

## Corporate Crime Observatory

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### PERSPECTIVES FROM A WHISTLEBLOWER ON EXPOSING TAX ABUSES AND CHALLENGING SWISS BANKING SECURITY

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The present document includes additional specifications provided by Rudolf Elmer, which complement the [conversation that took place on December 14, 2023](#), as part of the Master of Laws (LLM) course in Business Organization and Corporate Governance. The event was organized and moderated by Dr. Costantino Grasso, who serves as an Associate Professor in Business and Law at Manchester Law School. The statements within this document should be regarded as integral components of the discussion and form an integral part of the educational materials used for analyzing the topics explored during the open discussion session.

Specifically, this document presents a chronological account of a series of events related to banking secrecy, whistleblowing, and legal proceedings primarily centered around Rudolf Elmer's<sup>1</sup> actions related to the disclosures made about the Swiss bank Julius Baer (hereinafter JB) and its offshore subsidiaries. Each event is accompanied by the author's comments, which provide insights and analysis on various aspects such as the role of political decisions, the power dynamics in corporate settings, the impact of whistleblowing, and the evolving legal framework in Switzerland and beyond, particularly in the context of financial transparency and combating financial crimes.

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<sup>1</sup> Please note that in this document the use of the term "the whistleblower" refers to Rudolf Elmer.

No.	Event	Author's Comments
1)	In 2004, the Swiss Newspaper «CASH» received some data to make the case of Julius Baer (hereinafter JB) public. It reported only about the whistleblower, Rudolf Elmer, but not UHNWI, the Multi-National-Conglomerates, and the potential tax abuses perpetrated by JB.	This event highlights the complex interplay between journalistic ethics, client confidentiality, and legal obligations within Switzerland's financial and legal landscape, raising questions about the extent to which Swiss media outlets prioritize the protection of sources and the disclosure of sensitive information when confronted with such situations.
2)	In 2005, the Prosecution Office confiscated certain data during a house search and subsequently requested that this data be investigated by both Zurich's and the Federal Tax Authorities. However, the Parliament of the State of Zurich denied the prosecutor's request through a political decision, despite the potential loss of unrecovered taxes as a consequence.	The denial of the prosecutor's request for investigation, despite the potential loss of unrecovered taxes, underscores the power of political decisions in shaping the course of justice. This event may serve as an illustration of how politicians can wield their political influence to influence investigations and legal proceedings.
3)	In 2006, the bank offered CHF 500,000 as compensation in exchange for confidentiality in order to close the case which had been initiated by the whistleblower, Rudolf Elmer. The whistleblower did not accept the offer. As a consequence, the JB's CEO responsible for the case was dismissed because the case was publicly discussed and stayed with the prosecution office of Zurich.	Banking secrecy is most effective when issues remain undisclosed to the public. Additionally, a challenge arises when corporate economic power exerts undue influence on prosecuting authorities, making it difficult to ensure the pursuit of justice.

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4)	In 2008, WikiLeaks published internal files from Julius Baer, Cayman, as well as <a href="#">additional pieces of information</a> provided by the whistleblower Rudolf Elmer. This case gained global attention and significantly increased public awareness of WikiLeaks. JB filed a complaint against WikiLeaks with the aim of shutting down its servers. However, JB's case was unsuccessful due to the protection granted by the US First Amendment, which safeguards "Free Press and Free Speech" rights.	In this case, it came into play the "Barbara Streisand Effect", which highlights the unintended consequences of efforts to conceal, remove, or censor information. This incident served as a valuable lesson, underscoring the significance of "Free Speech and Free Press," especially within the United States. For whistleblowers, it is of paramount importance to ensure the circulation of information and garner public support to raise awareness regarding potentially unethical and illicit practices, such as the exploitation of offshore finance for tax evasion purposes.
5)	In 2008, Rudolf Elmer took the issue related to the Moonstone Trust to the Court of Munich in Germany due to the fact that the beneficiary was an affluent German citizen. The prosecution office of Munich closed the case.	This example is emblematic of the challenges in international cooperation in the areas of tax abuses and anti-money laundering, particularly when dealing with countries where banking secrecy is prevalent.
6)	In 2009, Rudolf Elmer provided information to Tax Authorities in Hamburg and Düsseldorf for alleged tax abuses involving also a German Minister of Finance. The German tax authorities did not provide Elmer with information on the investigation simply mentioning the cases fell outside their jurisdiction. As a result, they closed them. A tax investigator even received a warning for collaborating with Elmer.	From this circumstance, it arises the challenges that tax authorities may face in investigating complex financial cases especially where politicians are involved.

No.	Event	Author's Comments
7)	<p>In 2009, Rudolf Elmer lodged a complaint against the President of the JB Group in Zurich. The complaint centered on an alleged violation of Swiss Anti-Money Laundering laws on the basis that there was a notable absence of due diligence in the "Know Your Client" process in relation to a trust – the Moonstone Trust – which was used for the relatively short time of just 15 months. During this period, approximately a sum of USD 2 million was deposited into the trust that was allegedly used as a money-washing vehicle. The Higher Court of Zurich turned the complaint down by affirming that the whistleblower was not adversely affected by this process.</p>	<p>It is worth noting that this situation can be viewed as an instance where the Zurich judicial system may face criticism for its handling of complaints, leading some to question whether it openly protected certain private interests. Similar concerns have been raised about FIFA and its past leadership.</p>
8)	<p>In 2010, Jack Blum, lawyer and former Chief Investigator of the US Senate, invited Rudolf Elmer to New York where the IRS and DOJ interviewed him. He was invited by Senator Carl Levin in order to provide information to the US Congress. It is worth mentioning that, in 2014, the IRS and DOJ fined JB with a sanction of approximately USD 540 million.</p>	<p>The whistleblower faced a significant obstacle when it came to sharing the names of JB's clients, which included some senators as well as US corporations including global investment firms, with American authorities. The reason for this limitation was that he obtained this information while working in Switzerland. Consequently, Swiss Banking Secrecy laws applied, making it a crime to disclose such information. It's worth noting that despite his whistleblowing efforts, Elmer did not receive any financial reward from the American and German authorities.</p>

No.	Event	Author's Comments
9)	<p>In 2011, Rudolf Elmer handed over two CDs to Julian Assange, which was widely covered by the media and attracted public attention. Consequently, just two days later, the whistleblower found himself in his first court trial, during which he was initially found guilty of allegedly breaching Swiss Bank Secrecy. Additionally, in response to this incident, the Swiss Parliament increased the penalties for violations of Swiss Bank Secrecy by fivefold.</p>	<p>These circumstances are emblematic of how Swiss authorities have reacted to protect both the banking secrecy system and the JB Bank, as well as strengthen the regulatory framework for the purpose of such protection and to act as a deterrent against possible disclosures. The extended duration of the legal proceedings related to Rudolf Elmer's case, spanning over fifteen years, in itself, serves as a significant discouragement against whistleblowing on banking secrecy matters in Switzerland.</p>
10)	<p>In 2012, Rudolf Elmer provided US authorities with data related to US clients that used Swiss Partners JB Cayman's insurance policies products as a way to avoid tax. The Swiss Partners were fined by the IRS in 2013 and had to pay some USD 1 million in penalty.</p>	<p>The fact that the whistleblower was not compensated by the American authorities raises doubts about whether his collaboration with WikiLeaks, which was already in conflict with the American authorities at that time, may have influenced this decision.</p>
11)	<p>From 2008 to 2010, Rudolf Elmer contacted the UK tax authorities and Secret Services who were interested in the fact that some persons in the UK ran business through JB. Although some investigative activities were carried out the whistleblower was not provided with any information related to their outcomes.</p>	<p>This situation emblematically highlights the importance of keeping whistleblowers or reporting individuals updated on the outcomes of their disclosures for the sake of transparency and justice.</p>

No.	Event	Author's Comments
12)	In the late 2010s, Switzerland increased the severity of the penalties applicable to bank employees who disclose customer information. They can currently face up to five years in prison, and a fine of up to 250,000 Swiss francs and may be also charged with financial espionage and data theft as it happened to Hervé Falciani.	The legislative choice to increase criminal sanctions to protect banking secrecy in Switzerland stands in contrast to the emerging call for increased transparency in financial flows and tax matters, which was triggered by a series of whistleblowers' disclosures and leaks like the Panama Papers and Paradise Papers. However, Switzerland's decision to increase the criminal sanctions imposed in cases of violation of banking secrecy appears to prioritize the economic interests of Swiss banks, possibly to protect their competitive advantage and attract foreign capital. This decision may also aim to discourage future whistleblowers, posing challenges to global efforts to enhance financial transparency and combat financial crimes.

### Rudolf Elmer's Final Remarks

The phenomenon of "secrecy business" has seen a significant increase in recent years, making it even more lucrative for countries involved in offshore activities. Switzerland provides a notable example of this phenomenon for the following reasons.

Firstly, Swiss banking secrecy laws appear to clash with the fundamental principle of freedom of expression, as reported by [SWI](#). Since 2015, these laws not only apply to bankers, liquidators, and bank consultants but also [extend to journalists](#) who cover Swiss banks.

Secondly, as mentioned in the article "[Parliament agrees modest tightening of anti-money laundering law](#)" on SWI, it's worth noting that Lawyers, Notaries, and Fiduciaries are not subject to Swiss Anti-Money Laundering regulations. This is significant in protecting Swiss lawyers who often represent foreign clients,

sometimes in roles like consultants or intermediaries. This exemption is mainly due to the need to keep records, including bank accounts, transactions, and correspondence between the bank and the client within Swiss territory. Switzerland is home to approximately 1200 lawyers and law firms offering offshore consulting and administration services, as well as numerous family offices. In August 2023, Switzerland announced proposed reforms to its Anti-Money Laundering laws. These initiatives have been prompted by international pressure, criticisms over Switzerland's alleged sanctions loopholes, and the recent collapse of the country's second-largest bank *Crédit Suisse*. Their future remains uncertain as they enter the consultation and legislative process. See in that regard, Victoria Gronwald, 'Swiss AML Reforms 2023: Between Scrutiny and Secrecy,' (*Corporate Crime Observatory*, 23 September 2023), [www.corporatecrime.co.uk/post/swiss-aml-2023](http://www.corporatecrime.co.uk/post/swiss-aml-2023).

These two points collectively emphasize that Switzerland, along with other offshore jurisdictions, may be inclined to undermine the legal frameworks of other nations in pursuit of an "unlawful" competitive advantage.

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