

January 15, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Re: Notice of Proposed Exemption involving Credit Suisse AG, Application No. D-11819

Dear Secretary Perez:

Thank you for holding a hearing today on the Department of Labor's proposed waiver of sanctions imposed on Credit Suisse as a result of its recent criminal conviction. According to the plea agreement, Credit Suisse admitted that "for decades prior to and through 2009, it operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts and concealing their offshore assets and income from the IRS." The conviction for this conduct automatically disqualifies Credit Suisse and its affiliates from claiming the beneficial status of "qualified professional asset manager," a status reserved for honest, law-abiding financial institutions so that they may advise our nation's retirees on certain risky, conflict-ridden transactions.

As my colleagues and I noted in our original request for today's hearing, we are very concerned with the recent practice of our regulators reflexively granting waivers of sanctions in the law designed to deter future wrongful conduct and protect the public from bad actors. Troublingly, this seems to be the case in instances involving our nation's largest financial institutions, such as Credit Suisse, leaving many to wonder whether regulators are throwing away valuable enforcement tools and enshrining a policy of too-big-to-bar. To that end, we encouraged the Department to thoroughly consider Credit Suisse's waiver request and hold a public hearing to elicit more comment and debate.

As you know, sixteen individuals representing a wide range of organizations and issues will testify today at the hearing. Based on their submissions to the agency, they will discuss important information either that was not considered by DOL or that deserves additional scrutiny. In light of this, it appears that today's hearing was clearly warranted and I urge the Department and other regulatory agencies to make such hearings in the future the norm, rather than the exception.

In addition, I believe that at this point, the waiver should be denied given the lack of important public facts and the insufficient proposed conditions. Indeed, although the proposed waiver discusses at length Credit Suisse's objections to a denial of the waiver, the public remains deprived of basic information like the names and number of current affiliated and related QPAMs that could lose their beneficial status. As such, the public does not even know *who* is in need of the waiver.

Similarly, there is little to no information in the public record on the amount of assets managed by each Credit Suisse QPAM. And, although Credit Suisse claims that a denial of the waiver to these QPAMs would lead to the liquidation of these assets, costing pension plans \$450,000, there is no explanation as to how this cost was calculated. Without such information in the public domain, the public cannot be assured that this calculation is accurate or that a grant of the waiver would be in the interests of affected pension plans and their beneficiaries. As pointed out by Better Markets, Inc. in its comment letter to the Department, it is not even clear that it would cost the plans and their beneficiaries anything as "the threat of any harm to those retirement funds can and should be addressed simply by requiring Credit Suisse – the entity whose criminal conduct necessitated the change in asset managers – to defray any costs associated with the unwinding of any investments and the transfer of fund assets to other advisers."

Another fact that has been omitted from the DOL's proposed waiver and apparent consideration is the recidivist history of Credit Suisse. While such history may not have resulted in a criminal conviction and thus, trigger the sanction at issue, such conduct directly bears on the question of whether Credit Suisse and its affiliates should be allowed to claim the QPAM status, a status, as DOL has noted, that is reserved for those financial institutions that "maintain a high standard of integrity." In 2009, for example, Credit Suisse entered into a deferred prosecution agreement with the Department of Justice for "systematically evading—over the course of a decade—U.S. sanctions against Iran, Sudan, Burma, Libya, and Cuba."¹ Like the tax evasion case at issue, those violations continued for a significant amount of time, were difficult to detect, and reflect poorly on the integrity of Credit Suisse as a whole. And, this kind of wrongful activity is not isolated. As Global Financial Integrity states in its proposed testimony for today's hearing, Credit Suisse "is no stranger to such activity," and the Department should seriously consider Credit Suisse's "Corporate Rap Sheet" as researched by Philip Mattera at the Corporate Research Project.

Besides omitting these and other important facts, the proposed waiver contains conditions that I believe must be improved for the DOL to grant the waiver. As my colleagues and I previously stated in our letter requesting today's hearing, the DOL must ensure that the conditions are not "merely best business practices that should have already been in place, rather

¹ Assistant Attorney General Lanny A. Breuer Delivers Keynote Address at Money Laundering Enforcement Conference Washington, D.C., Tuesday, October 19, 2010, *available at* <http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101019.html>.

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than conditions that would adequately deter future criminal misconduct.” To that end, I agree with the Department on the condition requiring Credit Suisse to hire an independent auditor to evaluate its compliance with the law and the other conditions that the agency imposes. However, to improve this condition and bring more public transparency to the process of assessing Credit Suisse’s reforms, I believe the Department should also make public who the auditor is and how he or she was selected along with periodic progress reports.

While I believe that this improved auditor condition is necessary, it is not sufficient and the DOL must endeavor to include other conditions to protect pension plans and their beneficiaries. For example, the DOL should consider adding a prospective employee restriction banning Credit Suisse QPAMs from hiring any employees who have been or who subsequently may be identified by Credit Suisse or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the criminal conduct in any capacity. Such a restriction would assure our nation’s retirees that those involved in Credit Suisse’s decades-long scheme to assist thousands of Americans evade taxes will not be involved in directing their securities in risky, conflict-ridden transactions that are otherwise permitted by the QPAM status.

Once again, thank you for holding this important hearing, bringing more transparency to the Department’s waiver process and working to ensure that any determination by the agency on the waiver will be supported by a more complete, public record. I hope that other regulators follow your lead and utilize existing provisions in the law to protect retirees, investors, and the American public and their interest in seeing greater accountability and integrity among our nation’s financial institutions.

Sincerely,



MAXINE WATERS
Ranking Member