

United States Senate
WASHINGTON, DC 20510

February 10, 2022

Assistant Secretary (Acting) Ali Khawar
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Acting Assistant Secretary Khawar:

We write today to express concern regarding the Employee Benefits Security Administration's (EBSA) public notice¹ that it is considering granting a disqualification waiver to Credit Suisse Group AG (Credit Suisse) despite Credit Suisse's impending conviction in an October 2021 judgment for "defrauding U.S. and international investors in the financing of an \$850 million loan for a tuna fishing project in Mozambique"² and its previous 2014 conviction for "conspiracy to aid and assist U.S. taxpayers in filing false income tax returns and other documents with the Internal Revenue Service (IRS)."³ Federal law specifically bars entities with recent convictions from managing workers' retirement assets, but EBSA has proposed a one-year exemption that would allow the company to continue these lucrative activities.⁴ We urge you to reconsider and rescind this proposal, which would undermine efforts to hold Credit Suisse accountable for its illegal behavior and continue a precedent of EBSA refusing to enforce the law against banks that engage in illegal activity.

Credit Suisse is currently considered to be a "qualified professional asset manager" (QPAM) under a Transaction Class Exemption promulgated by the Department of Labor pursuant to the Employee Retirement Income Security Act (ERISA).⁵ QPAM status exempts a financial

¹ Employee Benefits Security Administration, Federal Register Notice, "Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Zurich, Switzerland," January 10, 2022, <https://www.federalregister.gov/documents/2022/01/10/2022-00170/proposed-exemption-for-certain-prohibited-transaction-restrictions-involving-credit-suisse-group-ag>.

² Department of Justice, "Credit Suisse Resolves Fraudulent Mozambique Loan Case in \$547 Million Coordinated Global Resolution," press release, October 19, 2021, <https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global>.

³ Department of Justice, "Credit Suisse Sentenced for Conspiracy to Help U.S. Taxpayers Hide Offshore Accounts from Internal Revenue Service," press release, November 21, 2014, <https://www.justice.gov/opa/pr/credit-suisse-sentenced-conspiracy-help-us-taxpayers-hide-offshore-accounts-internal-revenue>.

⁴ Employee Benefits Security Administration, Federal Register Notice, "Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Zurich, Switzerland," January 10, 2022, <https://www.federalregister.gov/documents/2022/01/10/2022-00170/proposed-exemption-for-certain-prohibited-transaction-restrictions-involving-credit-suisse-group-ag>.

⁵ Employee Benefits Security Administration, Federal Register Notice, "Amendment to Prohibited Transaction Exemption (PTE) 84-14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers," July 6, 2010, <https://www.federalregister.gov/documents/2010/07/06/2010-16302/amendment-to-prohibited-transaction-exemption-pte-84-14-for-plan-asset-transactions-determined-by>.

institution from key self-dealing restrictions that ERISA would otherwise place on transactions involving retirement funds. In short, QPAM status gives Credit Suisse the right to manage or transact with clients' 401(k) and pension plans.

Under EBSA regulations, however, a financial entity is prevented from retaining QPAM status if it has been convicted of criminal activity involving trust management.⁶ As part of its 2014 plea agreement, Credit Suisse “acknowledged 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,” and agreed to pay approximately \$2.6 billion in fines and restitution.⁷ Moreover, according to an impending conviction, Credit Suisse and its subsidiary “engaged in a global criminal conspiracy to defraud investors, including investors in the United States, by failing to disclose material information to investors, including millions of dollars in kickbacks to its bankers and a high risk of corruption, in connection with an \$850 million fraudulent loan to a Mozambique state-owned entity.”⁸ Credit Suisse was assessed nearly \$550 million in penalties, fines, and disgorgement as part of its October 2021 plea deal⁹ and additionally entered in a three-year deferred prosecution agreement in which it “admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged” in the case.¹⁰

Although EBSA itself has acknowledged “the magnitude, gravity, duration and pervasiveness of Credit Suisse’s misconduct, along with numerous Credit Suisse compliance control failures” when declining the bank’s 10-year exemption request,¹¹ it is continuing to move forward to provide the bank with a one-year exemption despite Credit Suisse’s repeated violations of federal law. This distinction between a one-year and 10-year exemption is illogical because the net effect is the same: a corporate criminal will be allowed to retain its QPAM status and continue its lucrative business managing workers’ and consumers’ retirement funds.

If Credit Suisse were a natural person, with two criminal convictions for financial crimes in the last decade, we think it is highly unlikely that EBSA would grant a waiver allowing its continued involvement with pension plans. But, because of Credit Suisse’s massive size and the structure of the deferred prosecution agreements, it appears that this international financial institution may receive special treatment that would be unavailable to an ordinary person in similar circumstances.

⁶ *Id.*

⁷ Department of Justice, “Credit Suisse Sentenced for Conspiracy to Help U.S. Taxpayers Hide Offshore Accounts from Internal Revenue Service,” press release, November 21, 2014, <https://www.justice.gov/opa/pr/credit-suisse-sentenced-conspiracy-help-us-taxpayers-hide-offshore-accounts-internal-revenue>.

⁸ Department of Justice, “Credit Suisse Resolves Fraudulent Mozambique Loan Case in \$547 Million Coordinated Global Resolution,” press release, October 19, 2021, <https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global>.

⁹ *Id.*

¹⁰ Employee Benefits Security Administration, Federal Register Notice, “Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Zurich, Switzerland,” January 10, 2022, <https://www.federalregister.gov/documents/2022/01/10/2022-00170/proposed-exemption-for-certain-prohibited-transaction-restrictions-involving-credit-suisse-group-ag>.

¹¹ *Id.*


We are concerned that this proposed QPAM exemption is just the latest example of a troubling pattern in which EBSA continues to grant regulatory favors for large banks that have been convicted of wrongdoing. In 2015, EBSA granted Credit Suisse a 5-year exemption less than a year after its 2014 conviction.¹² And in April 2021, despite our opposition,¹³ EBSA granted Goldman Sachs a 5-year QPAM exemption following its admission of criminal wrongdoing for its subsidiary's role in the 1MDB global bribery scandal.¹⁴

In an April 30, 2021 letter to us explaining the decision, EBSA officials wrote that “The Department proposed the Goldman Sachs prohibited transaction exemption, because it was concerned that harm may arise to American workers with assets invested in plans and IRAs that are managed by Goldman Sachs-affiliated QPAMs, if those QPAMs were unable to rely on the QPAM Class Exemption after the conviction of Goldman Sachs Malaysia.”¹⁵ This is essentially an admission that these firms receiving QPAM exemptions are too big to fail and that EBSA is either unwilling or unable to enforce ERISA restrictions against entities with recent convictions. To the extent this is a legitimate problem, the agency must develop rules that mitigate these types of risks for workers if their QPAM is involved in illegal activity, not simply repeatedly refuse to enforce the law against large financial institutions that continually break financial laws.

The Department of Labor exists to protect American workers and their retirement savings from greed, corruption, and mismanagement. Exempting corporations from consequences for misconduct and allowing Wall Street's most powerful bad actors to continue business as usual flies in the face of that obligation to the public.

You have the opportunity to send a clear message that the federal government holds corporate criminals accountable for their misdeeds rather than shower them with special regulatory favors. We ask that you review and rescind this proposal. Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



Elizabeth Warren
United States Senator



Tina Smith
United States Senator

¹² Reuters, “Credit Suisse granted exemption to continue U.S. pension business,” Karen Freifeld, October 1, 2015, <https://www.reuters.com/article/us-credit-suisse-gp-pensions/credit-suisse-granted-exemption-to-continue-u-s-pension-business-idUSKCN0RV54L20151001>.

¹³ Senator Elizabeth Warren, “Warren and Smith Ask Regulators To Deny Special Regulatory Favors for Goldman Sachs After 1MDB Scandal,” press release, April 13, 2021, <https://www.warren.senate.gov/newsroom/press-releases/warren-and-smith-ask-regulators-to-deny-special-regulatory-favors-for-goldman-sachs-after-1mdb-scandal>.

¹⁴ Employee Benefits Security Administration, Federal Register Notice, “Exemption From Certain Prohibited Transaction Restrictions Involving the Goldman Sachs Group, Inc. (Goldman Sachs or the Applicant) Located in New York, New York” May 28, 2021, <https://www.federalregister.gov/documents/2021/05/28/2021-11366/exemption-from-certain-prohibited-transaction-restrictions-involving-the-goldman-sachs-group-inc>.

¹⁵ Private Letter to Senator Warren from Timothy B. Hauser, Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, April 30, 2021.