



Remarks by Heather A. Lowe
At the Department of Labor Hearing Jan 15, 2015 Concerning the
Request by Credit Suisse for Waiver of QPAM Disqualification

Good afternoon.

Thank you for giving me the opportunity to testify today. My name is Heather Lowe, and I am Legal Counsel and Director of Government Affairs at Global Financial Integrity. Global Financial Integrity is a non-profit organization dedicated to curtailing the movement of illicit money around the world, like the tax evading funds that Credit Suisse was convicted of soliciting and facilitating the movement of. The majority of our work focuses on the developing world, from which nearly \$1 trillion in illicit funds is transferred annually. Prior to joining GFI I worked as an international banking and finance attorney with global law firms, primarily representing international financial institutions and private equity houses.

1. DoL regulations are very clear that because of Credit Suisse AG's felonious conviction, Credit Suisse AG and all of its affiliates are now barred from enjoying QPAM status. This regulation exists because there is a strong public interest in the protection of pension funds. Pension funds enjoy a high level of protection and regulation by the US government because if they are not protected, and people lose their retirement savings, they then become a massive drain on the government, and indeed other taxpayers.

Therefore, I'd like to begin by reiterating what we believe is the correct line of inquiry for this hearing. We believe the DoL should be asking **what compelling public interest exists to warrant the granting of an exemption/waiver to Credit Suisse so that Credit Suisse can maintain this preferential, privileged status under U.S. law. How does that interest outweigh the already identified, codified, and critical public interest.** The burden is on Credit Suisse, or in this case the DoL, as it is your proposal, to prove a compelling public interest in them retaining that privileged status.

2. In my request to testify, I included several references to significant regulatory infractions by Credit Suisse AG and its affiliates leading to fines and deferred prosecution agreements in the US and elsewhere. These violations include knowing and intentional violation of US Sanctions laws, failure to provide accurate information to investors, sales of derivatives intending to help banks hide huge losses, and misleading investors regarding mortgage-backed securities. I believe that other witnesses will be discussing these and other violations in greater detail so I will not use this time to do so.

3. I will use this time instead to note that their history of violations shows that in direct contradiction to assertions that Credit Suisse Executives will make today, Credit Suisse does not have a history of compliance. Whether or not their compliance program appears robust, as they will assert today, their history tells you that it is not. Credit Suisse AG's criminal conviction is not an isolated incident, as they will argue, but it is simply one more indication of a systemic, group-wide problem with how they manage fiduciary responsibility, investor transparency, and regulatory compliance.

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Former Assistant Attorney General Lanny Breuer, from the Department of Justice, made the following observations about Credit Suisse in a 2010 speech at an American Bar Association – American Bankers’ Association joint conference:

Last year, for example, Credit Suisse admitted to systematically evading – over the course of a decade – U.S. sanctions against Iran, Sudan, Burma, Libya, and Cuba. Credit Suisse set up a system – some might even call it a business plan – to deceive the United States by disguising its U.S. dollar clearing on behalf of countries that the United States had banned from our financial system. ...Credit Suisse even advised and trained the sanctioned entities on how to avoid automated filters at U.S. banks. In essence, evading our banking regulations was a service offered by Credit Suisse to sanctioned countries. As a result, Credit Suisse illegally moved hundreds of millions of dollars through the American financial system.¹

Credit Suisse was convicted in November of that same sort of intentional, systematic illegal behavior that was essentially its business plan with respect to tax evasion. Lessons were not learned. As Attorney General Eric Holder put it in the Justice Department’s announcement of Credit Suisse’s guilty plea, “This case shows that no financial institution, no matter its size or global reach, is above the law.... When a bank engages in conduct this brazen, it should expect the Justice Department will pursue criminal prosecution to the fullest extent possible, as happened here.”²

These are very strong, very clear statements from the DoJ about Credit Suisse’s very deliberate, highly planned illegal behavior for years and years.

Credit Suisse Executives will also likely argue today that the cases we are citing do not reflect current Credit Suisse activities or compliance. We ask the DoL to bear in mind that it can take several years to investigate and develop a case, especially where Swiss bank secrecy is involved, and while those testifying today will be describing a very bleak history, some of the cases being referenced include illegal activity carried on through 2010 – not very long ago at all when you consider how long it takes to develop these kinds of cases. Credit Suisse is offering promises and a description of an improved compliance program – but compliance is proven over time and through actions, not by written policies. Credit Suisse needs to prove its compliance to regain the trust of the U.S. Government.

4. You have heard Credit Suisse Executives discuss economic efficiencies, and how allowing them to continue to provide QPAM services is economically efficient for fund-holders. That may be true, but the DoL should be asking what makes Credit Suisse’s provision of these services more economically efficient than any other QPAM’s provision of these services? As the DoL knows, there are many other QPAM’s out there who have not been convicted of regulation-tripping felonies. What services is Credit Suisse providing that they cannot?

¹ Available at <http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101019.html>.

² Available at <http://www.justice.gov/opa/pr/credit-suisse-pleads-guilty-conspiracy-aid-and-assist-us-taxpayers-filing-false-returns>.

Wouldn't economic efficiency be restored if plans were migrated to other QPAMs? Shouldn't that be the default position, with Credit Suisse paying for that migration if they are no longer able to provide adequate services? Again, the fundamental question is what is Credit Suisse providing for fund holders that other QPAMS would not be able to provide, that would warrant a waiver of their disqualification?

5. You will also hear testimony today from recipients of Credit Suisse's charitable giving. We believe this testimony should be set aside as irrelevant to the matter at hand, if not actually viewed as testimony arguing against Credit Suisse's application for a waiver. First, providing funds to charitable organizations does not mitigate illegal behavior. We do not accept that argument with respect to the mafia, for example, and the DoL should not entertain it in this inquiry. Second, Credit Suisse's charitable giving budget very likely matches the amount of money that its tax advisors have told them will result in the most tax efficient outcome. Our tax laws are structured to incentivize this kind of charitable giving, and so to suggest that Credit Suisse's charitable giving is altruistically motivated is misleading. Finally, because of its illegal activities over the past several years, Credit Suisse will have had a greater amount of profit and therefore a greater charitable giving budget. That means that at least some of Credit Suisse's charitable giving is the direct result of their illegal activities, including the activities for which they were convicted. The DoL should not be entertaining the idea that Credit Suisse should be given some sort of moral credit for donating some of the proceeds of its crimes to charities.

6. Finally, you asked whether the safeguards in the proposed exemption were adequate to protect the rights of the participants and the beneficiaries of the plans that Credit Suisse corporate group members manage. Given Credit Suisse's history of intentional violations of US and foreign laws that involve crafting systems to get around those laws, I think that it would certainly be a gamble on the part of the DoL, and I would not want the DoL gambling with my pension fund. In addition, GFI does a great deal of work in the area of money laundering, and over the past few years the structure of "independent" auditors, who are actually paid by and interact closely with the companies they are hired to audit, has been called into question because audit firms have been found to be allowing those companies to scrub the audit reports, among other things. In the proposed plan, the auditor isn't even government appointed – they will be chosen by Credit Suisse. The combination of a company known to look for ways to get around compliance, and an audit environment of complicity, does not inspire confidence with respect to the proposed oversight plan.

I will end my remarks here today. Thank you for the opportunity to share our concerns, and we look forward to hearing the outcome of your deliberations.

END OF REMARKS