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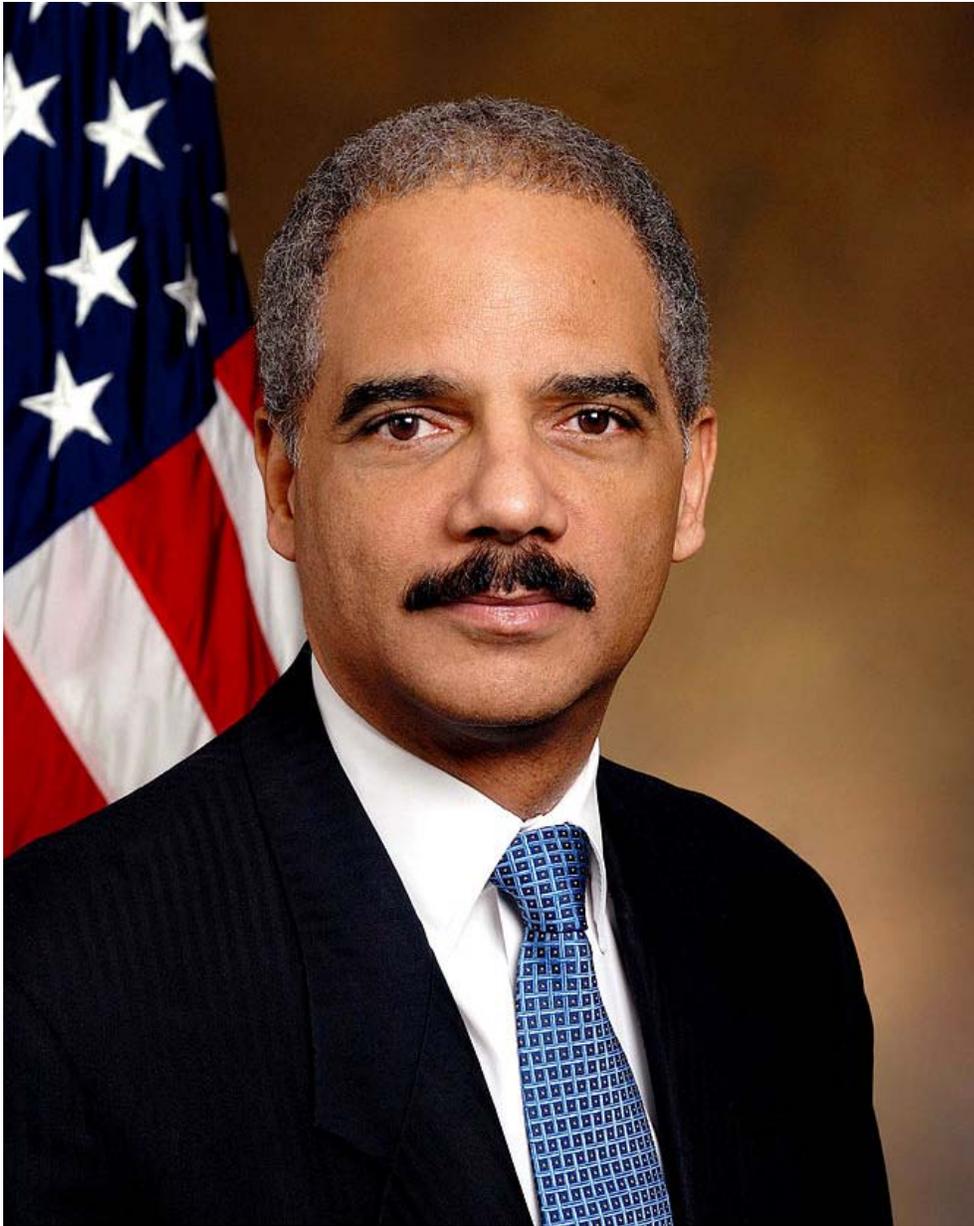
Guilty Credit Suisse Won't Deduct \$2.6 Billion Fine, But Depositor Names Remain Elusive

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The massive DOJ case against Credit Suisse is finally over. Not unlike UBS and other Swiss Banks, the U.S. claims Credit Suisse helped Americans evade taxes through offshore accounts. But UBS rolled over and Credit Suisse resisted, a decision that now looks misguided. Recently, New York State regulators joined the DOJ attack over Credit Suisse's New York regulatory filings.

It has been clear for some time that criminal charges would come and that large payments would be needed to resolve the case. But the DOJ finally filed the criminal information and the guilty plea has been entered. The latter is a big step for a big financial institution.

UBS received a deferred prosecution agreement and the criminal charges against it were eventually dropped. UBS paid \$780 million in 2009, compared to Credit Suisse's \$2.5 billion. In fact, New York State gets \$715 million as its cut of the Credit Suisse deal. In exchange, New York won't try to revoke the bank's license.



United States Attorney General Eric Holder (Photo credit: Wikipedia)

JP Morgan Chase paid \$ 13 billion over mortgage securities but avoided criminal charges. Mr. Holder surely wanted a guilty plea for Credit Suisse. The U.S. already charged the much smaller Wegelin & Co., which also pleaded guilty. But Wegelin is tiny by comparison, and unlike UBS and Credit Suisse, Wegelin had no U.S. presence.

More than 10 other Swiss banks are still in DOJ cross hairs and must be feeling queasy, though Credit Suisse is the White Whale. The Senate Permanent Subcommittee on Investigations accused U.S. authorities of going easy on Credit Suisse. Attorney General Eric Holder has been criticized for suggesting that large banks were hard to prosecute.

Credit Suisse now goes on the record that it operated an illegal cross-border banking business. It knowingly and willfully aided thousands of U.S. clients in opening and keeping undeclared accounts, helping them to conceal offshore assets and income from the IRS. According to the statement of facts filed with the plea agreement, Credit Suisse helped U.S. clients to conceal their undeclared accounts by:

- Assisting clients in using sham entities to hide undeclared accounts;
- Soliciting IRS forms falsely stating that the sham entities were beneficial owners of the assets in the accounts;
- Failing to maintain records related to the accounts in the United States;
- Destroying account records sent to the United States for client review;
- Using Credit Suisse managers and employees as unregistered investment advisors on undeclared accounts;
- Facilitating withdrawals of funds from undeclared accounts by hand-delivering cash in the United States or using Credit Suisse's correspondent bank accounts in the United States;
- Structuring transfers of funds to evade currency transaction reporting requirements; and
- Providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

As part of its plea agreement, Credit Suisse agrees to forego any kind of tax deduction for any of the payments it makes. That makes the \$2.6 billion even more painful. JP Morgan Chase faced a similar prohibition on deductions, although it appeared to have latitude for some of the payments. Not so with Credit Suisse.

For disclosure of account holders, Credit Suisse's deal is nuanced. The Senate Permanent Subcommittee on Investigations faulted the DOJ for getting only 238 names of U.S. citizens with Credit Suisse accounts, a mere 1 percent of estimates. Yet curiously, there is apparently no immediate handover of U.S. account names as there was with UBS.

But Credit Suisse will face U.S. treaty requests and agrees to disclose its cross-border activities. The plea agreement requires Credit Suisse to cooperate in treaty requests for account information. It must also provide information on *other* banks that transferred or accepted funds when accounts were closed.

Finally, in this new FATCA era, Credit Suisse must comply with FATCA and other U.S. laws. Among other things, that means closing the accounts of Americans who fail to comply with U.S. reporting.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.