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DATE: October 11, 2022

TO: Mr. Erin Hesse
Office of Exemption Determinations
Room N-5700
Employee Benefits Security Administration U.S. Department of Labor, 200 Constitution
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RE: Request to Testify: Docket ID number EBSA-2022-0008

Regards. I understand that the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, is seeking comments on the Department's proposed Amendments to its current "Qualified Pension Asset Manager" regulations. (See proposed QPAM Amendment of July 27, 2022, Docket ID EBSA-2022-000.

See <https://www.regulations.gov/document/EBSA-2022-0008-0001>).

DOL has also extended the initial comment period to October 11, 2022 (11:59 pm Eastern).

The DOL has also announced plans to hold a virtual public hearing on this proposed amendment on November 17, 2022., and has invited the public to submit requests to testify at that hearing by October 11, 2022 (11:59 PM Eastern.)

I have already added my name to a Joint Letter that is also being signed and submitted this week by Prof. James S. Henry, Mr. John Christensen, and Dr. Paul Morjanoff. That letter will be submitted by your deadline.

Given the fact that we are not part of any "group," and all have deep expertise and rather different perspectives on this subject, **I would also like to request at last 10 minutes of my own to testify individually at the November 17, 2022 hearing.** This would build upon my earlier experience, when I appeared as a witness at DOL's public hearing at Credit Suisse's QPAM waiver on January 15, 2015.

MY BACKGROUND

I am an Anti-Money Laundering (AML)/ Countering the Finance of Terror (CFT) expert for the German Parliament, Council of Europe and the European Parliament. As an AML/CFT expert I was invited to testify on Switzerland for the EU Parliament's PANA Committee (Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion) in September 2017 and the TAX3 committee (Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance) in October 2018.

MY SPECIFIC COMMENTS

The findings of my October 1, 2018 presentation at the Tax3 Committee on Switzerland were integrated into the European Parliament's report on financial crimes, tax evasion and tax avoidance. European Parliament resolution (2018/2121(INI)) was published on March 26, 2019.

[https://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV\(2019\)0240.pdf](https://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV(2019)0240.pdf)

At the Department of Labor (DOL) hearing in 2015, the focus was on Credit Suisse and its deficiencies. In 2022 the question should be, what improvements have been made in seven years, and how do we extend them?

In 2013, the Department of Justice (DOJ) offered Swiss banks a path to resolve potential criminal liabilities. Those eligible included Swiss banks that had reason to believe having committed tax-related crimes. In January 2016, the DOJ announced that it had imposed more than \$1.3 Billion in penalties on 80 Swiss banks. The Swiss Bank Program did not apply to several Swiss banks already under criminal investigation, including six major banks and eight smaller banks.

Never before had the U.S. government offered an amnesty program to the entire banking industry in a particular country. From the total of 243 Swiss banks more than 90 were settling with the DOJ, that meant that close to 40 percent of Swiss banks *admitted to potential and actual crimes*.

However, even after the settlement, many Swiss banks - not only Credit Suisse - were named in connection with new non-US criminal investigations and prosecutions.

For example, **Bank Pictet** is Switzerland's fourth largest bank. Unlike other large Swiss banks, to this date it has not yet settled with the US DOL, despite being investigation since 2012, when Pictet announced that it was being investigated by the DOJ. Pictet was also recently named in connection with the global FIFA, Petrobas, and Odebrecht scandals. As recent as March 2022, the Bank Pictet's offices in Geneva were searched by Switzerland's Office of the Attorney General (OAG) on suspicion of aiding and abetting bribery of public officials and money laundering.

From the perspective of US DOL's proposed QPAM amendment, I believe it is very important that QPAM *privileges* should be seen and appreciated by major banks. All banks involved in QPAMs should be identifiable by a public register. And before being awarded QPAM exemptions and other privileges, the burden of proof should be on the banks. Self-assessments by banks should also be made public for review. Finally, just for the sake of transparency and truthfulness, the US DOL should surely press the US DOJ to explain the status of its case with respect to Pictet. Surely after 10 years of investigation, US pension funds deserve to know.

MY FOCUS

I will focus my ten minutes of testimony on three specific topics:

(1). The case for new specific criteria as indicators of QPAM risks. For example, since the quality of the national legal, supervision and enforcement systems varies significantly among

the principal countries of incorporation for major banks that are applying for QPAM exemption, these variations ought to be taken in consideration, to protect US pension funds.

(2) The need for a complete public data base of existing and applicant QPAMs, as well as a possible reversal of the burden of proof when banks apply for QPAM exemptions. US DOL may also want to consider time limits for QPAM exemptions, subjecting at least certain categories of QPAMs to a similar burden of proof / "clean sheet" requirements if they apply. It is time for banks to have to demonstrate "clean hands" in order to receive privileged QPAM exemptions.

(3) Given that, as noted, up to 40 percent of Swiss banks admitted potential or actual crimes, a better screening process by the US authorities, supported by the public, is needed. I don't mean to imply to banks from other countries would necessarily rate much better -- from that standpoint, perhaps the Swiss survey is a precedent for DOL to follow with respect to QPAMS, once it has enumerated them!

SUMMARY

Overall, I believe that I have much to contribute to your hearing on November 17, 2022. I also look forward to following up on my testimony with further submissions, as needed.

I view the proposed QPAM Amendment and the associated hearing as a very important step forward, along the long road to achieving more responsible behavior from the financial institutions that are entrusted with the very special role of managing pension fund assets for the benefit of those who really own them.

Respectfully submitted,

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