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TO: Mr. Erin Hesse
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Room N-5700
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U.S. Department of Labor, 200 Constitution
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RE: Additional Supplemental Comments on Docket ID Number EBSA–2022–0008

Regards. We are submitting this comment letter in response to your recent decision (March 23, 2023) to reopen the comment period for this proposed Amendment until COB April 6, 2023.¹ It follows up on our earlier comment letters of January 6, 2023, and October 10, 2022, and the testimony that we presented at your virtual public hearing on November 17, 2022. All of our submissions pertain to the US Department of Labor's proposed QPAM Amendment of July 27, 2022 (Docket ID EBSA-2022-0008).

We have decided to seize this opportunity because recent events in the global and domestic banking industries have reinforced our view that US DOL's proposed QPAM Amendment is entirely warranted, long overdue, and, if anything, in need of a few more sharp teeth.

KEY POINTS

1. Since March 2023 we have witnessed a series of very disturbing events in global financial markets. There have been three US bank failures,² including the second and third largest in US history; several close calls at other regional US banks;³ continuing repercussions from last fall's massive FTX crypto-bank fraud; and the forced merger of Credit Suisse, Switzerland's second largest bank, with UBS, its largest bank.⁴

¹ See <https://www.regulations.gov/document/EBSA-2022-0008-0200> for the US DOL/ EBSA's decision to reopen the comment period until April 6, 2023, apparently to receive additional comments from at least one other party, the American Benefits Council.

² The three US bank failures that occurred in March 2023 included [Silvergate Capital](#), the [SVB Financial Group](#), and [Signature Bank](#).

³ Another largest domestic US bank, [First Republic](#), was only saved in mid-March 2023 by the joint actions of the FDIC, the Federal Reserve, and a consortium of eleven major US banks that provided a rescue package of at least \$30 billion.

⁴ The forced merger of Credit Suisse and UBS occurred on Sunday, March 19, 2023. See <https://www.theguardian.com/business/2023/mar/19/credit-suisse-bank-of-england-wont-object-to-takeover-as-ubs-considers-lbn-bid>.

2. While the side-effects of all this on Main Street have so far thankfully been limited, the period of acute financial instability is by no means necessarily over. In these times, we believe that key financial watchdogs like US DOL/EBSA have a heightened responsibility to assure the public that they are stepping up monitoring and are on the case.
3. These events were especially conspicuous to our experts group. In hindsight, we were among the few observers who correctly anticipated that leading financial institutions (FIs) like Credit Suisse deserve much closer regulatory scrutiny.
4. This is especially true during a period of a very sharp shift in monetary policy. As policy makers are just now realizing, effective regulation is an essential part of effective monetary policy. While several of the financial institutions (FIs) involved in the recent upheavals were relatively new or small, others, including but not limited to Credit Suisse, have not only played key roles in the global financial system for decades, but they have also been deeply engaged in excessive risk-taking and even outright criminal activity. (See Chart 1 below.) These recent upheavals are a stark reminder of the risks of tolerating such misbehavior.
5. Our experts group had warned DOL/ EBSA and other regulators specifically about Credit Suisse as early as January 2015. Back then, at a day-long hearing at US DOL/EBSA's headquarters, we presented abundant testimony and evidence on the risks of permitting CS to continue to enjoy QPAM privileges, given its incredible 2014 felony guilty plea to facilitating at least a decade of \$billions of tax dodging by wealthy Americans. Our testimony showed that this offense was just the proverbial tip of the iceberg. Long before 2014, CS had already compiled a spectacular track record of relentless criminality all over the planet.⁵ Given this, we warned that CS-the-organization could simply no longer be trusted. It deserved stiff sanctions, not waivers.
6. At the time, a retinue of hired CS minions, a chorus from the pension fund and banking industries, and US DOL/EBSA itself, discounted our analysis. So CS was permitted to enjoy two more generous waivers from QPAM sanctions -- the first one until December 2019, and the second right up until March 2022, when the exposure of a series of new CS felonies and whistleblower reports finally led EBSA to take corrective action, ordering CS to wind down its QPAM portfolio within a year.
7. We firmly believe that if the US DOL/EBSA had seriously heeded our early warnings about Credit Suisse's serial misbehavior back in 2015, CS might still be standing today. Had EBSA denied CS a waiver and conditioned its reinstatement as a QPAM on a prolonged period of good behavior, a new, much-improved bank might well have emerged. And EBSA would have sent a clear signal to other QPAMS that misbehavior by leading FIs would no longer be tolerated.
8. From this standpoint, Credit Suisse's recent collapse, combined with all the other tremors in the global financial system, only underscores our concern that several other leading

⁵ See the detailed litany of Credit Suisse misbehavior compiled in Attachment A to our January 6, 2023 comment letter.

*QPAMS may also now deserve much closer scrutiny for their persistent involvement in financial offenses.*⁶ This is true for several reasons.

9. First, as we argued in our other comment letters, since the 1990s, under the impact of financial deregulation, increased global competition, the rise of kleptocratic regimes like Russia and China and transnational criminal enterprises that have produced record levels of offshore flight capital, the rise of the global haven industry,⁷ and the proliferation of digital technology,⁸ organized financial crime and excessive risk-taking have become *pervasive* in both the US and Europe -- the preferred destinations for capital flight and dirty money.
10. Second, with respect to white collar crime in general and financial crimes by major banks in particular, the trend has been for regulators and law enforcement to rely increasingly on huge fines that rarely deter future corporate criminal conduct. The result is that FI after FI has discovered not only that such conduct has few personal costs, but that in many markets criminal behavior proliferates to the point where it becomes a competitive necessity. Eventually the institutional "rot" catches up -- but by then, as we've seen in the CS case, it is often too late.
11. The hallmark of this malady is the proliferation of huge fines for financial offenses. The bad news is that such fines rarely deter criminal activity. On the other hand, properly analyzed, with an eye on comparing the incidence of fines and penalties across different institutions, such data on comparative fines can provide some useful leads to regulators, as we'll see below.
12. For example, our research shows that from 2000 to 2023, **Credit Suisse** paid a total of **\$12.7 billion** (\$2020) in fines, penalties, and disgorgements with respect to its involvement in **at least 52 well-documented US-based financial offenses.**⁹ It also paid **another \$404 million** with respect to **4 UK financial offenses** in this period. (*See Chart 1 below.*) All told, it paid out **\$13.1 billion** in fines, amounting to **1.4 percent** of its 2020 total assets and an incredible **41.5 percent** of its year-end 2020 market capitalization. Such crimes must have been quite profitable for certain senior managers. In effect, in case after case, we've found senior management at CS and other FIs/ QPAMS serving their own short-term interests, and turning to the "dark side" to do so. As we now know, clearly this did not

⁶ For purposes of this discussion, "financial offenses" include facilitating tax dodging, illegal trading, bribery, sanctions busting, mortgage fraud, and insider trading.

⁷ See <http://globalhavenindustry.com/> and <https://fsi.taxjustice.net/> for a discussion of the growth of "financial secrecy jurisdictions" since the 1970s. Back then, there were only about 10-12 of such jurisdictions helping to invest and conceal illicit financial flows and capital flight wealth, often with the help of major First World banks, law firms, and accounting firms. By now there are at least 141.

⁸ This includes AI-based "fintech" that increasingly supports round-the-clock cross-border securities trading, algorithmic trading across multiple currencies, and instantaneous deposits, withdrawals, and payments clearing. Interestingly, the US Federal Reserve is on the verge of introducing a new digital clearing system for inter-bank payments, "Fed Now," that may accelerate these trends. The good news is that this technology will help to reduce transaction costs and boost the efficiency of the banking system; the bad news is that it may make FIs far more vulnerable to the kind of "digital bank runs" that may have played a key role in the demise of institutions like SVB Finance Group, Signature Bank, and perhaps Credit Suisse.

⁹ For the gory details concerning all of the individual offenses engaged in by Credit Suisse and the other leading FIs discussed in this letter, see <https://violationtracker.goodjobsfirst.com>.

pay off for CS shareholders or the public at large, either at home or in the countries that were served by the bank.

13. Sadly, Credit Suisse was by no means unique. In 2000-23, **UBS**, now Credit Suisse's new boss, paid over **\$20.4 billion** (\$2020) in fines, penalties, and disgorgements with respect to **96 US financial offenses**, and a **further \$819 million** (\$2020) with respect to **5 UK offenses**. All told, this consumed **1.9 percent** of UBS' 2020 total assets and **41.5 percent** of its 2020 market capitalization.
14. In other words, as indicated, these basic *corporate crime metrics* **are even higher for UBS than for Credit Suisse**. This begs the question of whether US DOL/EBSA should rest easy, now that CS' QPAM status has effectively been transferred to UBS. On the contrary, **we believe that UBS itself now clearly deserves much closer scrutiny if it is to remain a QPAM.**¹⁰
15. All told, as summarized in Chart 1 below, in 2000-23, the world's top fifteen global banks incurred a total of **\$367 billion** (\$2020) in fines for at least **1489 financial offenses in the US and the UK -- an average of 1.3 major financial crimes per week, each and every week for 22 years, committed by these leading global banking institutions.**¹¹ For this group of banks as a whole, the median fines/total assets ratio and the fines/market cap ratios were **1.33 percent** and **22.6 percent**, respectively.¹² By comparison, the equivalent ratios for the CS/ UBS combo are much higher -- **1.7 percent** of total assets and **41.5 percent** of market cap. While it is difficult to assess how a combined UBS/CS entity will behave, these metrics not reassuring.
16. These simple indicators of the propensity to engage in corporate criminal activity also suggest that **in addition to UBS, several other leading FIs also now be a cause for concern - especially in these times.** Indeed, it appears to us that US DOL/ EBSA is really going to need the tougher regulations and enforcement tools that it has proposed.
17. For example, in 2000-23, **Deutsche Bank** paid a total of **\$20.5 billion** (\$2020) for **78 US financial offenses**, plus another **\$609 million** in connection with **4 UK financial offenses**. This yielded relatively high fines/total assets and fines/ market cap ratios -- **1.3 percent** and a striking **93 percent**, respectively. Indeed, already in the throes of some financial instability, with a peculiar propensity for corporate criminality, Deutsche Bank appears to be another possible "Credit Suisse sequel" whose QPAM status may deserve a closer look.

¹⁰ Prior to its merger with UBS, Credit Suisse, to our knowledge the only QPAM that has been sanctioned by US DOL/EBSA to date, was simply selling its main US asset management business. It is not clear how the forced merger will affect that decision.

¹¹ As one commentator noted, "These are very expensive crimes, with lots of costly side-effects, including risks to the financial system. If you had a jet airline crashing a plane a week, week in, week out, on average, for 22 years, you'd think that somebody would notice and ground the airline's planes until it did the basic maintenance required to fix the problem."

Obviously these bank crimes were not evenly distributed across these years. In fact one of the most important features of major financial crime is that it often requires years to investigate and prosecute, while the profits are all enjoyed much earlier. Even if prosecutors succeed in investigating and convicting guilty institutions and assessing penalties, on an NPV basis the crimes can be profitable simply because of such delays.

¹² Excluding China-based banks other than HSBC.

18. In 2000-23 **Bank America** paid an incredible **\$99.66 billion** (\$2020) in fines and settlement charges with respect to **210 US and UK financial offenses** -- an average of more than \$441 million each, and one such financial crime **every five weeks**. The resulting penalties amounted to **3.54 percent** of BAC's 2020 total assets, more than twice the ratios for CS and UBS, and **38 percent** of BAC's 2020 market cap.
19. Several other top-tier global banks achieved lower "corporate crime" ratios, but they were hardly strangers to financial misbehavior. In 2000-23 **Goldman Sachs** paid **\$19.6 billion** (\$2020) in fines and settlements for **63 US financial crimes**, and another **\$200 million** for **4 UK financial offenses**, adding up to **1.71 percent** of its 2020 total assets -- also well above the CS and UBS levels. **JPMorganChase** paid a total of **\$45.15 billion** for **162 US offenses**, and another **\$709 million** for **8 UK offenses**, which added up to **1.35 percent** of its total assets as of 2020. **Wells Fargo** paid **\$27.6 billion** in fines for **153 US financial crimes**, or **1.41 percent** of its 2020 total assets. Less troubling, **Citigroup** paid **\$21.8 billion** in fines and settlements for **144 US offenses**, plus another **\$480 million** in the UK -- all told, about **1 percent** of its total assets as of 2020.
20. Relatively high rankings on such simple metrics are of course just helpful indicators, not conclusive. But we do believe that they can help to reveal a certain institutional propensity for corporate criminality.
21. On the other hand, low relative rankings no means a guarantee of good behavior. For example, some leading FIs have been able to avoid high rankings simply by *reserving their worst behavior for non-US locations*. Thus a recent OCCRP¹³ investigation in South Africa determined that the giant New York investment bank **Morgan Stanley** has been engaged in blatant illegal efforts to help extremely wealthy white South Africans dodge taxes in their home country -- essentially the very same tax crime that CS committed in the US in 2014. However, none of this shows up in the metrics for Morgan Stanley's *US financial offenses*, because this particular crime has so far never been prosecuted in the US. Still, **Morgan Stanley** did pay a total of **\$12.1 billion** (\$2020) in fines and settlements for **169 US financial crimes** in 2000-23, about **1.33 percent** of its 2020 assets. This is another clear example of how US DOL/EBSA needs the authority to consider non-US criminal behavior and prosecutions when it enforces QPAM standards.
22. Similarly, OCCRP has discovered that UK/HK-based **HSBC** has been deeply involved in money laundering and other financial crimes in South Africa, in connection with that country's recent "ZumaGate" scandal. However, HSBC has never been successfully prosecuted there, partly just because South Africa's prosecutorial resources are severely strained. HSBC also conducts more than 80 percent of its banking business outside the US. Overall, **HSBC** paid just **\$7.7 billion** (\$2020) in fines and other penalties for **48 US financial crimes** in 2000-23, plus another \$510 million for **4 UK offenses** during this period -- a total of just .3 percent of its 2020 total assets and 7.7 percent of its market cap.

¹³ The Organized Crime and Corruption Reporting Project (OCCRP) is a global collective of investigative journalists that does outstanding work. See <https://www.occrp.org/en>.

¹⁴ Raw data compiled from US DOJ, US SEC, and state bank regulators, press reports, and <https://violationtracker.goodjobsfirst.org/>; authors' analysis. "Financial crimes" mortgage fraud, facilitating tax dodging, bribery,

23. As we noted in our earlier letters, yet another example where non-US conduct and prosecutions clearly warrants more scrutiny from US DOL/EBSA, despite the absence of US convictions, is Bank Pictet, Switzerland's fourth largest bank. It has recently been named in connection with the global FIFA, Petrobras, and Odebrecht money laundering and bribery scandals. In March 2022, its Geneva offices were searched by Switzerland's Attorney General (OAG) on suspicion of aiding and abetting bribery of public officials in Brazil and other countries. However, so far there are no US prosecutions or convictions. Yet, incredibly, we have confirmed that as of 2023, Pictet has been under criminal investigation by the US DOJ since 2012! On request, US DOL has confirmed that it does not even know whether Bank Pictet and/or its affiliates have received QPAM exemptions! In our view, this is a glaring example of the need for more aggressive US DOL/EBSA scrutiny.

Chart 1		LEADING GLOBAL BANKSTERS - FINANCIAL CRIMES AND PUNISHMENTS, 2000-2023									
	Total Fines, Penalties, and Disgorgements (2000-23,\$B2020)			Financial Offenses, 2000-23 (#)			Total Assets \$B2020	Market Cap (\$B2020)	% of Total Assets (2020)	% of Mkt Cap (2020)	
	US	UK	Total	US	UK	Total					
Credit Suisse	\$12.72	\$0.40	\$13.12	52	4	56	\$914.1	\$31.6	1.44%	41.53%	
UBS	\$20.44	\$0.82	\$21.26	96	5	101	\$1,125.0	\$51.2	1.89%	41.52%	
Σ(UBS+CS)	\$33.16	\$1.22	\$34.38	148	9	157	\$2,039.1	\$82.8	1.69%	41.52%	
Deutsche Bank	\$20.53	\$0.61	\$21.13	78	4	82	\$1,630.0	\$22.7	1.30%	93.02%	
HSBC	\$7.67	\$0.51	\$8.18	48	4	52	\$2,984.0	\$105.2	0.27%	7.77%	
JPMorgan	\$45.15	\$0.71	\$45.86	162	8	170	\$3,386.0	\$387.3	1.35%	11.84%	
BankAmerica	\$99.59	\$0.07	\$99.66	208	2	210	\$2,819.0	\$262.2	3.54%	38.01%	
Wells Fargo	\$27.60	\$0.00	\$27.60	153	0	153	\$1,955.0	\$124.8	1.41%	22.12%	
Citigroup	\$21.78	\$0.48	\$22.26	144	3	147	\$2,260.0	\$128.4	0.98%	17.34%	
Goldman Sachs	\$19.69	\$0.20	\$19.89	63	4	67	\$1,163.0	\$90.7	1.71%	21.93%	
Morgan Stanley	\$12.09	\$0.00	\$12.09	169	0	169	\$1,115.0	\$124.0	1.08%	9.75%	
BNP Paribas	\$15.67	\$0.00	\$15.67	15	0	15	\$2,424.0	\$66.2	0.65%	23.68%	
Barclays	\$7.11	\$0.89	\$8.00	42	11	53	\$1,839.0	\$34.7	0.43%	23.05%	
ING	\$1.76	\$0.00	\$1.76	3	0	3	\$1,152.0	\$36.7	0.15%	4.81%	
ABN Amro	\$0.73	\$0.00	\$0.73	11	0	11	\$486.6	\$13.7	0.15%	5.30%	
NatWest/RBS	\$14.23	\$1.13	\$15.36	31	12	43	\$1,089.0	\$27.2	1.41%	56.47%	
Total	\$359.92	\$7.04	\$366.96	1,423	66	1,489			1.33%	22.59%	

Source: data: US DOJ, SEC, press reports, violationtracker.goodjobsfirst.com; our analysis © JSH 2023

24. These examples provide still more reasons why we should all support US DOL/EBSA's proposed changes to QPAM regulations. They would provide it with explicit authority to *look beyond US convictions* when it comes to deciding on waivers. The fact is that financial crime has become globalized and sophisticated, so that only paying attention to USA convictions is an anachronism.

money laundering, price fixing, sanctions busting, insider trading, and illicit trading; they exclude labor law violations, consumer protection violations, and environmental crimes.

SUMMARY

25. All told, recent upheavals in the global banking system have underscored the need for much tougher preventive monitoring, and much speedier corrective action, on the part of key financial watchdogs like US DOL/EBSA. The amendment that it proposed to strengthen QPAM last year were already sorely needed. But in light of these recent events, it is now more necessary than ever.
26. As we've argued, one elementary minimum requirement for this is a timely, regularly updated public registry for all institutions and their affiliates that are either have, or are applying for, QPAM privileges. To underscore what ought to be obvious: under ERISA, Section 406(a) exemptions can only be granted by DOL. They cannot be granted by financial institutions to themselves, much less so anonymously. But this is what the current bizarre regulatory regime amounts to, given the absence of a public registry. Right now, even DOL's QPAM program managers cannot tell if any particular FI or its affiliates are registered to be QPAMs.¹⁵
27. This current "anonymous/ no public registry" regime *directly undermines DOL's exclusive exemption power under Section 406 (a)*. Despite being the responsible regulatory authority, US DOL simply does not know who the QPAMs are. US DOL's modest proposal for public, mandatory QPAM registration is essential to the maintenance of any meaningful QPAM standards.¹⁶

Overall, once again, QPAM status is a privilege. It should not be available to serial corporate criminals. This proceeding is an important opportunity for US DOL/EBSA to underscore this basic point.

Finally, once again, *we offer these voluntary comments and analysis as a panel of independent outside experts* that has no current, past, or future financial or employment ties to the global pension fund management services industry, the financial services industry, or its many law firms and lobbyists.

As we stated in our January 6, 2023 letter, we would heartily welcome similar "declarations of financial independence" from all of the other participants in this proceeding.

¹⁵ Apparently the only way that DOL found out about Credit Suisse's QPAM status back in 2014 was when this surfaced in the course of the bank's settlement discussions with DOJ regarding its felony tax dodging charges!

¹⁶ Many other such public registries – for example, for beneficial ownership of companies and accounts – have recently been introduced in the interests of improved financial regulation. See, for example, FINCEN's new reporting requirements under the Corporate Transparency Act (2022), discussed at <https://www.fincen.gov/boi>.

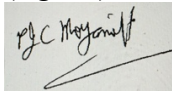
Respectfully submitted,

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