

Congress of the United States
Washington, DC 20515

October 9, 2014

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:

We write to express our views and request a hearing on the Department of Labor's proposed waiver of sanctions imposed on Credit Suisse as a result of its imminent criminal conviction for its decades-long role in assisting thousands of U.S. taxpayers in filing false income tax returns and other documents with the Internal Revenue Service. Such criminal misconduct will automatically disqualify Credit Suisse and its affiliates from claiming the beneficial status of a "qualified professional asset manager," thereby prohibiting them from providing certain asset management services to pension funds. As you know, this bad actor provision in the law is designed to promote integrity at our nation's financial institutions engaging in the serious business of advising millions of Americans investing for retirement.

We would like to commend the Department for, consistent with its statutory duty, seeking to make the waiver process transparent and open to public input. However, the Department must conduct a thorough and thoughtful review of the waiver application and the comments it receives and provide a public hearing on the matter. The American public has grown increasingly frustrated about the lack of accountability in our financial system, both with regard to conduct contributing to the financial crisis and to scandals that have occurred since then. Since 2008, we have seen instances of Libor manipulation, robo-signing of foreclosure documents, tax evasion, and failures in money laundering controls that facilitated the flow of profits to narcotics traffickers and countries sanctioned by the U.S. government.

While law enforcement has tallied up record monetary settlements in response to this conduct, we remain concerned that our regulators are not using the full arsenal of tools available to them to protect the public and retirees from bad actors and to ensure that criminal behavior is appropriately deterred. The bad actor provision at issue is one such tool, which, as noted above, automatically disqualifies institutions from claiming the status of qualified professional asset manager. As with most bad actor provisions, the Department is statutorily permitted to waive the disqualification, provided that it finds that the waiver is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan.

Although we are pleased that the Department has indicated that it takes a case-by-case approach and ensures that any waiver it grants includes appropriate conditions, we are also concerned that the process is not sufficiently robust. Since 1997, the Department has reportedly

October 9, 2014

granted waivers for *all* 23 firms seeking individual waivers. The beneficial status of qualified professional asset manager should be reserved for institutions that have shown a commitment to maintaining a high standard of integrity via compliance with the law. When the Department simply waives the disqualification provisions on a seemingly automatic basis, it undermines firms' incentives to obey the law.

This is particularly concerning in the case of large financial institutions such as Credit Suisse, where reflexively granting waivers may enshrine a policy of too big to bar. In the release, much emphasis is placed on the fact that the criminal misconduct was committed by Credit Suisse AG, an overseas affiliate, which did not provide any fiduciary or qualified professional asset manager services to ERISA-covered plans or individual retirement accounts. Admittedly, Credit Suisse Group, the parent company, is a large, complex institution with operations in more than 50 countries, \$980.1 billion in assets, 46,000 employees, and numerous branches and subsidiaries. But, as stated recently by SEC Commissioner Kara Stein, a company's "size and complexity should not insulate them from the same regulatory consequences that other[s] must bear."

Indeed, convictions for income tax evasion of a qualified professional asset manager *or any affiliate thereof* are specifically listed as disqualifying events in the law. As noted in the release, the disqualification events are based on the expectation that those qualified professional asset managers and those who may be in a position to influence their policies maintain a high standard of integrity. And, this integrity matters, not just to taxpayers and the public, but also to pension funds. In May, following the bank's guilty plea, the Employees Retirement System of Texas announced that it suspended all trading with Credit Suisse. According to a spokesperson of the pension plan, "We have a policy against hiring firms convicted of felonies."

In light of these concerns, it is incumbent upon the Department to seriously consider whether granting a waiver in this case is truly warranted, and if so, whether any conditions of the waiver are merely best business practices that should have already been in place, rather than conditions that would adequately deter future criminal misconduct. In doing so, the Department must give due regard to the views of pension funds, retirees, taxpayers, and the American public and their interest in seeing greater accountability and integrity among our nation's financial institutions.

Sincerely,



Hon. Maxine Waters
Ranking Member
Financial Services Committee



Hon. Stephen F. Lynch
Financial Services Committee



Hon. George Miller
Ranking Member Education
and the Workforce
Committee