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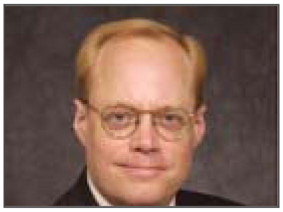


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# Post-Guilty Plea Advice From Credit Suisse?

Credit Suisse—not just a subsidiary, but the parent—plead guilty of conspiring to help Americans evade taxes. Paying $2.6 billion in fines, Switzerland's second-largest bank more than *tripled* the $780 million fine UBS paid over similar charges. But while UBS got off with a deferred prosecution agreement—criminal charges against it were quietly dropped in 2010—Switzerland's number 2 bank carries a felony conviction.

Now, the U.S. Department of Labor will hold a public hearing in January on whether, and under what conditions, affiliates of Credit Suisse should be permitted to serve as Qualified Professional Asset Managers (QPAMs) after Credit Suisse's guilty plea to one count of conspiracy to engage in tax fraud in violation of Section 7206(2) of the Internal Revenue Code.


Whatever the cost, a key benefit for Credit Suisse was getting the deal behind it and still being allowed to operate in the U.S. Even so, pleading guilty to a crime carries a taint, so there has been speculation over whether the bank's ratings or business will suffer. In Switzerland, bank secrecy used to prevail, but concepts of what violates Swiss law have metamorphosed.

Credit Suisse went 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 U.S.;
- Destroying account records sent to the U.S. 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 U.S. or using Credit Suisse's correspondent bank accounts in the U.S.;
- Structuring transfers of funds to evade currency transaction reporting requirements; and
- Providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

The Employee Retirement Income Security Act grants the DOL authority to determine whether Credit Suisse affiliates can continue to provide certain services as QPAMs to retirement plan clients. The DOL proposed an exemption for Credit Suisse and affiliates on September 3 and asked for public comment. During the comment period, members of the public requested a hearing on the proposed exemption.

In the past, without exception, when faced with companies convicted of not adhering to the law, the DOL has granted exemptions with rigorous requirements designed to protect individuals covered by retirement plans. Without an exemption, Credit Suisse's affiliates could be restricted from engaging in many commercial transactions on behalf of private pension plans and Individual Retirement Accounts.

To avert possible disruptions in retirement plan investments that would be detrimental to the financial well-being of individuals saving for retirement, or pensions, the DOL announced a temporary exemption, with conditions, to allow retirement plans to continue to do business with Credit Suisse's affiliates as QPAMs.

The conditions are designed to protect plan assets and individuals. They include stringent reporting, mandatory training of Credit Suisse personnel, and an independent audit of the Credit Suisse affiliates' compliance with their fiduciary obligations and the terms of the exemption. The exemption requires Credit Suisse to have notified affected plans and IRAs of the facts leading to the forthcoming criminal conviction and its consequences.

DOL announced a new notice for a proposed exemption reflecting comments on the September proposal. Testimony submitted during the hearing will be included as public comments on the new proposal. The notice of hearing announcement is here and the new notice of proposed exemption is here.

*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.*