taxpayer-clients to their Wegelin client advisors or Swiss asset managers, funds were sent from Wegelin's correspondent bank account to third parties who provided goods or services to U.S. taxpayers, thus allowing the U.S. taxpayer the benefit of these undeclared funds in a manner designed to make the source of the funds more difficult to detect. See, e.g., Indictment ¶ 111; Complaint ¶¶ 56-59.

D. Wegelin's Conduct After the U.S. Investigation of UBS Became Public

Perhaps the best example of the extreme willfulness of Wegelin's conduct occurred towards the end of the conspiracy. In early May 2008, the fact that UBS was being investigated by the Department of Justice became public and widely discussed in the press. UBS itself disclosed, among other things, that the Department of Justice was investigating whether certain U.S. clients sought, with the assistance of UBS client advisors, to evade their U.S. tax obligations. At the same time, UBS also disclosed that the Securities and Exchange Commission (the "SEC") was also investigating whether UBS engaged in activities in the United States that triggered an obligation to register with SEC as a broker-dealer. The fact that there was a tax-related investigation of UBS was widely reported in the U.S. and European press. In July 2008, UBS announced that it was closing its U.S. cross-border banking business. Thereafter, UBS began to inform its U.S. taxpayer-clients that it was closing their undeclared accounts. See generally Indictment ¶¶ 13, 18-19.

The disclosure of the UBS investigation presented Wegelin with a stark choice: Either Wegelin could have been deterred by the Department of Justice's tax-related investigation of UBS and concluded that it should exit the business of assisting U.S. taxpayers in evading taxes. Or Wegelin could have viewed the steady outflow from UBS of customers as an opportunity to obtain assets under management ("AUM"), market share in the private wealth management business, and ultimately profits. Wegelin chose the latter course and chose to view the investigation of UBS and the resulting exodus of UBS customers as a business opportunity,

rather than as an example to be avoided. This fact, by itself, strongly evidences Wegelin's willfulness. The message of deterrence generated by the fact that one of the largest and most prominent Swiss banks was being investigated for helping U.S. taxpayers evade their tax obligations simply was not received by Wegelin. And after Wegelin decided to accept customers leaving UBS, it became widely known in Swiss private banking circles that Wegelin was opening new undeclared accounts for U.S. taxpayers. See Indictment ¶ 19. For example, former UBS client advisors and a Los Angeles-based attorney specifically referred U.S. clients to Wegelin for the purpose of opening undeclared accounts. See, e.g., Indictment ¶¶ 28-29, 36, 49, 54.

After the UBS investigation became public, the Executive Committee of Wegelin -- a group of partners and others that controlled Wegelin -- affirmatively decided to capture the illegal U.S. cross-border banking business lost by UBS by opening new undeclared accounts for U.S. taxpayer-clients fleeing UBS. One of the managing partners of Wegelin announced this decision to team leaders of the client advisors in Wegelin's Zurich branch, some of whom openly questioned whether this decision was a wise one. In response, an executive of Wegelin told the team leaders that Wegelin was not exposed to the risk of prosecution that UBS faced because Wegelin was smaller than UBS and that Wegelin could charge high fees to its new U.S. taxpayer-clients because they were afraid of criminal prosecution in the United States. See Indictment ¶¶ 13, 19-20. This advice by a member of Wegelin's senior management is all the more egregious by virtue of that executive's extensive training as a lawyer and experience in law enforcement. See PSR ¶ 41.

In conjunction with top-level management's decision to capture the exodus of UBS clients, one of the managing partners of Wegelin supervised the creation of a list of client advisors at Wegelin's Zurich branch who were available to meet with potential U.S. taxpayer-clients, many of whom walked into the Zurich branch of Wegelin seeking to open new undeclared accounts. See Indictment ¶ 21. The fact that Wegelin, a private bank that did not normally accept walk-in clients, accepted such clients in this fashion further demonstrates Wegelin's extraordinary willfulness.

Thereafter, Wegelin experienced a truly striking growth in: (1) the number of U.S. taxpayers whom it was assisting in evading taxes: (2) the assets that it managed for these clients; (3) the fees received by Wegelin from this conduct; and (4) the relative importance of the business of helping U.S. taxpayers engage in tax fraud, as expressed as a percentage of its total AUM. As the following chart demonstrates, see PSR ¶ 50, Wegelin's AUM nearly tripled from the end of 2007 through the end of 2009 and the percentage of Wegelin's total AUM that was comprised of undeclared assets held on behalf of U.S. taxpayers more than doubled from the end of 2007 through the end of 2009:

As of	Total Undeclared Accounts for U.S Persons	AUM Held in Undeclared Accounts for U.S. Persons	Undeclared AUM as a Percentage of Wegelin's Total AUM	Total Fees from Undeclared Accounts for U.S. Persons, As Represented by Wegelin
12/31/2002	89	$87,900,000	2.3%	$479,022
12/31/2003	143	$172,700,000	3.2%	$590,162
12/31/2004	167	$206,500,000	2.8%	$689,711
12/31/2005	195	$214,000,000	2.5%	$769,255
12/31/2006	217	$309,700,000	2.6%	$890,618
12/31/2007	**252**	**$544,000,000**	**3.4%**	**$1,253,943**
12/31/2008	**558**	**$790,600,000**	**4.5%**	**$1,930,345**
12/31/2009	**684**	**$1,500,000,000**	**7.0%**	**$4,583,122**
12/31/2010	539	$1,200,000,000	4.9%	$4,634,822

In connection with accepting former UBS clients as Wegelin customers starting in mid-2008, Wegelin's management became more directly involved in the account-opening process. For example, Wegelin management participated in meetings with prospective clients at which client advisors sought to reassure prospective U.S. taxpayer-clients that Wegelin would not disclose their identities or account information to the IRS because Wegelin had a long tradition of bank secrecy and, unlike UBS, did not have offices outside Switzerland, thereby making Wegelin less vulnerable to United States law enforcement pressure. See Indictment ¶¶ 14, 21, 83.

In preparation for these meetings, members of Wegelin's management videotaped training sessions with client advisors of the Zurich branch to instruct them on their delivery of certain selling points to be made to U.S. taxpayers fleeing UBS. These selling points included the fact that Wegelin had no branches outside Switzerland and was small, discreet, and, unlike UBS, not in the media. Eventually, management of Wegelin's Zurich branch required that all new U.S. taxpayer accounts be approved by a specific managing partner or a specific executive. See Indictment ¶¶ 21-23.

While Wegelin was still taking in UBS clients, UBS itself resolved the U.S. investigation that it had disclosed in May 2008. UBS did so pursuant to a deferred prosecution agreement that UBS entered into with the Department of Justice in February 2009. As a term of the deferred prosecution, UBS agreed to pay the United States a total of $780 million: $380 million of disgorgement of profits from earned through its U.S. cross-border business, about half of which was paid to the Treasury and half of which was paid to the SEC; and $400 million for various taxes, interest, and penalties for undeclared United States taxpayers who were actively assisted or facilitated by UBS private bankers who met these clients in the United States and communicated with them via United States jurisdictional means on a regular and recurring basis. See UBS Enters Into Deferred Prosecution Agreement (available at <<www.justice.gov/tax/txdv09136.htm>>).

This was another opportunity for Wegelin to receive the message of deterrence, even though UBS was many times larger than Wegelin and had many more undeclared accounts and much more undeclared AUM than Wegelin. At this point, far beyond just an investigation, one of the largest and most prominent Swiss banks with one of the largest U.S. cross-border businesses had actually been charged with conspiring to defraud the IRS and had actually admitted in detail to having engaged in this conduct. See United States v. UBS AG, Information 09-60038-cr (S.D. Fla.) (available at << http://www.justice.gov/tax/UBS_Filed_Stamped_Information.pdf>>). And, to resolve the criminal prosecution, UBS also agreed to pay the United States $780 million consisting of disgorgement of profit and substantial restitution and agreed to a host of other measures, such as exiting the illegal business, disclosure of certain accounts of U.S. taxpayers to the United States, and appointment of an external auditor to ensure compliance with various obligations under the deferred prosecution agreement. See United States v. UBS AG, Deferred Prosecution Agreement (available at <<www.justice.gov/tax/UBS_Signed_Deferred_Prosecution_Agreement.pdf>>). But Wegelin was undeterred even by this. Wegelin continued to accept new clients from UBS for six months after the UBS resolution, and continued helping U.S. taxpayers evade their taxes until 2011. See PSR ¶ 88.

About a month after the UBS deferred prosecution was announced and in its wake, the IRS created a version of its longstanding voluntary disclosure program that was specifically designed for U.S. taxpayers who had undeclared accounts offshore, the Offshore Voluntary Disclosure Program (the "OVDP"). The basic outlines of the offshore voluntary disclosure program were that: (1) if a taxpayer with an undeclared offshore account answered various questions, committed to cooperating with the IRS, and paid back taxes, interest, and some penalty; (2) then the IRS would not recommend the taxpayer for criminal prosecution. The 2009 OVDP was time-limited and expired in October 2009. See generally 2009 Offshore Voluntary Disclosure Program (available at << www.irs.gov/uac/2009-Offshore-Voluntary-Disclosure-Program>>).[1]

[1] Eventually, the IRS re-opened the same program on slightly different terms. The current initiative remains available for U.S. taxpayers. See generally 2011 Offshore Voluntary Disclosure Initiative (available at <<www.irs.gov/uac/2011-Offshore-Voluntary-Disclosure-Initiative>>); 2012 Offshore Voluntary Disclosure Program (available at <<www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program>>).

As of June 2012, the IRS had received more than $5 billion in back taxes, interest, and penalties as the result of approximately 34,500 voluntary disclosures. See IRS Says Offshore Effort Tops $5 Billion, Announces New Details on the Voluntary Disclosure Program and Closing of Offshore Loophole (available at <<www.irs.gov/uac/IRS-Says-Offshore-Effort-Tops-$5-Billion,-Announces-New-Details-on-the-Voluntary-Disclosure-Program-and-Closing-of-Offshore-Loophole>>).

After the IRS' announcement of the OVDP, Wegelin changed various aspects of its business, changes that further demonstrate the willful nature of its conduct. For example, the typical restriction that Wegelin client advisors placed on contacts by clients with the bank from the United States was lifted once a client had informed a client advisor that he or she had voluntarily disclosed their Wegelin account to the IRS. See, e.g., Indictment ¶ 51. In at least one known instance, a Wegelin client advisor advised the husband of a U.S. client with an undisclosed account not to make a voluntary disclosure. See Indictment ¶ 33.

Because the U.S. clients who intended to make a voluntary disclosure needed information concerning their accounts, U.S. clients began to request account statements and other documents from Wegelin once they determined to make a voluntary disclosure. In response to the expected disclosure of client advisors' names to the IRS through the submission of documents as part of the voluntary disclosure program, one of the managing partners of Wegelin announced to team leaders of the Zurich Branch that client advisors' names would no longer appear on certain Wegelin records. Thereafter, some client advisors' names were replaced by "Team International," or a similar designation, on certain Wegelin records, so as to reduce the risk that these client advisors' names would become known to the IRS. See Indictment ¶ 24.

After about a year of taking in U.S. clients leaving UBS, Wegelin's executive committee decided that Wegelin would no longer open new accounts for U.S. taxpayers. But even at that point, Wegelin continued to service its existing undeclared U.S. taxpayer accounts and did not decide to exit the illegal business until 2011. See Indictment ¶ 25; PSR ¶ 88.

Despite the decision to no longer open new accounts for U.S. taxpayers, Wegelin, acting through Michael Berlinka, a client advisor who has been charged in this case and remains a fugitive, and a Wegelin executive, see PSR ¶ 44, opened at least three new undeclared accounts for U.S. taxpayers who had fled a different Swiss bank when it, like UBS, closed its U.S. cross-border banking business for both new and existing U.S. taxpayer-clients. This occurred in approximately late 2009 or early 2010. Each of the three new U.S. taxpayer-clients had at least two passports: one from the United States and one from a second country. In each case, Wegelin personnel opened the new undeclared account under the passport of the second country, even though Wegelin personnel were well aware that the clients were U.S. taxpayers by virtue of their possession of U.S. passports. See Indictment ¶ 25.

E. Other Indicia of Wegelin's Willful Conduct

Besides the use of sham entities, the use of its correspondent bank account, and its post-UBS conduct, there are other indicia of Wegelin's willfulness. These include:

(1) Wegelin's directing U.S. clients with undisclosed accounts not to call or send faxes from the U.S. because of a concern about U.S. law enforcement, unless the clients advised Wegelin that they had made a voluntary disclosure to the IRS;

(2) Wegelin's general refusal to send mail to the United States in order to ensure that the conduct of Wegelin and its U.S. clients did not come to the attention of U.S. law enforcement; and

(3) At least one client advisor's: (1) wiring funds to the U.S. bank account of a Wegelin client from a Wegelin account through Wegelin's correspondent bank account; (2) requesting that client to withdraw the wired funds from his U.S. bank account; (3) so that the client advisor could collect the cash from the first Wegelin client; and (4) give it, during a meeting at a Manhattan restaurant, to a second U.S. client who had an undeclared account at Wegelin, a series of maneuvers that the client advisor described as necessary because it was becoming increasingly difficult to move funds out of Switzerland.

See, e.g., Indictment ¶¶ 26-33, 36-37, 48-51, 58-60, 67-68, 87-90, 120-21; Complaint ¶¶ 65-68.

II. The Appropriate Sentence

The Government submits that, under the unique circumstances present in this case, the very substantial fine stipulated to by the parties -- $22,050,000 -- is an appropriate sentence, particularly when considered with the substantial restitution and forfeiture that are part of this case. The Government submits that such a fine adequately balances all of the factors that a sentencing court is required to consider under 18 U.S.C. § 3553(a). The Government further requests that the Court also impose a short term of probation.

A. The Sentencing Guidelines Calculation and the Maximum Possible Fine

In the plea agreement, the parties have stipulated to a Fine Range of between $14.7 million and $29.4 million. This is the product of the following:

(1) an offense level of 30, based on:

(a) a base offense level of 28 (for tax loss between $20 million and $50 million), pursuant to U.S.S.G. § U.S.S.G. §§ 2Tl.l(a)(l) and 2T4.l(L);

(b) a 2-level increase because Wegelin's offense involved sophisticated means, pursuant to U.S.S.G. § 2Tl.l(b)(2); see also U.S.S.G. § 2T1.1, comment. (n.4) ("Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means");

(3) a culpability score of 7, based on:

(a) an initial Culpability Score of 5;

(b) a 3-point increase because Wegelin had more than 200, but less than 1,000 employees, and because "individuals within high-level personnel of the organization," specifically various partners of Wegelin, "participated in [and] condoned" the illegal conduct, pursuant to U.S.S.G. § 8C2.5(b)(3)(A); and

(c) a 1-point decrease, assuming Wegelin's clear demonstration of acceptance of responsibility;

(4) a fine multiplier of 1.4 to 2.7, pursuant to U.S.S.G. § 8C2.6;

(5) a base fine of $10.5 million, pursuant to U.S.S.G. §§ 8Al.2, (comment. (n.3(H)), and 8C2.4(a, d); and

(5) a fine range of $ $14,700,000 to $29,400,000 (= $10.5 million base fine x 1.4 to 2.7), pursuant to U.S.S.G. § 8C2.7.

See PSR ¶¶ 108-21.

The parties have agreed to both seek a fine that is the midpoint of the fine range, $22.05 million.

In this case, Wegelin allocuted during its guilty plea that "its agreement to assist U.S. taxpayers in evading their U.S. tax obligations in th[e] manner [that Wegelin described elsewhere in the guilty plea] resulted in a loss to the [IRS]" of "$20,000,001." As a result of this allocution, the maximum possible fine that the Court may impose is $40,000,002. See 18 U.S.C. § 3571(d) ("If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss"); Southern Union Co. v. United States, 132 S. Ct. 2344 (2012) (holding that requirement of a jury verdict or guilty plea to increase defendant's prescribed statutory maximum sentence applies to criminal fines); see also United States v. Pfaff, 619 F.3d 172 (2d Cir. 2010).

B. The Agreed-Upon Fine Is One of Several Financial Consequences to the Defendant

At the outset, it must be noted that whatever fine the Court ultimately imposes is only one among several serious financial consequences to the defendant that have resulted from this prosecution. In addition to any fine imposed by the Court, the defendant has agreed to: (1) pay the victim of Wegelin's conduct, the IRS, the approximate amount of unpaid taxes, $20,000,001, resulting from Wegelin's illegal conduct; and (2) forfeit the gross fees that Wegelin has represented that it received as a result of its illegal conduct, $15.821 million. In setting the appropriate fine, the Court should consider the entire range of financial consequences to the defendant in arriving at the appropriate fine. A fine that exceeds by nearly 10% the approximate taxes that presently remain unpaid ($22,050,000 v. $20,000,001) and that exceeds by nearly 40% the gross fees ($22,050,000 v. $15,821,000 million) is a substantial one.

In addition to a fine, restitution, and disgorgement, the Government has already forfeited approximately $16.26 million from Wegelin's correspondent bank account, pursuant to the civil forfeiture Complaint (Exh. B). The Complaint was unsealed contemporaneously with the return of the Indictment. What was forfeited from Wegelin's correspondent bank account was not the laundered proceeds of Wegelin's illegal conduct under 18 U.S.C. § 981(a)(1)(B), i.e., was not taxes that should have been paid by U.S. taxpayers who had hidden money at Wegelin. Rather, the Complaint related to the covert repatriation of funds from undeclared accounts at Wegelin and other Swiss banks, funds that were comingled with other funds in Wegelin's correspondent bank account. All of the funds in the correspondent bank account were forfeited as property involved in money laundering, pursuant to 18 U.S.C. § 981(a)(1)(A), because the presence of both the funds being covertly repatriated and other funds passing through the account in unrelated transactions helped to make the repatriation of the undeclared funds more difficult to detect. See Indictment ¶¶ 2, 38.

A fine of $22.05 million, when considered together with $20+ millions of restitution and $32.02 million of forfeiture, is substantial.

C. Wegelin's Extraordinarily Willful Conduct Justifies the Substantial Fine

Beyond the totality of the financial consequences of the prosecution to Wegelin, "the nature and circumstances" of Wegelin's illegal conduct, 18 U.S.C. § 3553(a)(1), also justifies the $22.05 million penalty.

As the facts set forth above and in the PSR demonstrate, Wegelin's conduct was extraordinarily willful and the conduct merits the substantial fine agreed to by the parties. This is not a case in which Wegelin passively provided U.S. taxpayers with a service that just so happened to be used by U.S. taxpayers to evade their taxes. Nor is this even a case in which Wegelin turned a blind eye to how run-of-the-mill banking services were being utilized by U.S.

taxpayers. Rather, Wegelin actively assisted U.S. clients in achieving the illegal ends and had a stake in their abilities to achieve the ends of tax evasion because of the fees to be earned.

After all, without providing U.S. taxpayers with a means to evade taxes, the vast majority of Wegelin's U.S. clients never would have held their accounts there. For example, most of Wegelin's U.S. clients would not have been willing to pay its fees and have relatively limited access to their client advisors were it not for the ability to evade taxes that Wegelin provided. Moreover, Wegelin structured several aspects of its operations to facilitate the evasion of U.S. taxes and, at the same time, to minimize the risk that the bank, and its employees, would be prosecuted by U.S. authorities.

Wegelin's conduct is all the more egregious because Wegelin was undeterred by the investigation and prosecution of UBS, another, albeit much larger, bank that engaged in similar conduct. At not one, but at two crucial junctures during the conspiracy, Wegelin was undeterred. When the Department of Justice's investigation of UBS for helping U.S. taxpayers evade became widely publicized in May 2008, Wegelin decided to welcome U.S. taxpayers and to profit from the UBS investigation, rather than see UBS' experience as an example to be avoided. And, worse, when UBS was actually charged with committing a crime under U.S. law, admitted doing so, and resolved the charge via a deferred prosecution agreement -- part of which was a large payment -- Wegelin kept assisting U.S. taxpayers in evading taxes and did so for a significant period of time. Wegelin's choice to ignore the message of deterrence to be sent by the investigation and prosecution of UBS is all the more egregious when compared with some other Swiss banks. Some, although by no means all, other Swiss banks, did, in fact, exit the business of providing U.S. taxpayers with services designed to help them evade taxes after the UBS investigation became public or after the UBS deferred prosecution was announced.

The substantial fine is further justified by the reasons that Wegelin has publicly stated for this very serious conduct. When it pled guilty, Wegelin explained that it engaged in the charged conduct because: (1) other Swiss banks were doing the same thing; (2) Wegelin was not violating Swiss law; and (3) Wegelin believed that it was beyond the practical ability of the United States to prosecute it. Specifically, immediately after admitting that it knew that certain of its conduct was wrong, Wegelin stated:

> However, Wegelin believed that, as a practical matter, it would not be prosecuted in the United States for this conduct because it had no branches or offices in the United States, and because of its understanding that it acted in accordance with and not in violation of Swiss law, and that such conduct was common in the Swiss banking industry.

1/3/13 Tr. at 16 (copy attached hereto as Exh. C).

None of these is a remotely good excuse, or even a good explanation. And rather than mitigate Wegelin's offense, they are aggravating factors. The notion, for example, that a financial institution would engage in a fraud upon the United States and would deprive the United States of tax revenue to which it is legitimately entitled because it believed that it could not, as a practical matter, be prosecuted by the United States, is entirely offensive.

Indeed, the prosecution of Wegelin is well within the bounds of the extraterritorial application of federal criminal law. Our Constitution permits, consistent with constitutional due process, the extraterritorial application of federal criminal law to non-citizens acting entirely abroad "when the aim of that activity is to cause harm inside the United States or to U.S. citizens or interests." United States v. Al Kassar, 660 F.3d 108, 118 (2d Cir. 2011); see also United States v. Mardirossian, 818 F. Supp. 2d 775, 776 (S.D.N.Y. 2011) (noting that presumption against extraterritorial application of criminal statutes does not apply to statutes that are "not logically dependent on their locality for the government's jurisdiction, but are enacted because of the right of the government to defend itself against obstruction, or fraud wherever perpetrated") (citing United States v. Bowman, 260 U.S. 94, 98 (1922)). Because Wegelin was assisting U.S. taxpayers in depriving the United States of tax revenue, Wegelin plainly had the aim of causing harm in the United States. Nothing more than this was required to hail Wegelin into a U.S. court.

Plus, even beyond the fact that Wegelin intended a harm to the United States through its illegal conduct, there was the extensive use by Wegelin of U.S. jurisdictional means in committing the charged conduct. Among other things, there was: a U.S.-based correspondent bank account that was employed as part of Wegelin's criminal conduct; travel to the United States for the purposes of facilitating the fraud; and telephone calls, mail, faxes, and other wire transmissions to and from the United States for the same purpose. See Indictment ¶¶ 1, 15, 16(f, g, i, j), 32, 83, 98, 120. This was not remotely an aggressive exercise of federal jurisdiction.

Wegelin's explanation of its conduct that it was acting in accordance with Swiss law should also be rejected. It entirely contravenes the notion of comity among nations that a financial institution can hide behind its own law as a defense to actively and knowingly assisting the citizens of another country in violating the law of their home country and evading the taxes of their home country. This too is an aggravating, rather than a mitigating, factor.

In addition to the reasons for engaging in this illegal conduct that Wegelin gave at the time of its guilty plea, Wegelin has on other occasions articulated additional reasons for providing a haven for tax evaders. Specifically, Wegelin has justified the provision of these illegal services as a legitimate act of financial self-defense against the claimed excessive taxation by other countries. As Konrad Hummler, one of the two lead managing partners of Wegelin and a former president of the Swiss Private Bankers Association, was quoted in The Guardian, a British newspaper, in early 2009, as follows:

> Swiss bankers themselves estimate that they hold at least 30% of the estimated $11.5 trillion of personal wealth hidden in the world's tax havens. Konrad Hummler, president of the Swiss private bankers' association, has said: "The large majority of foreign investors with money placed in Switzerland evade taxes."
>
> And he remains unapologetic. He acknowledged to the Guardian that Swiss banks siphon off other governments' revenue.
>
> "I admit it is undemocratic," he said. "But I have a feeling that the democratic system went way beyond their legitimate role against the taxpayer. What these states do may be legal, but it is not legitimate."

In the Country Where Tax Evasion Is No Crime, Swiss Private Banks Are Unrepentant About Siphoning Off Other Governments' Income, The Guardian, Feb. 4, 2009 (available at << www.guardian.co.uk/business/2009/feb/05/tax-gap-avoidance-switzerland>>) (attached hereto as Exh. D). The notion that a financial institution would take advantage of, and actively promote, its home country's bank secrecy laws in order to provide a safe haven for those who would evade the taxes of another country and then justify it because of its belief that the tax policies of the other country are wrong should be repudiated, like the rest of Wegelin's justifications of its illegal conduct. The imposition of the substantial fine agreed to by the parties in this case will serve to reject conclusively these notions.

D. The Need for Deterrence Supports the Substantial Fine

"[The need for the sentence imposed . . . to afford adequate deterrence to criminal conduct," 18 U.S.C. § 3553(a)(2)(B), also compels the imposition of the $22.05 million fine. The Government does not contend that Wegelin itself, or its partners or employees, are greatly in need of specific deterrence. Rather, general deterrence weighs in favor of the substantial $22.05 million fine.

There will always be U.S. taxpayers who do not wish to pay their fair share of taxes and there will always be a very small subset of these U.S. taxpayers who are willing to engage in criminal activity in order to evade their tax obligations. In a world with a financial system that is as globally interconnected as ours is today, some of these tax evaders will inevitably look to offshore banks as a place to hide their money and the income generated by their money. And there will likely always be offshore financial institutions that knowingly provide these services in order to profit from the desire of some U.S. taxpayers to evade their taxes, just as Wegelin did. This conduct must be deterred.

Deterrence is all the more required lest other banks engage in the illegal conduct for one of the reasons stated by Wegelin: the fact that "such conduct was common in the Swiss banking industry." 1/3/13 Tr. at 16 (emphasis). The claimed commonality of criminal conduct, be it in

Switzerland or wherever else in the world, does not remotely justify knowingly and willfully violating the law of another country. This is particularly true with tax-related conduct, which is widely viewed as underprosecuted. See U.S.S.G. § 2T1.1, intro. comment. ("Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.").

Tax crimes, like many other white collar crimes, are difficult to detect. Here, Wegelin's crime was particularly difficult to detect, in part, because it was largely committed from overseas. In addition, Wegelin's crime was difficult to detect because Swiss bank secrecy laws make evidence gathering exponentially more difficult. Indeed, before the deferred prosecution of UBS and the voluntary disclosure program, prosecutions of U.S. taxpayers taking advantage of Swiss bank secrecy to evade taxes were uncommon. The substantial fine agreed to by the parties will, the Government submits, send a message of deterrence to banks that would use those same laws, and similar laws in other jurisdictions, as both a sword -- a means to encourage U.S. taxpayers to utilize their services in order evade U.S. taxes -- and a shield -- by taking advantage of the difficulty that bank secrecy poses to investigators who would root out such tax evasion.

Some deterrence has surely been achieved by the very prosecution of Wegelin and the forfeiture of substantial funds in Wegelin's correspondent bank account, a strong message to those who would believe that, without a physical presence in the United States, they cannot be reached by U.S. law enforcement. Financial institutions that wish to transact in U.S. dollars are greatly in need of correspondent bank accounts in the United States and the forfeiture of funds in Wegelin's account sends the message that the lack of physical presence will never be an impediment to U.S. law enforcement's acting to protect the IRS' ability to collect revenue from U.S. taxpayers. But without a fine imposed as punishment, the message of deterrence will not be fully realized.

E. Other Aspects of the Fine

Wegelin has agreed to pay any fine imposed by the Court within three days of the entry of the judgment in this case. The Government respectfully requests that the Court so order the same terms in imposing sentence. See U.S.S.G. § 8C3.2 ("immediate payment of the fine shall be required unless the court finds that the organization is financially unable to make immediate payment or that such payment would pose an undue burden on the organization").

Wegelin has the financial ability to make an immediate payment of any fine, as well as restitution, and that immediate payment of both would not impose an undue burden on Wegelin. As the PSR notes, Wegelin sold its non-U.S. business to another financial institution for CHF 560 million, or approximately $613 million at the exchange rate of .9126 Swiss francs per U.S. dollar as of the approximate date of the transaction. Based on the managing partners' nearly

56% ownership (direct and indirect) of Wegelin, the managing partners themselves realized approximately CHF 313.38 million from the sale, or more than $343.4 million. See PSR ¶¶ 95-96; see id. ¶¶ 81-82 (managing partners' ownership of 4.2% of bank plus 63.2% of Wegelin & Co. AG, which owns 81.9% of bank; 4.2% + (63.2% x 81.9%) = 56%). Furthermore, Wegelin generated an average yearly profit of approximately CHF 29.5 million for the period from 2002 through 2011. PSR ¶¶ 103-04. In addition, the Swiss Financial Market Supervisory Authority ("FINMA") required, as a condition of the sale of Wegelin's non-U.S. business, than CHF 100 million (approximately $107.37 million at today's exchange rate) be reserved for resolution of this case. PSR ¶ 96. There can be little question of Wegelin's ability to pay a fine within three days after the entry of judgment.

The Government respectfully submits that the stipulated fine of $22.05 million is the appropriate sentence. However, if the Court is inclined to impose a larger fine, the Government respectfully requests, pursuant to its plea agreement with the defendant, that the Court apply the gross fees from Wegelin's illegal business that Wegelin has agreed to forfeit ($15,821,000) towards the maximum fine that the Court may legally impose ($40,000,002). That is, the Government requests that, if the Court is inclined to impose a fine larger than $22,050,000, it not impose a fine greater than $24,179,002 (the maximum fine of $40,000,002 less the forfeited fees of $15,821,000). Although the disgorgement of ill-gotten gains serves a purpose distinct from the imposition of a fine, the Government submits that Wegelin's agreement to forfeit fees earned as a result of its illegal conduct should inure to its benefit.

F. The Court Should Impose a Short Term of Probation

A term of probation is authorized by 18 U.S.C. § 3561(a). The Sentencing Guidelines suggest that a term of probation be imposed "if the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions are necessary to safeguard the organization's ability to make payments." U.S.S.G. § 8D1.1(a)(2). Here, a short term of probation will help ensure that the defendant pays any restitution and fine that the Court imposes. A period of probation may also be useful to ensure that Wegelin winds down its affairs and completely exits, and does not re-enter, the business of providing undeclared accounts to U.S. taxpayers. The Court has the discretion to fashion a condition of probation requiring periodic reporting by Wegelin of the status of its efforts to do so. See PSR ¶¶ 88, 97-99; U.S.S.G. § 8D1.4(b)(3) (court may require as condition of probation "periodic submissions to the court or probation officer, at intervals specified by the court . . . reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received"). The Sentencing Guidelines further suggest that, when probation is ordered, it be for not less than a year. U.S.S.G. § 8D1.2(a)(1).

III. Restitution

A. Applicable Legal Principles

Wegelin has agreed to a substantial payment of restitution in this case, rendering restitution appropriate under 18 U.S.C. § 3663(a). See, e.g., 18 U.S.C. § 3663(a)(3) ("court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement").

In addition, because Wegelin has pleaded guilty to a conspiracy charge under Title 18 to an offense against property and an identifiable victim has suffered a pecuniary loss, restitution is mandatory under 18 U.S.C. § 3663A(c)(1). See United States v. Senty-Haugen, 449 F.3d 862, 865 (8th Cir. 2006) (district court properly ordered defendant convicted of conspiracy to defraud the government to pay restitution to IRS); United States v. Kubick, 205 F.3d 1117, 1128-29 (9th Cir. 1999) (mandatory restitution ordered on convictions for conspiracy to commit bankruptcy fraud and conspiracy to impede and impair IRS, each in violation of 18 U.S.C. § 371); United States v. Kerekes, No. 09 Cr. 137 (HB), 2012 WL 3526608 (S.D.N.Y. Aug. 15, 2012) (restitution was mandatory in case of plea to Title 18 conspiracy to defraud the IRS, among other crimes); United States v. Garza, 11 Cr. 3021, 2012 WL 2027025, *5 (W.D. Tex. June 5, 2012); cf. Pasquantino v. United States, 544 U.S. 349, 355-57 (2005) (foreign government's right to collect taxes is "property" within the meaning of wire fraud statute).

In ordering that a defendant pay restitution, a sentencing court need not calculate restitution with precision. Rather, a reasonable estimate of actual loss, based on information available at the time of sentencing, is perfectly appropriate. See United States v. Carboni, 204 F.3d 39, 46 (2d Cir. 2000) ("The district court need not establish the loss with precision but rather 'need only make a reasonable estimate of the loss, given the available information'") (quoting United States v. Jacobs, 117 F.3d 82, 95 (2d Cir.1997)).

It is also appropriate in determining restitution to extrapolate from known losses to unknown losses. See, e.g., United States v. Uddin, 551 F.3d 176, 180-81 (2d Cir. 2009) (in food stamp fraud case, sentencing court was permitted to estimate loss by extrapolating from known data average amount of loss per fraudulent transaction and applying average loss to transactions where exact amount of loss was unknown).

If the issue of restitution were contested, which it is not in this case, the Government would need to prove restitution by a preponderance of the evidence. Id. at 180.

Finally, interest is properly included as restitution. United States v. Qurashi, 634 F.3d 699, 704 (2d Cir. 2011) (holding that "MVRA allows a sentencing court to award prejudgment interest in a criminal restitution order to ensure compensation "in the full amount of each victim's losses"); see also United States v. Fumo, Nos. 09-3388, 09-3389, 09-3390, 2011 WL 3672774, *27-29 (3d Cir. Aug. 23, 2011) (holding that "prejudgment interest is available on orders of

restitution under the [Victim and Witness Protection Act] and MVRA") (collecting cases in Second, Fourth, Fifth, Ninth, Tenth, and Eleventh Circuits and citing Qurashi). The Internal Revenue Code provides that interest must be paid on any tax that is not properly remitted to the IRS on or before the due date of the tax. See 26 U.S.C. § 6601 ("If any amount of tax imposed by this title . . . is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid."). The rate of interest is prescribed in Section 6621 of the Code. See 26 U.S.C. § 6621(a)(2) (defining "underpayment rate" as federal short-term rate plus 3%).

B. Discussion

Based on these principles and in order to estimate the loss to the IRS arising out of Wegelin's illegal conduct, the Government looked first to the tax loss that arose from accounts held at Wegelin by U.S. taxpayers who participated in the IRS' voluntary disclosure program. Approximately 245 U.S. taxpayers who had undeclared accounts at Wegelin (out of a total of a maximum of 684 undeclared accounts, according to Wegelin) have participated in the voluntary disclosure program. Those 245 taxpayers paid back taxes and interest of approximately $13.3 million. The $13.3 million does not include penalties.[2]

Using these amounts, the Government sought to estimate the unpaid taxes, the amounts owed by the holders of the approximately 439 accounts that were not revealed to the IRS as part of the voluntary disclosure program.

To do so, the Government extrapolated from the figures of 245 U.S. taxpayers and $13.3 million of back taxes paid to obtain a per-account tax loss of $54,285.[3]

The Government then multiplied the per-account tax loss of $54,285 by the 439 undisclosed accounts to obtain an estimated unpaid tax loss of $23.83 million.[4]

---

[2] Typically, participants in voluntary disclosure were required to pay a penalty representing a percentage of the high balance in the undisclosed account. A penalty of up to 50% of the value of the account on the day of the violation is authorized by statute. See generally 31 U.S.C. § 5321 (a)(5)(C)(i)(II). Participants in the various versions of the IRS' voluntary disclosure program have typically paid between 12.5% and 27.5% of the highest aggregate balance in the undisclosed offshore bank accounts during the period covered by the voluntary disclosure.

[3] $13.3 million back taxes ÷ 245 accounts = approximately $54,285 tax loss per account.

[4] 439 accounts not disclosed to the IRS x $54,285 approximate tax loss per account = approximately $23.83 million total tax loss for account not disclosed to the IRS.

After taking into account various factors that could impact the Government's extrapolation, the Government determined that an unpaid tax loss of $20,000,001 is a fair, reasonable, and principled estimation of the unpaid tax loss.

As a check on this estimation, the Government compared this estimation to the figures used in connection with the Department of Justice's resolution with UBS in order to ensure that the tax loss attributable to Wegelin was not disproportionate to the tax loss attributable to UBS, which engaged in substantially similar conduct over a slightly shorter period of time. As part of the resolution with the Department of Justice and the Securities and Exchange Commission, UBS paid $400,000,000 for unpaid taxes. This was based, according to the statement of facts admitted by UBS, on a range of between 11,000 and 14,000 undeclared accounts held at UBS. The $400 million of unpaid taxes was based on 8 years of illegal conduct. Although UBS had many times more undeclared accounts than Wegelin and many times the undeclared AUM that Wegelin did, the Government submits that the data from UBS is a useful point of comparison.

The Government then determined for the undeclared UBS accounts the per-account per-year tax loss. It is between $3,571 and $4,545.[5]

Multiplying those amounts by the maximum number of undeclared accounts at Wegelin (684) and the number of years at issue in the case of Wegelin (10 years, see Indictment ¶ 12), results in total imputed tax loss (paid and unpaid) arising out of Wegelin's illegal conduct of between $24.4 million and $31.09 million.[6]

Similarly, multiplying the UBS per-year tax loss amounts by the number of undeclared accounts at Wegelin where the tax loss was unknown (439) and the 10 years at issue in this case results in total imputed unpaid tax loss of between $15.68 million and $19.95 million.[7]

---

[5] $400 million unpaid taxes ÷ 14,000 accounts ÷ 8 years = approximately $3,571 per-account per-year tax loss.

$400 million unpaid taxes ÷ 11,000 accounts ÷ 8 years = approximately $4,545 per-account per-year tax loss.

[6] $3,571 per-account per-year tax loss x 684 accounts not disclosed to IRS x 10 years = $24,425,640 total tax loss.

$4,545 per-account per-year tax loss x 684 accounts not disclosed to IRS x 10 years = $31,087,800 total tax loss.

[7] $3,571 per-account per-year tax loss x 439 accounts not disclosed to IRS x 10 years = $15,676,690 unpaid taxes.

$4,545 per-account per-year tax loss x 439 accounts not disclosed to IRS x 10 years = $19,952,550 unpaid taxes.

After taking into account various factors that could impact the Government's extrapolation from the UBS resolution, analysis of the UBS resolution confirmed the reasonableness of the Government's extrapolation from the Wegelin voluntary disclosure data. Accordingly, the Court should order the payment of $20,000,001 of restitution.

Wegelin has agreed to pay $20,000,001 of restitution within three days of the entry of judgment and, therefore, the Government respectfully requests that the Court order the payment of restitution on the same terms.

IV. Forfeiture

The Government has sought the forfeiture of the gross fees that Wegelin has represented that it received as a result of its illegal conduct from 2002 through 2010: $15.821 million. At the time of the guilty plea, the Court entered a preliminary order of forfeiture and, promptly thereafter, the Government published an appropriate notice concerning the forfeiture. The approximate last day for the filing of claims to these funds is March 5, 2013.

Accordingly, the Government respectfully requests that the Court enter the proposed Final Order of Forfeiture (attached hereto as Exh. E) on or shortly after March 6, 2013.

Should any claims to the funds at issue be filed by the applicable deadline, the Government will, upon receipt, immediately notify the Court.

V. Conclusion

For the reasons set forth above, the Government respectfully submits that the Court should:

(1) impose a fine of $22,050,000, to be paid within three days of the entry of judgment, and impose a short period of probation;

(2) order the defendant to pay $20,000,001 in restitution within three days of the entry of judgment; and

(3) upon expiration of the period for the filing of claims, enter the proposed Final Order of Forfeiture.

Respectfully submitted,

PREET BHARARA
United States Attorney

By: ____/s/_____
Daniel W. Levy/David B. Massey/
Jason H. Cowley
Assistant United States Attorneys
Telephone: (212) 637-1062/2283/2479

Attachments (Exhs. A-E)

cc: Richard M. Strassberg, Esq. (via ECF; w/Exh. A-E)
John Moustakas, Esq.
Goodwin Procter LLP

CERTIFICATE OF SERVICE

I, Daniel W. Levy, declare under penalty of perjury that:

1. I am an Assistant United States Attorney for the Southern District of New York.

2. On February 25, 2013, I caused a true and correct copy of the foregoing GOVERNMENT'S SENTENCING MEMORANDUM, together with the exhibits thereto, to be served by Clerk's Office Notice of Electronic Filing upon the following attorneys, who are filing users in connection with this case:

Richard M. Strassberg, Esq.
John Moustakas, Esq.
Goodwin Procter LLP

Counsel for defendant Wegelin & Co.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 25, 2013
New York, New York

____/s/_____
Daniel W. Levy
Assistant United States Attorney
Telephone: (212) 637-1062