

# TRANSCRIPT OF PROCEEDINGS

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IN THE MATTER OF: )  
 )  
PROPOSED INDIVIDUAL EXEMPTION )  
INVOLVING CREDIT SUISSE AG )

REVISED AND CORRECTED TRANSCRIPT

Pages: 1 through 217  
Place: Washington, D.C.  
Date: January 15, 2015

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## HERITAGE REPORTING CORPORATION

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UNITED STATES DEPARTMENT OF LABOR  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

IN THE MATTER OF: )  
 )  
PROPOSED INDIVIDUAL )  
EXEMPTION INVOLVING CREDIT )  
SUISSE AG )

Room C5320  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C.

Thursday,  
January 15, 2015

The parties met, pursuant to the notice, at  
10:04 a.m.

PANEL:

TIMOTHY HAUSER, Deputy Assistant Secretary for  
Programs at EBSA

PHYLLIS BORZI, Assistant Secretary of Labor, EBSA

LYSSA HALL, Director, Director of Exemption  
Determinations, EBSA

CHRISTOPHER MOTTA, Chief, Division of Individual  
Exemptions, EBSA

MEGAN HANSEN, Office of the Solicitor, Department  
of Labor

SPEAKERS:

STEPHEN SAXON, Groom Law Group

ELLEN GOODWIN, Groom Law Group

BILL JOHNSON, Credit Suisse Asset Management

SPEAKERS: (Continued)

ROGER MACHLIS, Credit Suisse Asset Management

PAUL MORJANOFF, Financial Recovery & Consulting Services

THOMAS SPALDING, Retired

JOHN POPP, Credit Suisse AG

BARTLETT NAYLOR, Public Citizen

HEATHER LOWE, Global Financial Integrity

JAMES S. HENRY, Tax Justice Network

ANDREAS FRANK, (No affiliation)

RALPH NADER, Founder, Public Citizen

EMIDIO MORIZIO, Credit Suisse Asset Management

NEIL RADEY, Credit Suisse Asset Management

ALAN LEBOWITZ, Evercore Trust Co.

WILLIAM RYAN, Evercore Trust Co.

GEORGE E. ARNSTEIN, (No affiliation)

JAMES SMALHOUT, (No affiliation)

DAVID GARZA, Henry Street Settlement

DENISE DURHAM WILLIAMS, Student Sponsor Partners

P R O C E E D I N G S

(10:04 a.m.)

MR. HAUSER: Good morning. Can everybody hear me? Okay, I'll do my best. Unfortunately, I have a cold, so it's going to be a bit of a strain.

I'm Timothy Hauser. I'm the Deputy Assistant Secretary for Program Operations at EBSA, the Employee Benefits Security Administration, of the U.S. Department of Labor. This is a public hearing on a proposed prohibited transaction exemption for certain affiliates of Credit Suisse. Before we hear from witnesses, I'm going to take a few minutes to lay out the legal context for the hearing and describe the process.

The Employee Retirement Income Security Act of 1974, ERISA, prohibits a wide range of transactions known as prohibited transactions. These are transactions between employee benefit plans and parties in interest, parties with a relationship with the plans. As a practical matter, plans could not function effectively without some relief from the expansive reach of these prohibitions. Large employers and funds necessarily engage in a wide variety of garden variety sorts of economic transactions with parties in interest, and for

example, all the different service providers to a plan are parties in interest, but nevertheless plans need to engage in, you know, all manner of transactions with those service providers.

Accordingly, the Congress gave the Department of Labor authority to issue exemptions from the broad reach of the prohibited transaction rules when the Department determines that the exemptions are in the interest of and protective of plan participants and beneficiaries as well as administratively feasible.

One of these exemptions is prohibited transaction exemption 84-14, the QPAM exemption. A QPAM is a qualified professional asset manager. By definition, QPAMs are large regulated institutions such as banks, savings and loan associations, insurance companies, or federally registered investment advisors who meet certain standards of size and independence. The QPAM exemption permits these independent plan fiduciaries to engage in a variety of beneficial arm's-length transactions with parties in interest that would otherwise be prohibited. The QPAM exemption does not, however, permit QPAMs to engage in self-dealing. They cannot act in their own interest or in the interest of their affiliates, nor can they

engage in transactions with parties that are in a position to affect their independent judgment, such as persons that have an ownership interest in the QPAM.

In the past, a number of the Credit Suisse entities have relied on the QPAM exemption for relief from some of the prohibited transaction rules, but Credit Suisse's recent criminal conviction violates Section I(g) of the QPAM exemption. That section prohibits QPAMs and related entities from relying on the exemption after specified convictions and it reflects the Department's view that a QPAM and those who may be in a position to influence a QPAM should maintain a high level of integrity as the bar remains in effect for 10 years following the date of conviction.

Credit Suisse AG pled guilty to conspiring with U.S. citizens to commit tax fraud in violation of the Internal Revenue Code on May 19, 2014. That same date Credit Suisse applied for an individual exemption from the Department, requesting that these Credit Suisse-related affiliates be permitted to continue to rely on the QPAM class exemption notwithstanding the impending conviction.

On September 3, 2014, the Department published a notice of a proposed exemption in the

*Federal Register* for the QPAMs to continue to rely on the exemption. The proposed exemption contains a variety of new conditions applicable to Credit Suisse AG and the affiliated QPAMs. These conditions were designed to ensure the integrity and proper fiduciary conduct of the affiliated entities. According to the applicant, none of the affiliated entities were involved in any way with Credit Suisse AG's criminal misconduct.

In response to our publication the Department received several comments requesting a public hearing. After consideration of those comments and requests, on November 18, the Department granted a temporary exemption and we also established this hearing date. The temporary exemption preserves the status quo and ensures that plans and IRAs don't incur needless costs or injury as a result of Credit Suisse's loss of QPAM status, and the issue today is do we essentially extend that temporary exemption and finalize a proposed new exemption.

Under the new exemption, just to outline some of the conditions, the relief is conditioned on representations that none of the affiliated QPAMs were involved in or profited from the criminal misconduct; that none of the assets involved belong to plans or

IRAs; employees and agents responsible for plan transactions must not have been involved in the criminal conduct.

Conditions include the development of extensive policies and procedures designed to ensure that the affiliates fully comply with their fiduciary duties; stringent reporting requirements; mandatory training of Credit Suisse's personnel regarding their legal and ethical responsibilities; and independent audits of the affiliates' compliance with their fiduciary obligations, their prohibited transaction rules and the terms of the exemption.

In addition, the exemption requires notice to affected plans and IRAs of the facts that led to the criminal conviction and its consequences, and with limited exceptions, the exemption prohibits the affiliated QPAMs from imposing fees, penalties, or charges on any plans or IRAs that wish to terminate or withdraw from the relationship with the QPAMs.

A full statement of the conditions is set out in the proposed exemption and, of course, the other set of conditions is they would also have to continue to comply with all the other conditions of the original QPAM exemption.

So, as our *Federal Register* notice stated,



the hearing today should focus on whether the proposed exemption is in the interest of plans, participants, and beneficiaries, and protective of their interests. We did not turn down any request to speak today, but we would appreciate it if you would focus your comments, you know, on that fundamental issue of whether this is essentially good or bad for plans and participants.

Speakers will be called in the order listed on the agenda. I'd appreciate it if the speakers could limit remarks to the 10-minute period allocated. If we have questions, the question and answer won't count against the time limit, and I caution everybody against reading any conclusions into our questions. They're questions, not decisions.

At the conclusion of the presentation we'll take other comments if time permits. If you filed a written statement with us, you don't need to read the whole statement. I know I'm a bad example of that, but speakers are encouraged to summarize the statements in their oral testimony, and before you begin your testimony I'd appreciate it if you could identify yourself, your affiliation, and the organization you represent for the reporter.

We'll keep the record open until January 26.

So, if anybody would like to supplement the record, you're welcome to do that, and the official record will be open for public inspection and copies will be available in our public disclosure room.

Let me now just let the other members of the panel introduce themselves, and we'll start with our first witnesses. Starting with my boss, Phyllis Borzi.

MS. BORZI: I'm Phyllis Borzi. I'm the Assistant Secretary of Labor for the Employee Benefits Security Administration.

MS. HALL: I'm Lyssa Hall. I'm the Director of Exemptions Determination, EBSA.

MR. MOTTA: Chris Motta, Chief of the Division of Individual Exemptions, EBSA.

MS. HANSEN: Megan Hansen, Office of Solicitor, Department of Labor.

MR. HAUSER: So our first speakers are Steve Saxon and Ellen Goodwin.

MR. SAXON: Good morning. My name is Stephen Saxon. I'm the Chairman of the Groom Law Group in Washington, D.C. Here with me today is my colleague, Ellen Goodwin. Thank you for giving us the opportunity to comment on the Credit Suisse exemption proposal.

MALE VOICE: Excuse me. Would you speak into the mic?

MR. SAXON: Initially we'd like to provide some historical background regarding the exemption, particularly Section I(g), the anti-criminal rule, that we may be uniquely suited to provide.

Shortly after ERISA was enacted it became clear -- I'm one of the few folks here probably who was around at that time -- it became clear that the breadth of the party-in-interest prohibitions under Section 406(a) caused insurmountable compliance difficulties for asset managers both with respect to single customer and pooled asset accounts.

For that reason and the number of transactions involving plan assets that were prohibited by Section 406(a), we began a process where we would prepare party-in-interest check lists, do prohibited transaction compliance reviews, and sometimes even get an investment opportunity where we weren't sure if we had prohibited transactions or not.

Because of those difficulties, in October of 1978, we filed a class exemption application action, Ellen has got some copies up there if you guys want to see it, D-1204, which would provide relief for service provider transactions engaged in on behalf of a plan

by a bank, insurance company or registered investment advisor. There was no 406(b) relief requested. We believe this became the forerunner to the QPAM exemption. The DOL rejected that proposal, telling us that it was too broad.

What we did at that time is we went up to the Hill and we began speaking to folks there. We drafted legislation that we presented to the President's Commission on Pension Policy that provided exemptive relief under 406(a) for transactions directed by a qualified professional asset manager, and there were certain regulatory soundness provisions and financial network provisions that we included in that. There was an arm's-length condition, but there was no anti-criminal rule similar to Section 411.

Later on, in 1981, Senator Nickles introduced legislation called S. 1541 that would have made pretty dramatic changes to the prohibited transaction rules at least as they applied under 406(a). One of the things by way of example that it did, it would have created an exception from the treatment of plan assets for assets maintained in conjunction with a bank collective investment trust or an insurance company with a separate account.

I think, now I was there listening, I wasn't

too intimately involved, I was just a junior associate at the time, but at some Senate subcommittee labor hearings that occurred in early 1982, Secretary of Labor Raymond Donovan announced that they didn't support S. 1541, but the Department did support moving forward with the proposal, QPAM exemption proposal, and that proposal was -- that proposal came to fruition in December of 1982.

Our review of early drafts of the proposal show that there was no inclusion of a 411 -- well, they included -- there wasn't inclusion of a 411 anti-criminal rule like we have today, but there was a reference to Section 411.

An interesting sidebar is that there was no anti-criminal rule under the pooled separate accounts exemption or in the bank collective investment fund exemption, both which were in effect at that time, and I want to talk a little bit more about that later.

If today we ended up with a Section 411 anti-criminal rule, we wouldn't be sitting here because that rule limits the anti-criminal application to the fiduciary that's engaged in the transaction, not the affiliates of the fiduciary. So it begs the question how did we get from Section 411 to Section I(g).

When the QPAM exemption was proposed in December of 1982, there was a very broad anti-criminal rule contained in Section I(g). It was broader than the rule that we have today both in terms of the number of crimes covered and in terms of the breadth of the affiliate definition. We made a number of comments. We objected to the breadth of the rule. We objected to the breadth of the affiliation definition. The Department took some of our comments. They didn't take all of our comments, and we ended up with -- a zillion other folks also commented on that, and we ended up where we ended up today.

One of the things I wanted to discuss, and it's really just to point out some facts, is that when we do prohibited transaction compliance protocols for financial institutions we look at the QPAM exemption, we look at 408(b)(17). We include, as applicable, the bank collective investment trust exemption and the pooled separate account exemption.

Neither the bank collective investment trust exemption nor the pooled separate account exemption, which in my professional opinion is just as important as the QPAM exemption because there are so many ERISA assets that are maintained in conjunction with those exemptions, they don't include a Section I(g) type

anti-criminal rule. Only the QPAM exemption includes that.

Now I've been asking myself a question, well, what is the relevance of that, and, look, the Department of Labor has full discretion. They can add any conditions that they feel are appropriate in the granting of an exemption, but it was kind of instructive to me that the Department felt that it was appropriate to move forward with the granting of very important exemptions that did not include any expansive, you know, Section 411 anti-criminal rule in the case of bank collective investment trusts and pooled separate accounts, but they did feel that, you know, this was necessary in conjunction with the QPAM exemption.

So what that kind of says to me is that, well, obviously you need to comply with the anti-criminal rule under I(g) in order to get the availability of the QPAM exemption. It has not been critical to the granting of many other important exemptions. Moreover, you know, the bank collective investment trust exemption and the pooled separate account exemption were both modified after '84, around 1990, 1991. The Department did not expand those exemptions to include a I(g) type condition in those

proposals.

Moreover, you know, there have probably been 25 or 30 amendments to Section 411 since the enactment of ERISA, probably six or seven times where the Department has really focused on the prohibited transaction rules and Congress has not expanded 411 to include the affiliates, not that that's necessarily instructive to me. It's just kind of a worthy fact.

So one of the things that we've been trying to figure out is why did the Department expand 411 to the breadth of Section I(g). To the best of our review and recollection, the answer to that question is in the preamble to the proposed QPAM exemption, and therein the Department stated that the purpose of Section I(g) and the expanded range of affiliates was to ensure that the QPAM and those who may be in a position to influence its policies maintain a high degree of integrity.

A logical extension of this is that the range of affiliates covered by the anti-criminal rule ought to be limited to those affiliates who are in a position to influence QPAM decisionmaking.

Looking at the conditions to the Credit Suisse proposal, we believe that the November 18 proposal would satisfy the purpose of the anti-



criminal rule as laid out by the Department in 1982. The November 18 proposal would ensure that the misconduct engaged by Credit Suisse AG would not affect the policies, procedures, or ERISA asset management customers of Credit Suisse Affiliated QPAMs.

I'm not going to recite all of the different conditions that are in my written testimony. And by the way we brought 20 copies of the written testimony. Erin has got some of them. I hope you guys have them, and if you folks want a copy, just email. You can email my partner here, Ellen Goodwin, at [egoodwin@groom.com](mailto:egoodwin@groom.com), and we'll send you a copy of our testimony if you want to read it.

But I thought it was worth emphasizing a couple things, and we've gone through our own negotiations with the Department on, you know, getting these types of exemptions. The exemption requires that the Affiliated QPAMs develop policies that ensure that the asset management decisions of the Affiliated QPAMs are conducted independently of the parent, Credit Suisse AG, and the exemption does not apply to Credit Suisse AG itself, and that reminded me in our negotiations with the Department on these types of exemptions it's always been important to the

Department that they looked at whether the misconduct, that is, the centerpiece, the reason why they're applying for the exemption, was engaged in by the QPAM or by some affiliate, and it was always easier, if you will, in my estimation to move the exemption through where the conduct was engaged in by the affiliate and not the QPAM. That seemed to be important and I think that made sense.

The conditions of the proposed exemption, they're formidable, especially when you compare those conditions against the conditions that the Department has used in the previous 19 or so exemptions that they granted in this space.

We think that the conditions when combined with the seven conditions under the QPAM exemption which would remain applicable more than provide sufficient assurance that the misconduct of Credit Suisse AG will have no impact on the policies and procedures of the Affiliated QPAMs in their management of ERISA assets. Therefore, we believe the rationale behind Section I(g) should be met in this case and that the exemption should be viewed as protective of the interests of ERISA plan participants and beneficiaries.

Do you have anything to add to that?

MS. GOODWIN: Sure. My name is Ellen Goodwin. I work with Mr. Saxon at the Groom Law Group. I just want to add a couple of -- I just want to respond to a couple of specific concerns that have been raised by the commenters to this exemption in the public record.

One of the things that the witnesses have expressed concern about is that the DOL would be granting a "waiver" from the application of ERISA to Credit Suisse in this case. We would like to emphasize that this proposed exemption is far from a waiver of the application of ERISA. It's an administrative exemption from the restrictions of Section 406(a) of ERISA. That leaves the rest of Title I of ERISA, the rest of ERISA's fiduciary provisions, fully applicable to the QPAMs.

This is a very rigorous set of conditions that the Credit Suisse Affiliated QPAMs were a part of. In terms of alternatives, it's one of the most, if not the most, demanding exemptions that DOL has proposed in the QPAM anti-criminal area.

Secondly, I just wanted to mention the witnesses have also raised concerns that DOL would not be actively engaged in the oversight of this exemption, and on this point we note that the DOL has

issued hundreds, if not thousands, of administrative exemptions from DOL's prohibited transaction rules and we've worked with DOL on many of them, and DOL exemptions are by their very nature intended to be self-administered. The law requires them to administer both. Section 408 of ERISA requires each exemption to be administrable. So they are intended to be self-administered.

This exemption, which is unusual for exemptions issued by the DOL, specifically requires the engagement of an independent auditor that will provide a very active ongoing oversight role, and in fact the auditor is required to audit the affiliated QPAM's compliance with the exemption, among many other things, and note instances of noncompliance in its report which would then be provided to the DOL, so that gives DOL a very meaningful ongoing oversight tool and role in this case.

MR. SAXON: I'll make one final point. The conditions under which the Department grants exemptive relief are listed in 408(a) of ERISA, the exemption that's administratively feasible. Ellen was addressing that when she talked about the waiver provision. The exemption is in the interest of participants and beneficiaries. The exemption is

protective of the rights of participants and beneficiaries of the plan.

It goes without saying that a lot of the witnesses, and we're not going to talk -- we know what a lot of the witnesses are going to say today. We have read their testimony as well. A lot of what they're going to say is quite compelling, but in our dealings with the Department over many, many years the Department has not ordinarily taken political issues into account, public policy agendas into account in determining whether to grant or deny an exemption.

And adding one thing to what Ellen has said, if you look at this exemption, it is obvious that there has been a lot of hard work, a lot of negotiations that went into the 14 separate conditions that the Department is requiring Credit Suisse to go through. I think it would be a mistake for the Department to entertain the types of public policy, political issues that heretofore you haven't engaged in.

I see nobody has been able to hear me for the last 20 minutes.

(Laughter.)

MR. SAXON: Yeah, that's pretty good. I'll start at the beginning.

(Laughter.)

MR. SAXON: And so I think that it would be a mistake to begin to do that at this stage, notwithstanding the fact that a lot of what will be said today is quite compelling. Thank you.

MR. HAUSER: All right. Thank you very much.

MR. SAXON: Thanks.

MS. GOODWIN: Thank you.

MR. HAUSER: Bill Johnson.

MR. HESSE: Could we take a moment to address the lights, re-situate a few things?

MR. HAUSER: Okay.

(Pause.)

MR. HAUSER: Okay, I think -- excuse me. I think we have our technical issues resolved now. Now my list shows as the next speaker Bill Johnson, but we seem to have two Bill Johnsons. Maybe you can just introduce yourself. I'd appreciate it.

MR. JOHNSON: I'm Bill Johnson.

(Laughter.)

MS. BORZI: Isn't there a TV show like this?

MR. JOHNSON: The other Bill Johnson is Roger Machlis.

I'm managing director and global deputy at

Credit Suisse Asset Management. Roger is the head of the Credit Suisse Asset Management legal and compliance group. I've worked in the asset management and financial service industry for over 20 years in a number of different senior positions.

First of all, we apologize for the actions that lead to this hearing. Credit Suisse has been very proactive in addressing the issues that it's faced. Our board of directors and executive management take the issues of compliance with all laws and regulations very seriously. We're absolutely committed to a culture of respect for the laws that apply to our bank and its clients.

We want to assure you again that our asset management employees were not involved in the conduct of our affiliate that resulted in the conviction. The activities and decisions of Credit Suisse QPAMs take place in the U.S. independent from Credit Suisse AG and its Swiss operations. Our asset management business complies with all the laws to which it is subjected. Our asset management business has a long established culture of compliance, ethical integrity, and attention to both the letter and the spirit of the law. We operate a fiduciary business and put the interests of our clients first and foremost.

We appreciate the opportunity to testify in support of our application for an individual exemption. We would like to thank the Department for its hard work on the exemption. We believe the exemption proposed by the Department is in the best interest of and protects ERISA plans and participants. We hope the Department will finalize the exemption as quickly as possible. This will remove uncertainty and provide closure to ERISA plans on this topic.

We believe a denial of the Credit Suisse request for a QPAM exemption would significantly hurt our plan clients. Our clients' counterparties know the QPAM exemption and are comfortable with it. Without a QPAM exemption certain transactions may be impossible. Alternatives might involve higher fees and transaction costs. If clients felt obligated to change managers, they'd be harmed by incurring costs and potentially adverse selection with the remaining pool of managers. Our clients have spent significant time and resources performing due diligence and negotiating contracts with Credit Suisse Asset Management. If ERISA plans have to change managers, they'll be forced to relocate their capital to their second choice.

If our clients are forced to terminate their



asset management arrangement with Credit Suisse, they would incur significant liquidation costs for their portfolio. They would need to spend substantial time issuing requests for proposals to find alternative managers. They'd need to interview and assess the respondents. They'd need to negotiate and document these new investment relationships. And, finally, they would need to reinvest those assets once the new managers are hired.

Our estimation of liquidation costs during the exemption process was intentionally conservative. Spreads to reinvest our credit strategies can exceed a half of a percent because of the scarcity of particular issues and tranches. These costs would harm plans by reducing net returns. In addition, our clients would not be invested in their desired strategies during the transition period. They would lose the benefit of being fully invested. And some strategies, such as credit, there are no easy substitutes, such as ETFs or futures. Additional costs and burdens may include required communications with participants, revision of plan disclosures, websites, blackout periods, and potential confusion among plan participants.

We have spoken with many of our clients

since Credit Suisse AG pled. They are diligent, cautious, and judicious in selecting their asset managers. They exercise due care as they carry out their responsibility. Our clients and their advisors understand that Credit Suisse Asset Management employees were not involved in the conduct of our affiliate that resulted in the conviction.

We would like to emphasize that not a single institutional ERISA client has terminated its relationship with Credit Suisse Asset Management since the plea agreement was entered. We think this makes clear that our clients want to continue with us. It would not be in the plan's interest to force them to make a change because the QPAM exemption was not granted.

Further, we'd like to emphasize that neither a single plan or IRA client wrote letters requesting that the Department deny the exemption or hold a hearing.

We know we need to earn our clients' trust every day. We serve at their discretion. We seek to do the best job managing their assets, to uphold the highest ethical standards, and to be consummate professionals in how we do our job. I'm proud of our investment professionals. I hold them and myself to

the highest standard.

I now reintroduce the other Bill Johnson, Roger Machlis, again managing director, head of our asset management legal and compliance team, and Roger's been practicing law for over 28 years.

MR. MACHLIS: Thank you, Bill.

I manage a team of over 20 professionals in the United States. The team provides comprehensive legal compliance coverage to our asset management businesses and helps to ensure that they conduct their activities in full compliance with relevant laws and regulations.

As fiduciaries, our asset management business is committed to acting in the best interests of our clients. I also want to assure you that our asset management employees were not involved in the conduct of our affiliate that resulted in the conviction, and Credit Suisse has done extensive due diligence to support that.

Credit Suisse asset managers use QPAM in their dealings and agreements with counterparties to implement the investment strategies for their ERISA clients. The QPAM exemption is designed to improve the administration of the prohibited transaction rules by providing training and execution efficiencies to

retirement plan clients. It has worked well for 30 years, allowing counterparties to understand and assess their risk when trading with plans. It has become a proxy for sophisticated professional investment management, even if not technically required for every transaction with a client not covered by ERISA.

It allows ERISA-covered plans access to the financial markets on an equal footing with other investors since the exemption is well understood by our counterparties and transactions are priced to reflect this comfort. In addition, many non-ERISA clients use the QPAM status to evaluate the qualifications of their managers.

QPAM is critical for certain transactions, but other exemptions may not apply or be accepted by counterparties, such as cleared swaps and credit and loan transactions. It is efficient for many more transactions as QPAM allows plans to enter into transactions without conducting expensive and time-consuming checks to determine whether a counterparty is a party in interest.

The Department has historically recognized that extensive party-in-interest checks could result in lost investment opportunities which would harm plan

clients and the participants. Over the years, as plans have become larger and have diversified their use of service providers in the financial markets and as financial institutions have consolidated, it would be difficult, if not impossible, to find counterparties for a trade who were not parties in interest, thus necessitating the use of a comprehensive exemption like QPAM.

Many of the transactions that hedge risk for plans and thus protect the participants and beneficiaries from volatility in the markets and interest rate risks depend principally on the QPAM exemption. Not surprisingly, the QPAM exemption is so common that practically all retirement plans expect their asset managers to use QPAMs, and many of our counterparties expect representations from us that it applies.

The job of appointing asset managers and deciding whether to continue to retain those managers belongs to the named fiduciary of each plan. ERISA is a comprehensive statute that embodies a decade of congressional study of the private employee benefit system. It makes plan fiduciaries responsible for selecting and monitoring their own asset managers. We do not believe it is in the best interest of the plans

for the government to substitute its judgment for the plan fiduciary's judgment, as some commenters have suggested. The structure of ERISA and its carefully designed allocation of duties reflects a congressional judgment that plan fiduciary choices will better serve retirement plans than top-down government decisions.

The Department has recognized this approach for over 40 years. In the event of a felony conviction, Congress authorized the Department to bar the convicted company from serving as an asset manager to the plan. Congress did not, however, authorize it to bar all of the convicted companies' affiliates. Our clients have fully considered the facts and determined that it is in their plans' best interest for us to continue in our fiduciary role for their plans.

We want to emphasize that the proposed exemption is not a waiver of the QPAM requirements. Instead, the Department has imposed a significant number of additional conditions that are protective of plans and their participants. Credit Suisse is fully prepared to meet all of the conditions in the exemption.

We would like to note that these conditions are comprehensive and far more stringent than those

imposed by the class exemption or any other individual exemption granted by the Department to a QPAM whose affiliate has been convicted.

As Bill noted, if this exemption is denied, Credit Suisse's QPAMs will no longer be able to serve ERISA-covered retirement plans in an efficient manner. Plans that have trusted and relied on QPAMs for many years may be forced to find replacements despite their demonstrated desire to retain Credit Suisse Asset Management.

Credit Suisse Asset Management takes the situation very seriously and is committed to showing our clients that we uphold the highest legal and ethical standards. Credit Suisse Asset Management has a strong independent compliance department and a culture of clear rules, training, detailed compliance policies, testing, oversight, and transaction review. This has enabled us to maintain a high level of integrity in the past and will continue to enable us to do so for the future.

MR. JOHNSON: Credit Suisse appreciates the Department's proposal for permanent relief. We hope you'll finalize the exemption as quickly as possible. We appreciate this opportunity and time. Thank you.

MR. HAUSER: Yes, thank you. Last night

when I was thinking about this hearing I read back through the stipulation of facts that were filed in the criminal case, and, you know, from my standpoint as a regulator, and I take your point that Credit Suisse AG is a separate company and it's not getting any of this relief, but, you know, one of the sections in the document, in the statement of facts which was signed off on by Credit Suisse AG is headed "Credit Suisse's Ineffectual Policies, Training and Audits", and what's described in that set of stipulations is that, you know, there were a set of procedures in place to keep, you know, illegal cross-border advice from being rendered and to prevent some of the illegalities that, you know, ultimately Credit Suisse AG, you know, admitted that it had engaged in, but an admission that the policies really hadn't been followed, and what's more, that the audit was ineffectual in the sense that there wasn't followup with the specific managers that were involved. There appeared to be some alteration as I understand it of the evidence so that documents were changed not to reflect the advice moving across the country, emails were destroyed and the like.

And I guess a question I have, and, you know, it's kind of a general question is while it may



be one more, you know, factual point, and then I think if I go to Credit Suisse's website, you know, clearly, on the one hand, Credit Suisse AG and the affiliated QPAMS are certainly distinct entities, but you hold yourself out as an integrated family of companies obviously, you know, offering a whole range of services in a fairly integrated way.

So the question is, you know, given this sort of conduct, how can you give us some assurance that the kinds of additional protections that we've proposed to impose here will actually do the trick? Because, you know, they significantly center on audit requirements and document production and the like.

MR. JOHNSON: I understand the concerns that you're raising. I think what's important is not only to have a very strong framework of policies and procedures but to have monitoring, surveillance, testing, and quality assurance to assure that those policies are being complied with at all times by the business.

Credit Suisse Asset Management, which has a strong record, an exemplary track record managing ERISA assets, that business has been managed independently from Credit Suisse AG; has an excellent history in terms of its compliance with policies and

procedures and relevant regulations and so forth, and its monitoring and testing is a very important prong of it. We've invested significantly in our infrastructure and systems in view of that.

When we enter into a process, an RFP process with plans that are looking to engage an asset manager, it's a very competitive process. They're looking not only to see that Credit Suisse Asset Management has a strong performance record, track record, and a stable asset management team, but also has strong compliance policies, procedures, and personnel, and we're tested on that by our clients all the time. We live that every day.

We've now added as an additional exemption intended to protect the plans and the participants an independent auditor who will be auditing this business for a 10-year period.

MR. HAUSER: So, in the wake of the criminal case, did you revisit the sorts of policies and procedures that were in place? Were there systemic sorts of changes that were made at the affiliated QPAMs? You know, was there a certain amount of, you know, just reflection about what needs to change in the organization?

MR. JOHNSON: Yes, we did and we continue to

do that on a regular basis. We did review all of our, for example, ERISA compliance policies and procedures, found that they were strong, a strong framework. We did make certain tweaks and enhancements as appropriate, and we continue to do that.

MR. HAUSER: Have all the QPAMs that are beneficiaries of the proposed relief, have they entered into contracts with independent auditors at this point to, you know, satisfy the conditions that are proposed?

MR. JOHNSON: Yes, we have entered into an arrangement with Evercore to be the independent auditor.

MR. HAUSER: And could you submit a copy of the contract with Evercore into the record of these proceedings?

MR. JOHNSON: We can submit it to the Department. I'm not sure it's appropriate as a public record, but we can certainly give it to the Department.

MR. HAUSER: What assurances can you give me -- anything you submit to the Department is a matter of the public record. What assurances can you give me as to the auditors' access to -- you know, if it identifies problems, breaches, you know, whether foot

faults or more serious things, what access will it be given to the employees and the people who are actually involved in the misconduct?

MR. JOHNSON: The auditor will have full access on an independent basis to work and to escalate findings to management, yes.

MR. HAUSER: And is that built into the contract?

MR. JOHNSON: I do not know, but that is certainly the protocol that we would expect from an independent auditor.

MR. HAUSER: Are there any restrictions imposed on the audit's access to --

MR. JOHNSON: Not that I'm aware of.

MR. HAUSER: Has the company agreed or would it be willing to agree to, you know, waive any assertion of attorney/client privilege with respect to communications with the QPAM fiduciaries, you know, in its dealings with the auditor so the auditor can see those records?

MR. JOHNSON: We would need to evaluate the facts and circumstances of it. Clearly the intention is to give the independent auditor full access so he can do his job properly.

MR. HAUSER: How many different QPAMs are we

talking about?

MR. JOHNSON: To date, three.

MR. HAUSER: Three. And is this one contract for all three or is it separate contracts?

MR. JOHNSON: It would cover all three.

MR. HAUSER: Okay. And have you also -- I think the conditions of the exemption also include terms for training. Have you similarly made arrangements for the training?

MR. JOHNSON: Yes, we have. We have annual compliance training through ERISA and we've engaged an external law firm. We have a kick-off session with that law firm who is going to be providing intensive ERISA training to all asset management employees, to all support personnel that work with asset management.

MR. HAUSER: Okay. Switching over to, you know, at the start of your presentation Bill made a point about the various costs the plans would incur if the QPAM weren't granted, which as I understood it included, you know, the costs associated with liquidating investments, finding another, you know, money manager and the like, as well as for those plans that stuck with you costs associated with, I suppose, availing them -- you know, using other exemptions, not being able to make certain investments, engage in

certain transactions.

But is there any way to quantify what those costs looks like more specifically? The one number that's cited in your papers is something like \$450,000 associated with three different asset management styles, but, you know, if you have \$2 billion in assets under management or whatever the number is, that doesn't seem like a very huge number in context.

MR. MACHLIS: I think your characterization of the various types of costs outlined, categories of costs, you know, market conditions change, so it's difficult to predict. Obviously we take our responsibilities for the participants, the fiduciaries, quite seriously, and so, you know, any additional cost is too much the way this is.

MR. HAUSER: Yeah. I mean, I guess let me just before I let other people ask questions, I'd just make an observation, and it was rightly pointed out in the proceeding, the testimony that preceded yours, that the Department of Labor isn't obligated to go in and oversee the process at Credit Suisse or look over the shoulder of the auditor, and that, you know, is obviously a cost savings in some ways for the taxpayer and points to administrative feasibility.

But that said, if we finalize this

exemption, I have to say that my expectation is the Department of Labor will be -- you know, I will send my investigators in in this coming year, and I think what we'll be doing is taking a look at the rigor with which the audits have been done, the seriousness with which the audit's been taken, making sure that in fact the conditions of the exemption are being met.

And I just say that because it's very hard for me sitting here without, you know, conducting an entire separate investigation to really have an appreciation to what extent those problems at Credit Suisse AG are cultural problems that involve the entire organization, and what we do not want if an exemption is finalized is for the exemption to be as conditions or the audit requirement to be treated as a cost to be minimized or as a set of boxes to be checked. You know, we mean for it to be a serious set of requirements.

And I guess I just worried a little bit when I read the preamble to our exemption that it may almost have led somebody to think that that was something we had decided not to do when in truth it's quite the opposite. I expect we'll be there looking at least, you know, initially. So I would just say that, and anything you can do, anything you can

supplement, you know, you can provide as a supplement to the record that would explain why we should have confidence in the audit process, what the terms of the audit process, you know, what you've agreed to contractually, the kind of access you're going to give the auditor would be very much appreciated.

Anybody else?

MR. MOTTA: I think you stated that the asset management business of the QPAMs operated independently of Credit Suisse AG. Has compliance always operated independently at Credit Suisse AG?

MR. JOHNSON: Yes, it has. We have a compliance team that is dedicated to covering the asset management business. It has sets of policies and procedures that are designed to protect and ensure that the business is conducting its activities as a fiduciary in compliance with the laws and regulations, so it does function as a team. It has an independent and strong culture of compliance. In fact, a number of policies and procedures that we've adopted here in the U.S. the compliance team for asset management actually exported to other areas of Credit Suisse outside the United States because they were being held up as high standards.

MS. BORZI: I just have a couple questions.



I want to underscore the importance of what we're doing here today. The idea that these exemptions should be fully transparent, they're subject under the law to public notice and comment, and this hearing really gives people the opportunity, and as Tim said, everyone who requested an opportunity to testify we gave, we're giving that opportunity.

But the format doesn't usually lend itself to anything but a series of presentations and no opportunity for people to challenge or ask you questions. Similarly, the witnesses that we'll hear later on during the day today won't have an opportunity, you won't have an opportunity to ask them questions or challenge their assumptions.

So I'm going to take on that role for you and the other witnesses that support the exemption. I'm going to try to channel some of the concerns that have been raised by the other witnesses and vice-versa when the other witnesses come to the table. So I do want to underscore Tim's comment at the outset that you should take nothing from the nature of our questions or the questions themselves.

So let me start with what Tim ended, this notion of how seriously we intend the audit to be taken and how if this exemption were granted we would

expect that you all would take it.

So tell us about the procedure you used to select the independent auditor that you say you now have a contract with.

MR. JOHNSON: I will defer actually to my colleague, ERISA counsel who worked extensively in meeting with --

MS. BORZI: So is that somebody we're going to get on another panel?

MR. JOHNSON: Yes.

MS. BORZI: Okay. All right. Then somebody remind me that that's a question I'm going to ask.

MR. JOHNSON: Yes. I wasn't personally involved.

MS. BORZI: Because the last thing I want is people giving answers --

MR. JOHNSON: Yes.

MS. BORZI: -- that are outside their area of expertise.

MR. JOHNSON: Yeah. I was not personally involved in that.

MS. BORZI: But you did talk a little bit based on the selection question, so let me just follow that theme another bit. You did say in response to Tim's question that you've already begun the training

and that you had hired an outside law firm.

MR. JOHNSON: Yes.

MS. BORZI: How did you select this law firm?

MR. JOHNSON: The law firm is Fried Frank, and they have a lot of expertise in the ERISA area, and we felt that they were in a good position to provide enhancement to internal training that we already do on ERISA for asset management.

MS. BORZI: Have they provided any other legal services to Credit Suisse AG or any of the other affiliates?

MR. JOHNSON: AG, I'm not aware that they do. They provide some legal work for -- Credit Suisse is a large organization.

MS. BORZI: Sure.

MR. JOHNSON: So we have a number of law firms that assist us. Fried Frank is not our main law firm that we use. We do not have a significant relationship with them in asset management, so they are in that sense independent, and they have a very strong ERISA team that will come in and give the professionals in asset management support team additional enhanced training, knowledge, and information to inform our compliance with ERISA.

MS. BORZI: Well, you can see what the nature of our concern here would be, that again going back to the statement of facts that were part of the plea agreement, Credit Suisse AG admitted to the fact that its training program wasn't sufficient. So we would be very concerned if anybody who had a hand in that insufficient training program was also going to be doing some of the training.

MR. JOHNSON: Yeah. Not all of the ERISA. As I mentioned earlier, the asset management business operates independently from Credit Suisse AG. Credit Suisse AG is not at all involved in the training. This is the training on ERISA, and we've got U.S. experts and Fried Frank coming.

MS. BORZI: So part of the reason I'm asking these questions is that a recurrent theme in the testimony, in the written statements of the people who have asked us not to grant this exemption is that there exists -- I'm not even going to say "existed", but exists certainly a culture that seems quite different from the culture of compliance that you two gentlemen have emphasized in the asset management side, that the mothership, if you will, Credit Suisse AG, doesn't seem to have that -- again, representing the comments that were made by the others -- that

culture of compliance doesn't seem to be part of the culture of the mothership, of Credit Suisse AG.

MR. JOHNSON: I can certainly speak for the asset management business that I cover, and I've been here at Credit Suisse for 18 years, and we are very committed to a culture of compliance and we've always run the business with integrity, subject to the highest standards. Our clients or plans, participants and beneficiaries, they expect no less from us.

So we are very comfortable with the compliance environment that we have developed as a whole. And it is a business that is separate from the problems that did occur there. We are not involved, our employees are not involved in Credit Suisse Asset Management. And certainly the firm as a whole overall has taken many great strides and invested very significantly in compliance infrastructure, and certainly all of us at Credit Suisse deeply regret the conduct that led to the conviction and necessitated this hearing.

MS. BORZI: Okay. I have one question for Mr. Johnson, and that is -- well, actually both of you talked about the costs that your clients would incur were the exemption not granted, and maybe it was just the way I was hearing what you were saying as opposed

to the way you were trying to communicate to us, but I got the clear sense that the assumption behind these costs would -- was -- is that people don't change QPAMs, that there never comes a point that people make a decision to move from one QPAM to another. Is that the industry practice?

MR. MACHLIS: They will make changes, but it's their decision based on the merits of their evaluation.

MS. BORZI: Yeah, again I understand that, so I have two follow-up questions. The first is clearly their decision to go with you all as the QPAM, the circumstances have changed somewhat because the whole point of this hearing is to focus on the I(g) condition in the prohibited transaction exemption. So one might argue, as some of the witnesses who don't think the Department should grant this exemption, that as a result of this changed circumstances some of your clients may decide to move on.

And so then the question is what is it in the list of things both in your written materials and in your oral statements, the costs that people have to incur when they make this change? Is there anything unique to this situation except the timing that they may have to make it on a quicker timeframe than they

would normally? Are there any unique costs is I guess the nub of my question?

MR. MACHLIS: I think you characterized it correctly, meaning in comparing the situation where they decide to fire us at a normal course --

MS. BORZI: I didn't want to use that word because people change -- it has a connotation. People change, I mean.

MR. MACHLIS: At a normal course versus as a result of the hearing.

MS. BORZI: Well, as a result of the criminal conviction --

MR. JOHNSON: Correct.

MS. BORZI: -- and the failure, if you will, if that's the decision to grant the exemption.

MR. JOHNSON: Correct. It's the same cost. It's the nature of who makes the decision, when they make the decision, and the remaining universe of suitable choices for achieving their investment objective.

MS. BORZI: Okay. Thank you very much for your testimony.

MR. JOHNSON: Thank you.

MR. MACHLIS: Thank you.

MR. HAUSER: So, according to my schedule,

the next speaker is Dr. Paul Morjanoff, and I apologize if I mispronounced the name.

Okay. We have a brief technical issue.

(Pause.)

MR. HAUSER: Mr. Morjanoff.

MR. MORJANOFF: Thank you. Good morning.

Firstly, we will examine the bank's application, which is your document one. It was a cut and paste adaptation of an old application, but it copied obsolete questions and omitted current questions. The regulations in force at the time of the application is your document two.

At question two the following information was needed: a detailed description of the exemption transaction; identification of all the parties and interests involved; and a chronology of the events leading up to the transaction. None of these were supplied.

A list of all the Credit Suisse affiliated QPAMs and Credit Suisse related QPAMs is missing. We don't know the scale of the operation, millions, billions or trillions. I understand it's more billions from the conversation. The directors, degree of CS ownership or the connections to secrecy jurisdictions or tax havens.



We are ignorant of the complexity of the structured financial products and if laundered or untaxed money could be commingled with pension funds.

At question six, the bank claimed it would use what is called "everyday investment transactions" which it defined as foreign or domestic, registered or unregistered Rule 144A, dealer equity securities, swaps, the hedging the risk through a variety of instruments and strategies.

This is a blank check which permits all manner of shady, nontransparent dealings, proprietary trading, the mess that brought around the global financial crisis. Even worse, CS is one of the biggest operators of dark pools, anonymous trading platforms in the country.

The bank, however, summarized it with a statement. All of these transactions are customary for pension funds. In my opinion, they're not suitable for IRAs and the majority of plans.

No chronology of events was given. The crime lasted over a century, and the government complained that the applicant bank had refused to submit necessary documentation. The bank has a confirmed history of obstruction, criminal activity, and stonewalling, summarized in your document three.

Consequently, there can be no credibility of the bank's assurances that the assets -- sorry. The bank was convicted of two felonies. The more serious one, conspiracy, was not mentioned in the application. Consequently, there can be no credibility of the bank's assurances that the assets or staff of the QPAMs were not involved or did not benefit from the conspiracy. We don't even have a list of these entities, and the bank's representative apparently was not aware of the conspiracy crime.

The conspiracy felony is by far the greater threat to plans, participants, and beneficiaries because it involved a conspiracy of management to facilitate crime. This is of universal relevance to asset management. The legal reference for this is United States v. Helmsley from the Second Circuit, which states that "Conspiracy is a crime distinct from its underlying predicate acts and purposes and involves additional harms."

Despite the best efforts of the DOJ it couldn't determine the extent of the bank's crimes. All we know is the point at which the DOJ gave up. The bank had obstructed the investigation by destroying documents, tampering with other documents, discharging involved staff without being interviewed

or refusing to submit documents which it had in its possession.

Other than criminal conduct was omitted from the application. Credit Suisse subverted the QI agreement. Now this is the fundamental agreement that gave it permission to operate in this country. The normal consequence for this is loss of banking license. The bank was gambling with its banking license, but the DOL doesn't have to gamble with its pension funds by granting the application.

Then there was Credit Suisse's ineffectual policies, trainings, and audits. Since the ineffectiveness was not discussed, we would logically assume that the projected policies, trainings, and audits would also be ineffectual. The bank has had these in place for years and apparently has become highly skilled in circumventing them. If the bank had been serious about changing, it would have included details in an accountable program.

At question nine, the bank explained why it thought the exemption would be administrably feasible. The bank said the DOL didn't have to monitor the plan and it relies on an independent auditor. I think your questions covered that point quite well already. I note that Holocaust victims waited 50 years for their

documents. Would an auditor wait 50 years?

At question 13, a declaration was required. "Under penalty of perjury, I declare I am familiar with the matters discussed in the application and to the best of my knowledge and belief the representations made in this are true and correct." There is no such declaration. The author was unfamiliar with the content.

There are people in the bank who do know the truth of the matter. Why were they not chosen? Was it in order to keep the truth secret?

All of these are major matters for access to \$7 trillion of hard-earned pension funds. By ignoring them, the bank has omitted mandatory content, trivialized criminal justice, and advertised contempt for the law.

Some illustrative examples from our investigations: We had a team of experts investigating alleged criminal activity in the bank for several years. We had extensive contact with Credit Suisse legal department and offered our assistance to Credit Suisse internal fraud bureau, but this was declined. We had several well-connected Swiss people on the team with good intelligent sources inside the bank and inside the Zurich canton and Swiss

federal criminal authorities and the Zurich economic police. We also had significant contact with the Swiss banking regulator and the Swiss money laundering authorities in Bern.

We obtained documents legally which are not available to the DOJ. In this way we are able to pierce the veil of Swiss bank secrecy and we saw what was behind it. This report is tabled as your document four.

We confirmed a significant criminal combination inside the bank and also that CS legal department had obstructed and deceived the Zurich district attorney. We formally notified CS senior and top management of this and offered to fully document and justify our findings, expecting that they would be interested in this. In fact, they stonewalled us and refused to accept our reports. We made formal notification to CS top management multiple times but were rebuffed.

At document five, there's the copies of the most recent notifications which summarize the earlier ones. This makes a mockery of the bank's claim to not tolerate criminal activity. This notification is dated post the application's date.

What was of extreme concern to us was that

this criminal combination operated across five separate Credit Suisse units and several crime syndicate units across two continents in a manner which required tight integration and protection from senior management across so-called independent units. It allegedly involved a heartless bait and switch scheme that ordinary investors were enticed with the savings and the securities which were promoted as top rank. Once the bank had the money, the supposedly top-ranked securities were switched to other but worthless securities with a similar name but which were indistinguishable for these consumer level customers.

The bank refused to document the transactions to the criminal investigation authorities. When someone on the criminal investigation team embarrassed the bank, typically they disappeared from the team and were not replaced. The bank consistently withheld documents which would have made the crime obvious but which we eventually obtained.

The Zurich district attorney complained about CS's obstruction and admitted privately there is not a single DA in Switzerland that would go up against Credit Suisse. We later became convinced that

Credit Suisse exerted corrupt control over what the DA would be allowed to receive, investigate, and prosecute as far as criminal activity inside the bank was concerned. In this, the bank was supported by its regulator, who on at least one occasion deceived all EU regulators who had wanted to know why the Swiss were doing nothing.

Bank secrecy was abused to protect the crime. This criminal combination, because it was protected by the Swiss authorities, is virtually impregnable. Approving the application is support for bank secrecy, which would undermine the majority of honest financial providers, forcing them either out of business or to engage in risky or illegal activities in order to compete. By undermining the integrity of the market, it will be against the interest of plans, participants, and beneficiaries.

Lack of monitoring will -- you will have to monitor, of course, an impossibly high workload for auditors chosen by Credit Suisse guarantee ineffectiveness. There is no effective strategy available while Swiss bank secrecy remains and the bank resists real change.

Denying the application gives certainty and provides an ordered transition with minimum disruption

over the coming year and will enhance market integrity.

MR. HAUSER: Thank you. You know, you submitted a quite voluminous document with a lot of allegations and concerns, and I guess one question I have is in this package, and I understand the issues you've raised, but do you have any specific instances of, you know, entities outside, you know, of the QPAMs that are at issue here actually engaging in misconduct? Do you have anything that goes specifically to plan assets or IRA assets being mismanaged or, you know, abused in some way?

MR. MORJANOFF: Okay. I'd have to go into the black box of the proposed investments which covered all or wide range of investments, including OTC unregistered securities. That's the best I've got to go with, so that's what I'll run with.

All right. So we had cases with -- because unregistered securities are basically made by marketmakers, trading can be very, very thin, and, of course, in the dark pools it's even worse.

Now it's not unusual for marketmakers to conspire to establish a closed market, what we could call wash trading or circular trading between marketmakers where they can fix a market, they can fix



the turnover. It will all be published on the website and certainly can be seen by investors. But even sophisticated investors will trust the NASDAQ website, look at the market, look at the turnover, look at the charts and say, hey, there are a lot of people interested in this. Actually there are only two marketmakers and are colluding.

So the case, in fact, that we were able to document, I have to establish, we had to fight tooth and claw to get to these documents because of Swiss bank secrecy and the other issues concerned and also because the fact that they use cross-jurisdictional concealing. It's not just a matter of Swiss bank secrecy in Switzerland, then the Americans. You've got American bank secrecy saying we can only disclose this to the Swiss parent.

So, if you have any connection to any secrecy jurisdiction or any tax haven, you have a real problem because you have an accountability issue. You also have mechanisms like attorney/client privilege. They might have their lawyers in the Bahamas, and you can't get the documents from them.

MR. HAUSER: Okay. So I think I understand your point of view, and just -- I mean, essentially is it the case that -- I mean, your conclusion really is

that given the course of conduct that you feel that you've documented in this submission there is no set of conditions, you know, or no circumstance in which we really should grant an exemption to these entities, I mean, that the only right course of action is a denial no matter, you know, what conditions we might come up with?

MR. MORJANOFF: I'd go even further than that. I think it's important to make the denial so that you can monitor the process of the denial because, as we know, when UBS had to divest its U.S. bank customers, all they had to do was flop around to the next customer, which in some cases was Credit Suisse. So that I'd go one step further.

On the basis of our findings, I would expect that unless there is real change, and I'll say dramatic and radical change compared to what we've seen and heard today, there will be further loss of financial privileges by Credit Suisse. And so what we're going through now is an ordered, timely process to learn about a new situation.

The new situation is we have criminal banks coexisting with legitimate non-criminal banks and this new gray area, and to date the overwhelming reaction has been denial. Okay, we'll just say they're a

normal bank. No, that's not the situation. There are deep-seated problems that have to be addressed. They don't have to be closed down today as a result, but if they don't change, we must never remove that threat that unless there is change that is the ultimate sanction, and that normally follows with a -- this is a repeat offender of loss of privileges, loss of privileges, loss of privileges, and this causes ripples through the financial system that you need to monitor.

You need this as practice because I'm predicting that this is not the first time it's going to happen, but you have time and leisure to study this process and see what happens and put your spies in all the other QPAMs, see what they will do. See if they go through the Bahamas to get back to Credit Suisse or to sue or I don't know, but there's a lot of learning to go on because it's a new day and I've got to say that no one here is up to speed. No one is really even admitting the scale of the problem because they're too frightened to admit it.

MR. HAUSER: All right. Well, I very much appreciate your comments. If there is anything more you want to submit, do it. Unfortunately, we actually don't have a lot of leisure, so we'll need to move on,

I think, to the next witness. Thank you very much.

MS. BORZI: I have a couple questions.

So, for the record --

MR. MORJANOFF: Yes.

MS. BORZI: -- would you please tell us about what you do, who did this investigation, who were the clients, what the point was?

MR. MORJANOFF: Okay. Basically, FRCS is an organization that works for the victims, our consumer investors in a scam, which was a partnership between Credit Suisse and a second company, TNST. And when we started the investigation, this was before the global financial crisis, we had no idea or suspicions of what we were to find. In fact, if someone told us, we probably wouldn't have believed it. But by launching criminal investigations, we hired fraud firms, investigators, lawyers, legals, we spoke to countless lawyers, we became skilled in a field which it seems that no one else is apparently very skilled in. So now it seems by circumstance we've become knowledgeable in something that the DOJ is not admitting about.

MS. BORZI: And when did your investigations begin?

MR. MORJANOFF: It basically began about

2001, but they continued continually since then.

MS. BORZI: Okay. You filed lawsuits presumably?

MR. MORJANOFF: There have been, but fundamentally the nature of the case is criminal. It is not fundamentally a civil matter. Obviously there are civil law consequences as there are in what we're looking at today. But the nature of the criminal matter was it had to be already predesigned to circumvent the civil law process.

We allege that this is a very large matter, that a lot of thinking, a lot of legal expertise has gone into creating schemes that were basically unlitigatable, and the simple truth was it was a criminal matter and the criminal process was the correct procedure which we followed. We've had extensive liaison with international law enforcement at UJUST, at CS's part, at the very highest level, and also we shared our findings with the DOJ here and also state law authorities.

MS. BORZI: So I just have one other quick question, and I will start by saying I know nothing about Swiss bank secrecy or American bank secrecy for that matter. So to what extent do these Swiss bank secrecy laws protect not just the bank, if you will,

but of the affiliates, like, for instance, how would they -- is there a specific provision in Swiss banking law that would extend the secrecy protections, for instance, to the asset management business?

And if you don't know the answer, we'd be happy to --

MR. MORJANOFF: Okay, no. Basically yes, but again it involves the field of forensic accounting, which goes to the point that it would be administratively impossible because the auditors couldn't do it. It depends on how the QPAMs are structured.

Now, in modern day tax avoidance, tax avoidance has become legitimate, having shell companies in the Bahamas has become legitimate, and virtually all the big companies have them, and they do it, so that's not necessarily obviously evil because it's everywhere now.

MS. BORZI: Right.

MR. MORJANOFF: But once you have a financial entity in a secrecy jurisdiction you can wash your transactions through that where they become almost invisible. Now they all claim, and if you work hard enough and spend a lot of money, you can find them. But what can happen is you can wash that from

there around the world through another 30 tax haven and secrecy jurisdictions so that no auditor would have the budget to follow the money.

So the problem is if you want to hide the money, if you have any connection at all in any secrecy jurisdiction or any tax haven, it's basically unauditible in terms of the standards we're looking at today.

MS. BORZI: Thank you very much for your testimony.

MR. HAUSER: Thomas Spalding.

MR. SPALDING: My name is Tom Spalding. I'm a retiree, so I thought I would weigh in on this, and thank you very much for this venue and appreciate everybody's attendance.

I guess speaking the obvious, the reason why we're here and the root cause of our meeting today is an ethical failure, so I've got two points that I want to make this morning, and then I'll have a little summary statement at the end.

So this one has to do with my first point, culture of compliance. Culture of compliance exists when in the end you get followers to do the right thing even when you're not looking. And which followers are we talking about? We're talking about

employees, we're talking about maybe the regulated entity. So I wanted to bring to the fore FM 22-103, which is about ethical trading and it's entitled "Leadership and Command at Senior Levels", and I'm going to put that in as Exhibit A.

In particular, the whole document is really great about how to be a leader, what the requirements are, and I think that there are probably a lot of leaders in this room, so I would recommend it to you for your review, and I'll give you a teaser quote.

"Senior leaders and commanders have specific ethical responsibilities to their organizations. These responsibilities flow directly from the attributes required of senior leaders to successfully implement their vision. First, they are worthy role models. Second, they promote the ethical development of their subordinates by teaching them how to reason clearly about ethical matters. Finally, they sustain an ethical climate that promotes trust and professional commitment."

So I hope you're interested in reading that. In the long term, it's a game changer and I think what we're looking at here is probably colored somewhat by the concerns we all have for the ethical integrity of the financial system.



So, in the short term, though, I did bring up Appendix C, which I'll show you a little bit. You won't be able to read it obviously, but two columns: healthy versus unhealthy. This is a 1987 document, so if you go through it, it really spells out a continuum, and if you look at it from my perspective, I'm interested in it because, as a database geek, I find in this appendix an Easter egg by the terminology of those people, and so it's a set of 25 questions to determine if you have an ethical, healthy ethical climate, and you could convert this type of information into an anonymous form or a web app to get a picture of an organization, for example, on a monthly basis or on monthly intervals or after a meeting or before an inspection or after a public meeting or to evaluate your sister agency, the regulated, a stakeholder. So conceivably an anonymous web app open on the internet Credit Suisse could use to evaluate Department of Labor.

So this type of thing is of interest to me. The process is analogous to a recently published study of corruption in the States. Harvard did this, and it was reported in my local newspaper just recently, so it's not in my comments, but I took a little bit of it.

The report was done December 1, 2014, from the Edmond J. Safra Center for Ethics, and so now I think I've identified a business brand for somebody. I think it's a worthy thing to pursue. It seems like it's mainstream to evaluate organizations this way. To get some kind of evaluation done would be quick and easy with a database setup on the back end, and I could go on and on in the details of that.

But as a web application, the secret to compliance is convenience. So, if something is done, basically it's whatever is the easiest. The compliance items that you put in place should follow human nature and this may be something that gives you a window on you, your partners, your competitors, and so that's why I offer it.

Once you have it in the database, this data, you could derive reports from it. You can find out how many people responded. So, if your organization is 12,000 people and no one responds, you know you've got a problem, so management has to reach out, right?

Which questions does the organization fail? That would be of interest. Twenty-five questions. You can kind of pierce these issues up front by these anonymous postings.

Where are the areas for future work? When

did we turn the corner is another question you could ask and potentially find an answer to. So DOL should solicit a scope for its own use, at least that, and maybe add it to those 14 points.

The second point that I have is about the content of pension programs, and I brought this book, Hazel Henderson, a good read, *Ethical Markets for General Reference*. I'll just limit myself to one instance in particular.

There evidently is this potential for a pension to destabilize another pension through the use of the Bankruptcy Code, and I cited a Cayman Island reference in my written summary. I would refer you all to that. I would encourage the DOL to see if it can't close that and attain some type of priority for pensioners in bankruptcy. A pension should not be treated as an ordinary creditor. It seems to me that Credit Suisse when it brought up the idea that it would be using a hedge fund-like approach, this article specifically calls out to hedge funds to use this type of approach, and I just don't like it, so I thought I would bring that up to you.

In summary now: There is a viral contagion in the financial system and I think if management commits to an ethics program it could be fixed. This

is a bonus season for finance obviously. Bonuses are coming out. Does the applicant recognize -- what do they do to recognize and reward ethics? What did it do to retrieve the group that was in error and caused this violation and criminal activity?

I read about Chinese walls in the filings in the *Federal Register*. Isolation really does not address the root cause. I would say that a culture of compliance is often very difficult in companies because we all know as human beings we joust with each other. We have situations where maybe there's a code word that we use, maybe it's done by a wink and a nod, but fraud is perpetrated in these strange type of situations, but it's everyday activity really. So how do you address this?

As a financial leader, I would ask you would you be willing to be seen with an ethics app on your phone by your employees or your contractors? After a meeting are you willing to go to the water cooler and ask, "Hey, Bob, did you complete the ethics app? I did." When your best friend sits in the front row of the ethics training and he kicks up his feet and opens up the newspaper, what are you going to do?

These ethical situations certainly would not be covered by a fig leaf. This is reassuring, this

meeting here today is giving us a lot of good, new information I hope. I don't think an app -- I think if there was something like that, some small thing that everybody did in these boardrooms and so forth that was as simple as checking off a 25-question list maybe we wouldn't be sitting here today. Maybe we wouldn't have the ethical questions if you just do the small thing a little bit every day. If you commit to it as a leader, and it sounds like some of you are ready to say and do that, maybe today, then ethics starts today, and maybe it will wash over the entire financial sector because that's how thorough the ethical problems are in my opinion from my reading, from all the billions and billions of dollars that have been paid in fines.

That's all I have. Thanks.

MR. HAUSER: Thank you for your suggestions, Mr. Spalding. If there is anything you want to include in the record, you can just submit it in the next couple weeks.

Bartlett Naylor.

MR. NAYLOR: Thank you, Mr. Hauser, Officers of Department of Labor, and special thanks to Erin Hesse, who has been more responsive to email requests for this type of information than I think I've ever

enjoyed from any government staffer, and so thanks to you, Mr. Hesse.

Again, my name is Bart Naylor. I'm the financial policy advocate for Public Citizen. I think later today you may have the honor of hearing from our founder, Ralph Nader.

Public Citizen is an organization of roughly 350,000 members and supporters, so I think it's a statistical inevitability that many of our members are themselves beneficiaries of plans that are managed by Credit Suisse. Our members are also self-selected activists and progressives that believe that government requires daily exercise of citizenship, and it's that exercise that I hope to engage in today in going over some of the points that we tried to make in our letter, and I'm very anxious, very hopeful, Ms. Borzi, that I'll get to answer some of your questions.

I've also worked as the head of investigation for the Senate Banking Committee where I had a front row seat to some of the financial crimes that visited this country during the last financial crisis during the 1980s. That was a time when there were some 1,000 savings and loan executives who went to jail, who paid the price, if you will, in very real terms for crimes.

I've also worked for the Teamsters. I was the head of the Office of Investment, Corporate Affairs, and needless to say the Teamsters has an intimate relationship with ERISA given the fact that some of the abuses of worker pension money led to some of the very strict rules about how truck drivers' and other workers' money should be managed.

I was intrigued by the legislative analysis by the fellow from the Groom law firm, and I am aware that law-making has a sausage-making element to it, but in the end there are statutes and the Department of Labor does issue rules that those of us can actually read even though we did not see what went behind the curtains.

So we come here today for two basic reasons. One is that Credit Suisse has engaged in a massive crime that involved many of its employees. This crime was not a rogue employee who ran off the field for a short amount of time. It was essentially a business model complete with a Credit Suisse Bank convenient to the Zurich Airport so that American clients wouldn't need to be bothered with the beautiful Swiss scenery before they returned to the United States having deposited their funds. Some 52,000 American clients were apparently helped in avoiding paying U.S. taxes

by their Credit Suisse enablers. You'll hear later today another or a litany of Credit Suisse crimes.

Now returning briefly to the QPAM statute as it's related or as it's discussed in the 1982 rulemaking. In the printout that Mr. Hesse kindly sent to me, you can't get this online, it talks about how the QPAM or crime of a company will eliminate the ability of a QPAM to enjoy certain privileges involving any affiliate of the company, and what is an affiliate?

In other words, we're hearing Credit Suisse make strong representations that the QPAM people were not involved in the crime. But you go to some length to say that that is beside the point. Any affiliate, in fact, you even say a relative, apparently the husband or the wife of somebody at Credit Suisse AG, if they commit a crime, then you remove some of the privileges of QPAM.

Further, a QPAM isn't a person. It's a business. These businesses work in a hierarchy, and there is a boss above the QPAM department and then a boss, and then pretty soon you get to a boss who has other supervisory responsibilities and as you go down that chain you'll fairly soon find the crime. And so I'm not sure why we can take comfort that the QPAM



people were not involved in a crime when in fact structurally in this company they were through supervision.

I understand that we're not supposed to be concerned with public policy. It's difficult to see Credit Suisse and its crime as anything other than part of a culture problem. JPMorgan in 2013 paid penalties on any number of its businesses. CitiGroup has committed massive fraud. So has Bank of America. I know this because Eric Holder says so. He says so in very colorful terms in press releases even though we don't actually enjoy the details of the trial because these companies are not taken to trial. They're given either civil settlements, in which case we don't know some of the details, or there are deferred prosecution agreements, and so we lack many of the details.

The Permanent Subcommittee on Investigation looked at the Credit Suisse case and while they say a great deal, they offer a lot of color, they also come into brick walls. I'm quoting, "When asked how many of the U.S.-linked accounts opened in Switzerland were hidden from the United States, Credit Suisse told the subcommittee that he's been unable to determine or estimate that number. When asked how much money was

involved in the undisclosed Swiss accounts, Credit Suisse was again unwilling to answer."

So I caution those of you who will make this decision when you assess the credibility of the assurances of Credit Suisse that nobody was involved, that somehow the culture is fixed.

The New York Federal Reserve President William Dudley gave a speech recently where he lamented the corruption of culture, the corruption on Wall Street, and he said that maybe what we should do is take the most senior executives of a bank and cut their payment into two parts: one, the cash that they would get, but then another would be a deferred pool, and this pool would be used to pay the fines regardless of the responsibility of the person.

So, in other words, you would take the top 2,000 people at JPMorgan or top 1,000 at Credit Suisse and part of their pay would be put into a deferred account, and if Credit Suisse pleaded guilty or entered into a settlement where they had to pay a \$3 billion fine, then this pool would be used first.

I raise this because this to me is part of the same spirit of the QPAM statute where you say that these privileges are lost to manage truck drivers' money and so forth in complex instruments or engage in

things that are otherwise a conflict of interest. If even the affiliate of the company engages in wrongdoing, I think the best way or our way is to oblige your statute to make sure that everybody at Credit Suisse, even the QPAM folks are going to be policing the tax evasion department of Credit Suisse and/or the newly honest tax evasion department will make sure the QPAM department is honest.

One small point I hope you will foresee or others is how much Fried Frank will be paid. We're told this burden, financial burden on Credit Suisse will be \$400,000 or something like that, a couple basis points of the \$2 billion they manage. I assume Fried Frank is not doing this pro bono or the monitor that will be hired. I'm wondering if the expense of becoming more honest than normal at Credit Suisse will be somewhat similar to the other burden of simply divesting of these complex instruments that are otherwise unavailable to them if they don't enjoy QPAM status. Thank you.

MR. HAUSER: So I think it would be helpful to me if you could maybe just explain where you stand vis-à-vis, you know, the exemption. Is your objection essentially that in your view we just shouldn't ever - - you know, anytime somebody engages, anytime a

corporation, a QPAM, or an affiliate of it engages in a crime we should just stick to, you know, the I(g) conditions and say they cannot serve as a QPAM and that's that, or are you saying something more nuanced?

MR. NAYLOR: Well, I think if the rules of the road are clear, then yes, I think the simplest course of action is that. Your concern needs to be about the beneficiaries. Beneficiaries have plenty of choices for a QPAM though. Lots of investment managers out there that presumably -- there are a few left, I hope, without criminal convictions, deferred prosecutions or civil settlements, so yes.

MR. HAUSER: And so I think I understand -- well, let me -- I mean, I think your view is that the cost really to the plans of eliminating access to the Credit Suisse QPAMs is not particularly great, and there may be some benefit from that. But what is in your view the additional benefit that would accrue to the plans?

I mean, in this case at least, Credit Suisse, you know, this wasn't a case where there wasn't some factual development. There are stipulated facts. There was an entry of a judgment of conviction. Credit Suisse was required to pay 2.8, you know, plus billion dollars, and it's hard to at

least from my standpoint, it's hard to see how what we do here is going to appreciably -- if that isn't a sufficient deterrent, you know, for misconduct, it seems even if I thought it were appropriate for us to make decisions based on that deterrent issue, it's hard for me to imagine that what we do here is going to make an extra difference, you know.

MR. NAYLOR: Well, I actually take almost a completely opposite viewpoint. I view that as a pain-free guilty plea. That \$2.8 billion as far as I could tell was paid by shareholders. I have seen no disclosure that senior executives reached into their own personal pockets and paid that money. I have not seen anybody with handcuffs and their arms behind their back walking off to jail. In fact, I'm told that there have been conversations with the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission to make sure that nothing really happened other than there is this black mark in a piece of paper that says guilty on it and that shareholders are \$2.8 billion poorer with Credit Suisse.

So, in fact, if these other promised penalties are removed, if banks do not get their

charter revoked, as did happen with Riggs Bank, for example, if the Securities and Exchange Commission issuers retain their well-known season issuer status, then I think you're sending a signal that if you're well lawyered, if you're of a certain size, and if you get your shareholders to pay enough that it actually gets into the newspaper as a penalty, then you're fine.

MR. HAUSER: But, I mean, I would think the role of the Justice Department in this case was to make a determination as to whether or not the sanctions were adequate, and our role in this proceeding is to figure out whether or not the exemption we come up with is adequately protective of participants or whether the plans and participants are going to be injured.

And I understand your point that, you know, you have issues maybe with what the Justice Department did, and you don't think the costs necessarily are going to be all that great to plans and just telling them, well, you're not going to be able to rely upon Credit Suisse being a QPAM. But I'm not sure what benefits you think -- I still guess I don't understand what you think the initial benefits are going to be that are going to accrue to the benefit of a plan if

we just turn this exemption down and say we're not, you know, going to give it to you.

MR. NAYLOR: Well, in this series, this decision tree that you've outlined, there's at least one sentence that I wish you would restate. Once the Justice Department metes out a penalty you have to oblige the QPAM statute which says they lose that status. The next step isn't to figure out if an exemption is workable, it's to figure out what is in the best interest of the plan beneficiaries, and is there no option better than the one that Credit Suisse proposes.

MR. HAUSER: Do you, I mean, and let me just repeat the question I asked somebody else. Is there some set of conditions that we could impose on the grant of an exemption here that would make you comfortable with that, you think that it was a good idea to grant the exemption?

MR. NAYLOR: Well, I don't actually wake up every day trying to figure out how to make life better for Credit Suisse.

(Laughter.)

MR. HAUSER: That would be a very specific sort of --

MR. NAYLOR: Yes. This would be a great day

for Credit Suisse to bring out plan beneficiaries and to tell you how much they love Credit Suisse and how when they go back to their customers they tell them, you know, this company committed a crime of historic proportions, but I've decided to use them to manage your money as opposed to anybody else because of the following reasons, and I ask you to let them tell you what those reasons were because if I ran a church pension fund or a Teamster pension fund, I'd rather not answer the question, hey, didn't Credit Suisse just plead guilty to massive tax fraud? I think I would just rather get another QPAM, and I hope there are some.

Are you going to help me out, Ms. Borzi?

MS. BORZI: What I'm going to do is I'm going to assure you, and I think you probably know my history, that we will for sure be looking at the costs and the connections associated with the hiring of any of the service providers for this exemption. I actually was going to ask a question about your intents, but I think I know the answer, and so therefore I think I'm not going to do it.

MR. NAYLOR: I will conclude, if I may, Credit Suisse wants you to view yourselves as some kind of an umpire calling balls and strikes and ignore



the fact that there is public policy involved, and I think I believe that's a fatuous argument and I would call your attention that the ranking member of the House Financial Services Committee, Maxine Waters, has sent you a letter today pointing out the important public policy issue that you cannot avoid and asking you to deny this waiver. Thank you.

MS. BORZI: Can I just say one thing? You know, to me personally the number one issue is the issue you identified. I take very seriously, we all take very seriously the notion that in order to grant any exemption the number one criteria, it's no accident the number one criteria is that it's got to be in the best interest of the participants and the beneficiaries. And I agree that the burden will always be on the applicant for an exemption to make that kind of unmistakable evidence, and that's what we're going to be looking to see.

MR. NAYLOR: Thank you.

MR. HAUSER: The last witness before we break for lunch is John Popp.

MR. POPP: Good morning. My name is John Popp. I'm a managing director of Credit Suisse and head of the credit investments group at Credit Suisse Asset Management. I've worked in asset management and

financial services for over 30 years in a number of senior positions and I've been with Credit Suisse for 15 years approximately.

Madam Secretary, before turning to my prepared testimony, I'd like to follow up on the cost question that you posed earlier to Bill Johnson.

The dollar amount given of \$450,000 was a conservative estimate simply of the liquidation of a portfolio were we to be terminated.

A fiduciary may change managers on the bases of performance, asset allocation shifts, or other factors. We have kept our clients fully informed of the evolving exemption process and appropriate notifications have gone out. Not only have our institutional ERISA clients chosen to stay with us, which includes two of the 20 largest corporate plans in the United States, we have gained additional ERISA clients since the settlement.

The named fiduciaries themselves have decided not to change managers. Denying the QPAM exemption would effectively take the decisionmaking process out of their hands, and I do not believe this is in the best interest of the plans or protective of the plans' participants, which we estimate to be over one million individuals.

While the costs of liquidating the portfolio itself may seem modest, there would be substantial costs in moving to a new manager, which a fiduciary would typically consider in its evaluation of potentially changing managers.

The stock and traditional bond markets have many, many managers. We happen to offer a strategy that is a subset within fixed income relating to senior loans and the number of managers in that universe is substantially smaller, and smaller still when one looks to the experience and scale of our business.

When replicating a portfolio in the strategy, there is certainly the bid/ask issue. So a bid/ask in our asset class ranges between 50 and 100 basis points, and it's tracked by the Loan Syndication & Trading Association, estimated it was 90 basis points through the month of December. So that applied to a billion dollars of new assets would be a more substantial number. That would be about \$9 million.

It would also be the time out of the market issue if a plan were to liquidate and try and find a new manager, what would that cash be put into? Unlike certain stock and bond investment strategies, loans does not offer an inexpensive alternative through

futures or ETFs. In fact, the ETFs that are offered in the loan market have substantially higher fees than we charge our ERISA clients.

There is the cost and time of these plan staffs themselves in conducting a new manager search, often with outside asset consultants; the circulation of requests for proposals and the evaluation of those; the legal costs in documenting new contractual relationships with trustees, administrators, investment managers, among others; and ultimately it's highly unlikely that the portfolios that are liquidated would necessarily be reconstructed to the same level and the same positions. Different managers may not follow particular names, or certain names may not actually be available in the market given the scarcity and illiquidity in our particular asset class.

So, again, the notion of denying the exemption certainly would cost fiduciaries to make a change that at least today they have not seen to be in their best interest despite the other things that have been said, and we certainly don't think it would be in their interest to be put in that position.

So, with that --

MR. HAUSER: And I'm sorry. Can I --

MR. POPP: Yes, please.

MR. HAUSER: How many assets, what size, approximate dollar size are the assets under management that we're talking about?

MR. POPP: So I'm speaking specifically about our credit strategies. We have approximately \$1 billion.

MR. HAUSER: Thank you.

MS. BORZI: And that's all three QPAMs?

MR. POPP: No, that is just credit. I think the aggregate number is slightly over two. The commodity strategy does have more liquid alternative options. Commodity is approximately one billion.

MS. BORZI: Approximately five, 5 billion?

MR. POPP: No, no, no, in the aggregate a little over two of specifically designated ERISA money.

So I'd like to accomplish three things in my additional comments. First, to express my and my team's regret regarding the behavior of certain former Swiss-based employees of our affiliate, Credit Suisse AG, which led to this hearing. My second objective is to provide an overview of the benefits of the specialized investment services that we provide to plan sponsors. And finally, I'll revisit why I

believe denying Credit Suisse's asset management business a QPAM exemption could harm ERISA clients and their participants.

On the first topic, we understand the disruption that the conduct of those former employees has caused our plan clients and the uncertainty it has created in the markets. I'm here today to assure you that Credit Suisse's U.S. asset management business was not involved in this conduct. Indeed, there has been no allegation from any regulator to the contrary. Further, we have not employed and will not employ any of those former employees.

On the second topic, as I mentioned, I head the credit investments group of Credit Suisse Asset Management. At year-end 2014, my team managed approximately \$34 billion in specialized fixed-income strategies. Fixed income is viewed by pension plan investors as an important component of a diversified strategy. Our primary strategy focuses on the investment of a subset of fixed income known as senior loans, which are made to corporate borrowers in the United States primarily.

This strategy has emerged as an increasingly attractive complement to traditional fixed-income allocations based on structural attributes of the

underlying loans. In particular, investors have been quite concerned about the significant duration risks in their fixed-income portfolios which can be quite sensitive on a price basis to moves in interest rates.

Senior loans offer investors an effective duration hedge against movements in rates given the floating rate nature of the loans, potentially reducing price volatility as a result in shifts in rates. In addition, in the current low-interest rate environment, investors have looked to senior loans, which have a high relative current yield, to provide important interest payments to help meet pension obligations. Within this strategy, Credit Suisse's asset management business is considered by plan sponsors and institutional investors to be one of the market leaders.

First, our senior management team is truly among a handful of managers that have managed through multiple credit crises. The four senior members of my team are going on their eighteenth year of working together.

Second, the size of our platform is sufficiently large to make us strategically important to each of our counterparties, therefore benefitting our clients by our access to primary and secondary

deal flow.

And third, our longstanding performance track record dating back to 1998. According to eVestment, a leading investment database, our performance has been top quartile for risk-adjusted returns in our strategy for one, three, five, seven, and ten years. This combination of factors has led multiple plan sponsors to allocate their portfolios to our team, seeking to outperform the relevant benchmark but to do so with lower volatility.

In addition, our asset management business also offers a diversified commodities index strategy with \$10 billion in assets in the aggregate, not all of which is ERISA money. Investors seek exposure to this asset class as a portfolio diversifier and as a hedge against unexpected inflation.

Credit Suisse's asset management business has been managing this strategy on behalf of institutional clients since 1994 and is one of the few managers in the space with this amount of experience and assets. We believe we are one of the top five asset managers in this specific strategy measured by assets under management. Within our top five peer group, we believe we offer a highly differentiated process. In addition, due to the turbulence within



the commodities markets over the past few years, we have actually seen several managers exit the asset class.

Lastly, I want to reiterate the potential harm that denying Credit Suisse's asset management business a QPAM exemption could cause to plans and their participants.

Within traditional stock and bond investments there are hundreds of managers offering similar strategies. This is in stark contrast to senior loans and commodities where managers offering the specialized skills within these strategies are much fewer in number. Smaller still is the number of managers offering the experience, scale, and performance history of Credit Suisse's asset management business. Therefore, finding a replacement for us may be difficult.

The process pursued by our clients in selecting a manager typically involves an array of steps. These may include circulations of requests for proposals; discussions with consultants; extended operational investment; due diligence; meetings with portfolio managers and credit analysts; investment committee approvals; establishment of investment guidelines; fee negotiations; establishing appropriate

data feeds and operational support; and other contractual negotiations.

Altogether these steps have taken as long as 18 months for some clients. Thus, it may take a plan sponsor a significant amount of time to find and implement a new manager if it were required to replace us. Our clients have spent considerable time and resources conducting manager searches and they have selected us.

In this regard I would like to emphasize that since the Credit Suisse AG settlement no institutional ERISA client has terminated its mandate with Credit Suisse, and, again, we have actually received new ERISA clients since the settlement. If we are unable to manage their assets, ERISA plan clients may be denied the opportunity not only to use their selected manager but also the opportunity to use our strategies. This could undermine the named fiduciary's role in selecting a manager for a particular strategy. It may also have collateral consequences for the rest of the plan's portfolio: for example, other strategies within the ERISA plan's portfolio may need to be changed to accommodate the loss of these strategies.

The Department issued QPAM exemptions over

30 years ago to increase trading efficiencies. Its relief is broad. Broker dealers and other trading partners understand its conditions in contrast to other exemptions. Thus, they may price trades higher or require additional security reliance on other exemptions if they are willing to trade at all.

I know we need to earn our clients' trust every day. We serve at their discretion, and at all times we seek to do the best job managing their assets to uphold the highest ethical standards and to be consummate professionals in how we do our job.

We thank the Department for its work on this exemption which will allow plans to avoid potentially negative impacts from liquidating portfolios and changing managers when they would otherwise choose not to do so. We hope you will be able to finalize the permanent relief as quickly as possible. Thank you.

MS. BORZI: So certainly the description of the effects on your clients is persuasive and the fact that you represent that none of the clients, even knowing about the criminal conviction, have left you, and you've even gotten more. So that gets me to wondering, and one of our other witnesses raised this issue, as to why neither through our public comment process nor in this public hearing process any of your

clients have ever come forward to make a case for themselves as to why it would not be a good idea to not grant you -- to fail to grant you an exemption. What do you think is going on there? Do they sort of not know?

MR. POPP: I think they're fully aware of this and we have certainly made them fully aware of what's going on. I think they speak with their money and their decision to keep their assets with us. But I can't specifically answer on their behalf as to why they chose not to write.

MS. BORZI: Well, I think we operate based on a public record, and while it's useful to us to hear your representations, it would make, one would think, a stronger case for the points that you're making if your clients were willing to step forward and participate in this process. Just a thought.

MR. POPP: Okay, thank you.

MR. HAUSER: Thank you very much.

MR. POPP: Thanks.

MR. HAUSER: We'll plan to start up again at 1:15. Go have lunch or do whatever you'd like.

(Whereupon, at 12:17 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:15 p.m. this same day, Thursday, January 15,

2015.)

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A F T E R N O O N   S E S S I O N

(1:19 p.m.)

MR. HAUSER: I take it you're Heather Lowe.

MS. LOWE: I am. Well spotted.

MR. HAUSER: Okay, welcome.

MS. LOWE: Thank you. So thank you very much for the opportunity to testify today. My name is, as we've established, Heather Lowe. I am legal counsel and director of government affairs at Global Financial Integrity.

Global Financial Integrity is a nonprofit organization based here in D.C. that looks at the movement of illicit money around the world and works to curtail the movement of that illicit money, much like the illicit money that was moved in the form of tax-evading funds by Credit Suisse AG.

The majority of our work focuses on actually the developing world where nearly a trillion dollars leaves the developing world in illicit funds annually and, of course, that money has to end up somewhere and it often ends up in banks in the U.S., in Switzerland, in London, in the Cayman Islands, et cetera. I'm best known for my work in the money laundering area. I sit on the industry consultation for the Financial Action Task Force, which is the international anti-money

laundering standard-setting body based in Paris.

Prior to joining Global Financial Integrity, I worked in international banking and finance, primarily representing international financial institutions and private equity houses.

Our position today is that this proposed exemption should be denied. As the statute states, this is an integrity issue. The Department of Labor regulation is very clear: that because of Credit Suisse AG's felonious conviction Credit Suisse AG and all of its affiliates are now barred from enjoying QPAM status. This regulation exists because there is a very strong public interest in the protection of pension funds. Pension funds enjoy that high level of protection by the U.S. Government because if they are not protected and people lose their retirement savings they then become a massive drain on this government and indeed other taxpayers.

Therefore, I'd like to begin by reiterating what we believe is the correct line of inquiry for this hearing. We believe the Department of Labor should be asking what compelling public interest exists to warrant the granting of an exemption or waiver to Credit Suisse so that Credit Suisse can maintain this preferential privileged status under

U.S. law. How does that interest outweigh the already identified and codified public interest?

The burden is on Credit Suisse and in fact the Department of Labor given that you've proposed this exemption to prove the compelling public interest in them actually retaining that privileged status.

In my request to testify I included several references to significant regulatory infractions by Credit Suisse AG and its affiliates, and I note that that's very important, "and its affiliates", it's a group-wide issue, leading to fines and deferred prosecution agreements in the U.S. and elsewhere. These violations include knowing and intentional violation of U.S. sanctions laws; failure to provide accurate information to investors; sales of derivatives intending to help banks hide huge losses; and misleading investors regarding mortgage-backed securities. In fact, some of Credit Suisse's activity was so egregious that in Japan they were actually barred. Their banking license was actually revoked in Japan.

I believe that other witnesses will be discussing these and other violations in much greater detail, so I'm not going to use the time today to do so. I will, however, use this time to note that the



history of violations shows that in direct contradiction to what Credit Suisse will likely assert today Credit Suisse does not have a history of compliance. Whether or not their compliance program appears robust, as they will, again, probably testify today, their history tells you that it is not.

Credit Suisse AG's criminal conviction is not an isolated incident, and it's not an issue specific to Credit Suisse AG, but it's simply one more indication of a systemic group-wide problem with how they manage fiduciary responsibility, investor transparency, and regulatory compliance.

Assistant Attorney General Lanny Brewer from the Department of Justice made the following observation about Credit Suisse in a 2010 speech made in front of the American Bar Association/American Bankers Association joint conference. He said that, "Last year, for example, Credit Suisse admitted to systemically evading over the course of a decade U.S. sanctions against Iran, Sudan, Burma, Libya, and Cuba. Credit Suisse set up a system, some might even call it a business plan, to deceive the United States by disguising U.S. dollar clearing on behalf of countries that the U.S. had banned from our financial system. Credit Suisse even advised and trained the sanctioned

entities on how to avoid the automated filters at U.S. banks. In essence, evading our banking regulations was a service offered by Credit Suisse to sanctioned countries. As a result, Credit Suisse illegally moved hundreds of millions of dollars through the American financial system."

Credit Suisse was convicted in November of that same sort of intentional systemic illegal behavior that was essentially a business plan with respect to tax evasion. Lessons were clearly not learned in the sanctions debacle.

As Attorney General Eric Holder put it in the Justice Department's announcement of Credit Suisse's guilty plea, "This case shows that no financial institution, no matter its size or global reach, is above the law. When a bank engages in conduct this brazen, it should expect the Justice Department will pursue criminal prosecution to the fullest extent possible."

These are very strong, very clear statements from the Department of Justice, some might even call them directions, regarding Credit Suisse's very deliberate, highly planned, illegal behavior that went on for years and years.

Credit Suisse executives will also likely

today argue that the cases that we're citing don't reflect current Credit Suisse activities or compliance. We ask the Department of Labor to bear in mind that it can take several years to investigate and develop a case like these, especially where Swiss bank secrecy is involved. And while those testifying today will also be describing a very bleak history, some of the cases being referenced include illegal activity being carried out through 2010, not very long ago when you consider how long it takes to develop one of these cases.

Credit Suisse is offering promises and a description of an improved compliance program. The compliance is proven over time and through actions and not with written policies. Credit Suisse needs to prove its compliance to regain the trust of the U.S. Government, and U.S. pension funds should not be in jeopardy during that period.

You've heard Credit Suisse executives this morning talk about economic efficiencies and how allowing them to continue to provide QPAM services is economically efficient for fundholders. The Department of Labor should be asking what makes Credit Suisse's provision of these services more economically efficient than any other QPAMs' provision of these

services. As the Department of Labor knows, there are many other QPAMs out there who have not been convicted of regulation tripping felonies.

What service is Credit Suisse providing that they cannot? Wouldn't economic efficiency be restored if plans were migrated to other QPAMs? Shouldn't that be the default position with Credit Suisse paying for that migration?

They talked a lot this morning about how much it would cost the fundholders, right. It shouldn't cost the fundholders. It should cost Credit Suisse if they're no longer able to, obviously, provide those services. Again, the fundamental question is, what is Credit Suisse providing for fundholders that other QPAMs are not able to provide?

You will also hear testimony today from recipients of Credit Suisse's charitable giving. I found that very interesting. We believe that this testimony should actually be set aside as irrelevant, if not be viewed actually against Credit Suisse's interest.

First, providing funds to charitable organizations does not mitigate illegal behavior. We don't accept that argument with respect to, for example, the Mafia, and you shouldn't be considering

it here.

Second, Credit Suisse's charitable giving budget very likely matches the amount of money that its tax advisors told them would result in the most tax-efficient outcome. Our tax laws are structured to incentivize this kind of charitable giving, and so to suggest that Credit Suisse's charitable giving is altruistically motivated is misleading.

Finally and probably most importantly, because of its illegal activities over the past several years, Credit Suisse had a greater amount of profit and therefore a greater charitable giving budget. That means that at least some of Credit Suisse's charitable giving is a direct result of its illegal activities, including the activities for which they were convicted. The Department of Labor should not be entertaining the idea that Credit Suisse should be given some sort of moral credit for donating some of these proceeds of their crimes to charities, and the charities should probably be aware of this as well.

Finally, you asked whether the safeguards in the proposed exemption were adequate to protect the rights of the participants and the beneficiaries of the plans that Credit Suisse corporate group members

manage. Given Credit Suisse's history of intentional violations of U.S. and foreign laws that involve crafting systems to get around those laws, I think that it would certainly be a very big gamble on the part of the Department of Labor, and I would not want the Department of Labor gambling with my pension fund.

In addition, Global Financial Integrity does a great deal of work in the area of money laundering, and over the past few years the structure of "independent auditors" who are actually paid by and interact closely with the companies they are hired to audit has been called into question because the audit firms have been found to be allowing the companies to scrub those audits, among other things.

In the proposed plan, the auditor isn't even government-appointed here. They will be chosen by Credit Suisse. The audit will be addressed to Credit Suisse and not to the government. The combination of a company known to look for ways to get around compliance and an audit environment of complicity does not inspire confidence with respect to the proposed oversight plan.

Despite that, I have set out some other concerns with respect to the oversight plan that are very specific in an additional document that I

provided, but I stress that no oversight plan would be robust enough to address the severity of the problems with Credit Suisse right now. Let's put that 10-year QPAM ban in place and see how well their compliance program actually does. Then we should be reconsidering.

I'll end my remarks here today. Thank you for giving me the opportunity to share our concerns. We look forward obviously to hearing the outcome of your deliberations, and of course I'm happy to answer any questions. Thank you.

MR. HAUSER: Thank you. So, you know, part of what Credit Suisse says, I think, is that the QPAMs that are getting the relief here aren't Credit Suisse AG.

MS. LOWE: Uh-huh.

MR. HAUSER: Credit Suisse AG, they've acknowledged, engaged in criminal misconduct both here and in the Justice Department proceedings, but they've been convicted for that. They've paid a fine, and they note that, you know, the exemptive relief we're giving doesn't extend to them. It extends to entities that weren't involved in the crime, didn't engage in the crime, aren't employing people that were involved in the crime.

Why isn't that an adequate answer to most of the concerns that you've raised? And do any of the cases or the instances you've cited, do any of them go to mismanagement of plan assets or IRA assets or crimes with respect to plan or IRA assets by the entities we're actually giving the relief to?

MS. LOWE: Sure. So, first of all, I would say that I've given you in my submission, my original submission to the group, to the Department of Labor, a lot of instances of other affiliates of Credit Suisse AG that have fallen afoul of the law or, you know, have been fined, have entered into deferred prosecution agreements, et cetera, for a lot of different activities, right.

So this is not a compliance issue that is specific to AG. Yeah, the conviction we're talking about that led to this is specific to AG, but the compliance issue certainly is not, and we don't know how far that stretches, right. We do know the tone from the top is incredibly important. You hear that over and over and over, and what we're hearing is that tone from the top is not there, right. It is not resulting in the kind of compliance you want.

I've given you some examples in what I've provided of transgressions with respect to investors,



right. To me, that's quite close to a pension fund, right. Those are peoples' personal investments, so to me that's pretty analogous. That lack of, not only lack of care but actually proactively wanting to dupe investors has me very worried about, you know, what message that sends to the rest of the group and in fact the QPAMs we're talking about here.

MR. HAUSER: And in your view, what about the argument that Credit Suisse makes that this to some extent ought to be a matter of choice by the plan fiduciaries that, you know, or IRA owners that choose to rely on Credit Suisse?

MS. LOWE: Sure.

MR. HAUSER: Our exemption requires a notice be delivered to the customers, you know, advising of the criminal conviction and its consequences, and there are costs associated with moving your money to a different investment manager, liquidating investments, and why is it wrong to say that, you know, those are costs that the plans and the IRAs ought to be permitted to decide whether they're prepared to incur or not rather than have us effectively, you know, cause those costs to the customers?

MS. LOWE: Okay. Well, obviously long before we came along it was decided by the people who

drafted the regulations that this was not an issue that should be left up to the investors, that this was important enough to actually boot them out, right, to provide that protection. So the world has --

MR. HAUSER: Right. Those were just people like me who drafted those rules.

MS. LOWE: Right, but that's the law.

MR. HAUSER: Right, but this proceeding is one in which we have the authority to grant and write an exemption, and it's in the statute, and the question is just, well, should we. And certainly there is precedent for us granting this kind of relief, you know, because we have in other cases.

MS. LOWE: In every other case I would note actually.

MS. HALL: May I address that?

MR. HAUSER: Sure.

MS. HALL: I think you can't say that because you don't know that.

MS. LOWE: Actually, you guys said that.

MS. HALL: No, we didn't say that we --

MS. LOWE: You put it in the --

MS. HALL: -- in every other case. I mean, there are instances where people will call us and propose a situation and not file an application

because we tell them we're not likely to grant an exemption in that case. There are also exemptions that may be filed and withdrawn. You don't see them posted in the *Federal Register*. So I think the statement that we granted these in every case is really overbroad.

MS. LOWE: I simply took that from the *Federal Register*, your statement, so, you know, I'm repeating your statement.

MR. HAUSER: Okay.

MS. LOWE: If that's erroneous, that's --

MR. HAUSER: But I guess I just go back to the question. We certainly agree that that was a worthwhile condition to include in the QPAM exemption. We don't plan on taking that out of the QPAM exemption, but we also have authority under our laws to grant new exemptions with additional conditions if we think it's appropriate.

MS. LOWE: Right.

MR. HAUSER: And one response to somebody getting in trouble and blowing the I(g) condition is for us to say, well, we'll let you conduct business, but we'll impose a bunch of new conditions.

MS. LOWE: Right.

MR. HAUSER: And I guess, again, the

question is just why is that not the right approach here? Is it some inadequacy in the conditions we presented?

MS. LOWE: No, it's not the right approach here because Credit Suisse AG as a group has shown over and over and over again that it really tries to get around compliance, right. If we were talking about another financial institution, this would be a different discussion, right, and it would be fact-based based on that institution, and we're having that discussion now.

MR. HAUSER: Okay.

MS. LOWE: And that's what's so important about this hearing.

MR. HAUSER: And I suppose what would be helpful, I did read your submission, but if some of these examples that you gave specifically involved plan assets or IRAs or you think are particularly compelling, I would just -- you know, I'll look at it again.

MS. LOWE: Sure.

MR. HAUSER: But it would be helpful if you supplemented the record --

MS. LOWE: Okay.

MR. HAUSER: -- and just kind of tease that

out at least for me.

MS. LOWE: Okay, thank you.

MR. HAUSER: Thank you.

Anybody else?

MS. HALL: I would just add that if in particular they address the asset management affiliates?

MS. LOWE: Uh-huh. Yes. Okay.

MR. HAUSER: Thank you very much.

MS. LOWE: Thank you.

MR. HAUSER: James Henry, James S. Henry.

MR. HENRY: My world is a world of Tax Justice Network, and we worry about tax havens and private banks and corruption and, like Heather, the developing world as well. The reason we're here today is because we think that Credit Suisse got a very light fine from the Department of Justice. It's not \$2.68 billion by the way, it's \$2.6 billion. It's tax deductible in Switzerland. No senior executives at Credit Suisse were fined or went to jail as a result of this penalty. Credit Suisse gave up no private banking client names to the U.S. Government, even though Senator Levin pressed for that, and as recently as March 2014, Kathryn Keneally, who is the AAG who was involved in negotiating this settlement, was

pressing hard for those names to be released. She resigned two days after the settlement was announced in May.

She got a call from a guy at the White House. His name was Broderick Johnson. He's an assistant to the President of the United States. He said the CEO wants this case settled. And John Podesta, who is a counselor to the President, was paid \$1.3 million by Credit Suisse in the last three years. They are active lobbying on behalf of this client. This is not a politically neutral antiseptic decision that you're making.

Now why are we here? You have a narrow responsibility the way you read the law. Traditionally you've interpreted this only as looking at ERISA and protecting beneficiaries. But we hear contradictions in this morning's testimony all over the place. We hear that the costs of leaving the plan behind would be very high for the plans involved, and yet on the other hand no plan has left, so they must be low.

We hear that you are hiring independent monitors as opposed to withdrawing this exemption, and yet the independent monitors you came up with were Roger Altman's Evercore and it wasn't you that

selected them, it was Credit Suisse, and Fried Frank, which has lots of business with Credit Suisse AG, including the Genzyme deal in 2011.

So I guess, you know, I have lots of issues with the arguments that have been made so far, but I think the biggest question is why are you here. If the plan beneficiaries could vote with their feet and have not done so, what do we draw from that? Does the Department of Labor just wash its hands of this case and go home because the plan beneficiaries have decided already? Well, then why do we have this law? Why do we have this procedure, and why do we have this hearing?

I suggest that there are very strong values at stake here for the public in terms of sanctions for a major financial institution on a global basis to learn once and for all that this kind of behavior is something that senior management will be held responsible for one way or another, not through fines that could be passed along to consumers or to shareholders, not through, you know, apologies, certainly not through the kind of waivers that have been systematically granted not only by you and by the SEC, by the U.S. Federal Reserve in this case for Credit Suisse's status as a prime dealer. It's waiver

after waiver. So effectively the value of the criminal plea has been obviated, has no teeth, has no impact.

Furthermore, in the presentation that I've presented here, I've made the argument, you know, there's a host of specific lawyer-like objections that we could talk about. You know, you really ought to get -- if you're going to have monitoring, you ought to have monitors who are going to be not chosen by Credit Suisse or at least there ought to be some kind of independent process for getting their inputs, making a competitive bidding process. We'd love to have some outstanding consulting firms and NGOs involved in reviewing this bank from the inside. But you ought to have them comply with requirements of the *Federal Register*, your own executive order that they ought to be delivering the data. As one of the earlier speakers noted, there is no detail on how much assets, how many plan participants there are. You know, we have rough estimates of rules of thumb, \$2 billion, \$1 billion. We're taking Credit Suisse's own words for anything, much less the cost of transition.

You have an obligation here to look behind those claims and that rhetoric and to find out independently what is true about how competitive this



market is, how big a cost there would be, why the beneficiaries haven't showed up at this hearing. You know, is this a case where the crimes of Credit Suisse are so great that they are able to cross-subsidize this business and so that, in effect, any legitimate QPAM holder with integrity is basically priced out of this market? I suggest that there are public policy issues that cannot be avoided.

This is a large part of the pattern, unfortunately, in this financial institutional history that we have. We have a long history of flagrant behavior per organization across many years, many jurisdictions, many types of crimes. In Credit Suisse's case, I found 35 separate settlements, penalties, and disgorgement interests since 1998, totaling \$6.75 billion. For the top 22 banks in the world, the total for that same period was \$246 billion, most of it in the last two years. It has had no impact on their behavior.

The regulatory agencies that are in charge of financial behavior of institutions are vulcanized. They don't agree upon themselves. They defer responsibility to each other, and, you know, like we heard this morning, the Justice Department was supposed to have done that. Nobody's in charge of it.

We have five different regulatory agencies at the federal government alone looking at bank behavior, and the sanctions have had no impact. Why is that? Two hundred forty-six billion dollars, it had no impact on bank behavior other than this year looking forward.

Well, as I said before, no executives have lost their jobs in this period. We've relied entirely on fines. We've granted routine waivers, and if you look at this from a cash flow perspective, all of the excess returns -- I have charts on this in the presentation -- were earned in the period from 1998 to 2007 when we had this neoliberal period of excessive de-regulation when regulators influenced by the banks took their hands off the switch, opened the door to all kinds of misbehavior, massive amounts of fraud. Six hundred and fifty-five separate offenses by the top 22 banks. Everything from money laundering and mortgage fraud to tax dodging that's evident in this case.

And I think what you have to hear from the American people, not just me as an NGO activist here but as someone who has been in the corporate world. I was chief economist at McKinsey. I worked for Jack Welch at General Electric. I'm now a senior fellow at Columbia and I've spent a lot of time with students

trying to encourage them to take an interest in business. We have had it with the banking industry, and we've had it with weak regulation. The time for that is over, and it's your job to do better.

MR. HAUSER: Just maybe one or two questions. You know, I don't see the mechanism for us to hold, as you say, senior management responsible. Now whether we grant or deny the QPAM exemption, nothing is coming out of the pockets of, you know, directly anyone in senior management as a result of that. So I just --

MR. HENRY: Well, let me talk about that for a second because it's very important to understand the incentive structure of these major institutions, and I've worked for many of them. The thing that they would really take seriously obviously is not something you can ordain and no one is holding the Department of Labor responsible for this misbehavior. This is a massive public policy problem. We have a more powerful banking industry than we had in the S&L crisis days of the late '80s when the 880 bankers went to jail. And the first Bush Administration was actually pretty tough on these people.

But now the top four or five banks have 40 to 50 percent of the market. We spent a lot of money

bailing them out. TJN published a study showing how those banks, the top 22, have moved about \$12 trillion offshore beyond the reach of tax authorities as of 2010. The figure is larger now. They made tax dodging for the wealthiest people on the planet another business.

So I'm not blaming the Department of Labor for all of these institutional problems. I would really like to encourage you to use what you have to put their feet to the fire, and I'm not a Libertarian in this view in this area. I would like to see you monitor them, but I would like to have monitors that we can count on to really insist on a better performance standard and to make sure that that happens.

What we heard today was that there is zero synergy between corporate AG and this pension management business. They don't derive any benefits, it's all negative synergy. There's no argument in the world for even keeping it within Credit Suisse. They should spin it off. If they really wanted to prosper, they would do so. Rename themselves immediately. It's not helping their cause.

But, you know, I think your decision is not about, you know, do we not grant another exemption. I

understand that there is lots of precedents for giving this kind of exemption. You know, I think, I mean, you know, my preference would be that you denied it, but the issue is if you're going to have monitoring let's put some teeth in it.

And then the issue comes down to how much discretion do you have to actually influence the monitoring process, to set targets, to examine their competitive performance internally. What is their bonus structure? How are they rewarding ethical behavior? How are they avoiding the kind of insider trading scandal that Evercore, who was hired by the monitor, as their monitor, was subject to in August? One of their senior partners, you know, two and a half years in prison for insider trading.

So, you know, this isn't a DOL problem any more than it's just a Credit Suisse problem. It's a huge industry that we have to clean up, but it's something that can start here if you simply send a signal we're not just rolling over this time, this is different, we hear the American people, we want much more ethical behavior on the part of our largest financial institutions.

MR. HAUSER: Thank you. I much better understand what you are asking for.

MS. BORZI: I just want to go back to a point that you made before because I think it's a very, very important point. The reach of our authority is obviously much more limited than the Department of Justice or many of these other agencies, and so that's why we sound like broken records all day here by asking for your help, for your advice about additional -- you know, one tool we do have is we never grant any of these exemptions without conditions, and I don't know whether you were here for the testimony this morning, but in addition to the conditions that already existed, this particular exemption has added a whole host of additional things that we haven't put in other exemptions.

And so what I think I'm hearing you say is we should go even farther than these conditions if we are thinking about granting it.

MR. HENRY: Well, I'm specifically concerned about having the auditor -- you know, there's a question about what they could actually audit and what that consists of.

MS. BORZI: Right.

MR. HENRY: I'd like to have the scope of that audit extend to the systems that have traditionally been broken within some of these

institutions in terms of risk-taking. We're talking CEO awards and incentives and structures.

You know, basically if you look at the, and I have a lot of data in this presentation I gave, any one of these institutions looking forward from the date 2000 would have said if I misbehave and I take risks with the law, the fines are not going to come in until 2014, and that's what we've seen. So I get all this cash flow up front. It's strictly kind of an investment decision. The net present value of crime in the financial world because of the way we rely on ex-post facto litigation so heavily to deter this as opposed to prevention, as opposed to up-front regulation, but the net present value of crime is positive by any stretch of the imagination and it's very lucrative.

MS. BORZI: And these fines are just a cost of doing business.

MR. HENRY: It's a cost of doing business and by the time they have to pay them many of the managers have moved on or they've gone, so it's not an effective way of running, you know, a railroad, to have -- I mean, last year banks in the United States paid less in corporate income taxes to the federal government than they paid in fines. That means

essentially you're getting -- it's like the drug enforcement business. The enforcers have become beneficiaries of the fine system. They're sort of symbiotic with the fine system, and I think that's not the way to, and it's not having the kind of impact that we need to have on the margin on incentive, on deterrence for other activities because everybody, every bank in the world is looking at what you're doing now.

They're saying, well, if we have, you know, a QPAM, do we have to worry, you know, if we get in trouble down there? And if the answer is it's just easy to walk through that process, it isn't painful. So rather than just say no to Credit Suisse, go away, you're denied an exemption, I would like to have for Credit Suisse a ladder of pain, and so they never --

MS. BORZI: We started everything by saying --

MR. HENRY: They never --

MS. BORZI: -- making it clear there are investigators who are going to be monitoring.

MR. HENRY: That's what we need to double down on, reenforcing that and making sure exactly what that means, and the first thing to do is to choose auditors who are independent of Credit Suisse and of,



you know, banks like the ones I've mentioned or law firms that have close ties to these people. And if they find it a grueling experience to go through this kind of monitoring after they've had a QPAM exemption, they may regret not having -- that would be my dream is that they regret not having been denied this exemption.

MR. HAUSER: Well, an exemption with a ladder of pain built into it, that would be new for us.

MS. BORZI: Well, we do have a ladder. You just have to get over it.

(Laughter.)

MR. HENRY: But you have to start somewhere.

MS. BORZI: Got it.

MR. HENRY: And I think, you know, leadership on this issue is really -- this is an opportunity for people to set some standards and to show an example to the industry. So I look forward to your decision.

MR. HAUSER: Thank you very much.

MR. HENRY: Thank you.

MR. HAUSER: Andreas Frank.

MR. FRANK: Okay. Thank you for giving me the opportunity to testify here today.

MR. HAUSER: You may need to speak up louder.

MR. FRANK: Okay. Thank you. Okay. Is that better?

Thank you for giving me the opportunity to testify today. I have been an associate of Goldman Sachs in New York and in Zurich and served as a director of HSBC in Germany in my former life. I advise the German Parliament and the Council of Europe on anti-money laundering and consult companies on how to comply with the national AML laws.

So why I'm here and why I think your decision will have also international reach? When I started to look into this, it came to my mind that in the announcement of today's hearing the DOL states that in the past, without exception, when faced with companies convicted of not adhering to the law, the Department has granted exemption. So the DOL statement raises for me the question what felonies and violations of law a bank has to commit before a request for an exemption will be declined.

On May 19, 2014, Credit Suisse AG, Switzerland's second largest bank, pleaded guilty to conspiracy to aid and assist taxpayers in filing false income return and audit documents with Internal

Revenue Service. The bank agreed to a statement of facts that detail the nature of this conspiracy which is worthy of international crimes really and involve hundreds of Credit Suisse employees, secret offshore accounts and sham entities and foundations. In short, this was a broad-based and coordinated sizable financial crime enterprise.

The use of structures to hide the beneficial owner has dramatically increased in 2006, the UBS case, not only in Switzerland but worldwide. It's a problem for anybody that is in the fight against organized crime and money laundering, low structures which hide the beneficial ownership of, the use for and by organized crime for money laundering.

They will also undermine the attempts by a factor in the context compliance as well as the OECD, automatic information exchange, to stop tax evasion worldwide. I think these schemes are not over.

Credit Suisse CO Brady Dougan, and I have to say I have a lot of friends in Credit Suisse that dislike what happened to the bank. He testified under oath before the Senate Committee on February 26, 2014, that the bank's efforts to help clients avoid taxes was limited to a small group of rogue bankers.

In the May plea agreement, Credit Suisse

repeated its claim that senior management did not know about the bank's misconduct. Mr. Dougan has held the CEO position since 2007 and has been a member of the executive board since 2003.

In 2006, I was asked for help in a succession case. The deceased, a Canadian citizen living in Germany, had evaded taxes by hiding his fortune in Credit Suisse numbered accounts. In my discussion with the bank's legal department, it became clear that the bank not only aided and abetted tax evasion but also wittingly violated European and German law to cover up the tax evasion scheme. The bank provided a tax structure with fake Swiss resident and delivered cash amounts above the legal limit to his German home. The bank confirmed that the CEO of private banking, a guy by the name of Walter Berchtold, who is no longer with Credit Suisse, was informed about the case.

In 2011, a German court sentenced Credit Suisse to a total fine of 149 million Euros for helping German citizen to evade taxes. The fine mainly siphoned off profits which the bank had made in the years 2004 to 2010 with helping German tax evaders. By the way, in Germany there is no criminal law for corporations.

The court ruling describes in detail how the Swiss bankers have systematically helped the German tax evaders to hide money from German tax authorities. A number of Credit Suisse senior management supported the large-scale tax evasion according to the court ruling. Several Credit Suisse employees accepted penalty orders to settle the case quietly. Credit Suisse did not appeal the court's ruling and accept the verdict.

The Schweizer Wirtschaft personnel for bond, the official body representing staff of Credit Suisse and other Swiss banks, reacted with astonishment to Mr. Dougan's comments before the Senate Committee, saying it was hardly credible that the bank's bosses knew nothing about the practices, expressing the suspicion of perjury. It was common knowledge that tax evasion was a strategy, a business model pursued by many banks for a long time, this organization said.

Credit Suisse senior management's claim they had no knowledge about the huge tax dodging scheme within the bank is not credible. According to the Swiss financial watchdog, FINMA, Credit Suisse violated its duty to identify, limit, and monitor risk involved in its U.S. client business over here.

The lack of internal supervision and

monitoring seems to be ongoing. In March 2014, the press reported that Credit Suisse in Germany was searched for possible large-scale inside trading involving Credit Suisse employees. Despite the obvious management failures, Credit Suisse had retained most of its senior management.

The admission of weak internal controls and supervision by the bank and the Swiss supervisory authority should cast doubts about the enforceability of the rigorous requirements demanded by the DOL for the exemption. I like to hear what you said today, that you will enforce it. I think it's very important, taking those statements from the financial watchdog.

Then I can cut short here. In my professional work, I'm used that the United States of America being the most transparent country on information. However, with respect to this hearing, I was a little bit disappointed because none of the important numbers about the QPAMs or the size of the business wasn't available to take in consideration.

Now, to summarize, Credit Suisse shows serious governance and compliance deficits. There is suspicion of false statements in the hearing before the U.S. Senate Committee and the Department of

Justice. Last but not least, Credit Suisse has a long history of violating the law.

Before any waiver is granted to Credit Suisse AG the bank has to prove to the public that it has come clean with its past of secrecy and opaque dealings. If, however, Credit Suisse wants to remain a secretive Swiss bank, it should spin off or sell off its U.S. business and affiliations. Then the need for an exemption would no longer exist.

Thank you for your time.

MR. HAUSER: Thank you.

MS. BORZI: I just want to pause on this last comment that you made because our prior witness made the same comment.

MR. FRANK: Right.

MS. BORZI: That one way to avoid the problem is to no longer meet any of the affiliate tests.

MR. FRANK: Right.

MS. BORZI: And, you know, do you think that's a realistic alternative?

MR. FRANK: Why not? UBS has proposed this. I mean, why not Credit Suisse? If it's really not the core business, why not have it spinning off? It comes under U.S. jurisdiction. You don't have the issues of

secrecy anymore, cost monitor, it's the same business.

MS. BORZI: Yes, can I ask a similar question to one of the questions I asked our earlier witness who talked about the Swiss bank secrecy laws?

MR. FRANK: Right.

MS. BORZI: Are those kinds of laws the same in Germany?

MR. FRANK: No.

MS. BORZI: So they don't apply?

MR. FRANK: No.

MS. BORZI: Wouldn't apply?

MR. FRANK: No. It's difficult for German law enforcement to go against those laws.

MS. BORZI: Thank you. And so would affiliates of a bank be able to claim protection to not disclose things in Germany?

MR. FRANK: Well, again, you know, first you have to get evidence before you can go -- okay. This is the game of -- this is the game.

MS. BORZI: Assuming you had -- I don't know whether --

MR. FRANK: Yeah, but it's, you know, a long time thing. You know, you have to apply for it, you know it from the Senate hearing, you know, how many names were given. I think 5 percent of the demanded



22,000 or whatever. So it's always the same game. It makes life in anti-money laundering extremely difficult, and also I think, you know, we all talk about the worldwide efforts to stop tax evasion. With these possibilities to hide the beneficial owner, forget about it.

MS. BORZI: Thank you for your testimony.

MR. FRANK: Thank you.

MR. HAUSER: Ralph Nader.

MR. NADER: Good afternoon. Thank you very much for having me here and express some of my views. Obviously, the recidivist character of Credit Suisse's crimes has been chronicled by prior witnesses, and in my prepared statement I just summarize them briefly. I won't take the time to do that.

I want to begin by just saying some preliminary remarks because statutorily or otherwise you're in a cul-de-sac as to how much you can do, but the cul-de-sac has to be stretched by your own judgment and your own reception to continuing evidence of the behavior of this bank as well as other motivations.

Let me start by saying if an individual committed the crimes that Credit Suisse committed, the diversified, recidivist, long-term crimes at a lower

level quantitatively, that individual would be prosecuted, convicted, sent to a penitentiary, and not allowed to service any pension plans as an extracurricular activity. We wouldn't even be here now.

So we're dealing here with a corporate entity, we're dealing here with almost a case study of rampant corporate privileges, immunities which end up with impunity. The 2.6 or 7 billion dollar fine is like an excise tax that is transferrable. It doesn't really go to the core of the DNA of the criminal operation run consciously, creatively, dynamically by hundreds of Credit Suisse operators with clearly the knowledge of the top officials.

I worked at the Department of Labor many years ago with Assistant Secretary Daniel Patrick Moynihan. He was head of the policy division. And from time to time we'd have occasion to talk about what we called no law laws, that is, laws that really aren't laws. They're overcome by power in a variety of ways. Either they're badly drafted by design in Congress, reverberating from corporate lobbyists and corporate law firms, or they have low budgets and there's no opportunity to enforce the law in many respects, like the IRS shrunken budget, trying to get

by their own determination \$300 billion of evaded taxes a year, a year, \$300 billion, and their budget is being cut now, so it's less than an aircraft carrier costs, about \$10.7 billion, to collect 90 percent of the revenues, or there's a lack of political will at the top of the Executive Branch that reverberates down, and more recently, spectacular opportunities for jurisdictional escapes by multinational corporations. Tax havens are an example of that.

And this gets me to the first of three points in my testimony, which is the waivers. Waivers are originally inspired by the tradition of a court of equity. In the old, old days back in England you had very rigid laws and they developed a court of equity next to a court of law to provide some flexibility, and that's the inheritance of these kinds of waivers, to provide flexibility.

But they have been transformed into a capital asset for these corporate criminals and a capital asset for corporate law firms who make a huge amount of money getting waivers from all kinds of Departments: Department of Education, Department of Defense, IRS, NHTSA, Department of Labor, on and on. And so we now have a government of waivers, a

government of exceptions run riot, and I want to just bring to your attention for your extracurricular reading there's a book that came out called *A State of Exception* by Giorgio Agamben, which I'll give you an excerpt from, and he surveys Western democracies and what's happened to the rampant expansion of waiver processes and how they can transform democratic processes into authoritarian edicts.

So starting with the first of my points, which is, and I just gave it to you, the policy ramifications of granting waivers to corporations that have engaged in prohibited transactions. I discuss some of the waivers that you've given or the exceptions to other banks, six of them in the past. You have an unblemished record here of consistency. Nobody can accuse you of unpredictability.

(Laughter.)

MR. NADER: And I have a summary paragraph. The Department of Labor has an opportunity here to stand proudly at its post and send a clear signal to other qualified professional asset managers that if you commit unthinkable criminal violations you lose. On the other hand, a permanent waiver would signal the Department of Labor's continual tolerance of cutting corners and criminal wrongdoing by powerful financial

institutions at the expense of consumers, democracy, and the rule of law.

Notice here that the FCC has linked in by statute the character of a corporation as a qualification for retaining a license, getting a license, or losing a license, and I go into that in some detail, but you might want to review that in terms of incorporating the issue of character here because we have with the FCC the following components of character: (1) evidence of misrepresentation or lack of candor; (2) evidence of anti-competitive practices; (3) evidence of violation of laws; (4) evidence of dishonest or deceptive practices. And sort of sounds like Credit Suisse, doesn't it?

The company itself has escaped remarkably with the help of King & Spalding and other corporate law firms, who get very little attention by the press other than to be called prestigious corporate law firms. I don't know where they got the word "prestigious," but if anybody perforates the rule of law more efficiently, creatively, vigorously, and dynamically, more than corporate law firms I'd like to hear about it. Brilliant. They are responsible and they cannot escape simply by saying we're providing legal services for these corporations.

Credit Suisse not only has provided all these criminal behaviors as a capital asset to sell, but it's in its DNA. They got no prosecution of the top two bosses who are allowed to remain in charge. It evokes a new book out by Professor Rena Steinzor called *Too Big to Jail* which just came out, University of Maryland Law School Professor, and the need to focus criminal prosecution not just on corporations but on the corporate executives if we really want deterrence.

They also were allowed to retain 22,000 client names of the tax evaders. They didn't have to turn them over as a group to the Justice Department. And then after it was over there were statements by the executives saying, "No problem. It doesn't affect our business very much at all. We can continue operating." I mean, how many fingers in the eye do federal officials have to take from a company like that, and they are not the only company?

The deterrent benefits of enforcing the law and regulations in matters involving corporations are part of the penumbra that you have to be concerned with it seems to me. This is a criminal matter. So, if the question is why don't you let the plans decide, well, there are two reasons why that's not enough.

One, we don't even know what they believe because there doesn't seem to be any evidence in the record. I don't know if you've surveyed the 100 plans. I know one Texas retirement system quit in May after the criminal plea, with a press release saying we suspend trading with them at this time, which meant -- for the Texas Employees Retirement System manages \$25 billion to state workers, and then the memorable quote, "We have a policy against hiring firms convicted of felonies."

So the question is, are you letting the workers have a view here who have their money in these plans? Are you letting the plan administrators be informed about their options? There's a kind of routine that operates here. It's like how hard it is to change your bank these days. But more important is this. It's like the civil justice system and the criminal justice system. If someone's wrongfully injured by a perpetrator and doesn't pursue tort law claims, that's not the end of it. The government has a prosecutorial interest in that. So there's a civil side and there's a criminal side. And so whatever the plans think or do or are engaged in or whether they've been wined and dined by Credit Suisse, et cetera, you have an independent responsibility, it seems to me,

because of the criminal nature of this.

And then I do what I often have never done before, and I say if you continue your unblemished record of exceptions, why do I ever concede that? I have a whole list of conditions that you really should consider here.

Thank you. Oh, by the way, the material is still coming over the transit. A whole body of information just came to us from Texas on a case a few years ago where the -- and it was a concluded case involving Credit Suisse where the judge said, "Credit Suisse's actions in this case were so far overreaching and self-serving they shock the conscience of this Court."

Now watch the ending. The parties engaged in an agreement where the counsel for Credit Suisse conditioned the agreement on vacating the judgment. They now obliterate the law. All this should raise our collective sense of urgencies here. We're witnessing a massive corporate crime wave in the United States and other places in the world where the law is being perforated. The rule of law is being corporatized, commercialized by people in government as well who are under political pressure to go easy and adjust requirements on these corporate criminals



and they're looking forward to jobs in Cahill Gordon or Cravath Swaine when they leave the government. That's not a healthy environment for equitable prosecution of law against the big guys, and to try to convince the little guys and the little people that there's an even-handedness here that can be established and defended. Thank you.

MR. HAUSER: So we'll certainly look at the additional conditions you laid out. I guess the one question I have is in a sense just what do you think is at stake here. I mean, a lot of the rhetoric in your answer to me seemed a little out of keeping with what's actually at issue here.

I mean, you know, we aren't granting a waiver really. We're granting an exemption that only has to do with transactions that don't involve self-dealing. You know, it's essentially we're letting them engage in a series of transactions with parties related to plans and pretty garden variety sort of transactions if we give the exemption. We aren't giving them a pass from the self-dealing provisions. We're not giving them a pass from the duties of loyalty or prudence. We're not giving any relief whatsoever to the entity that was actually convicted of the crime, you know. But if we did it, we'd be

permitting these affiliated entities to continue to engage in this sort of one set of transactions but with a lot of additional conditions.

And I guess one way I heard what you were saying was just given kind of the conduct and maybe given the current environment, from your standpoint, if we're going to ever get to where you think we need to be, we just have to say no almost kind of regardless of whether, you know, from kind of a dollars and cents standpoint that has that much impact in a particular case.

The other possibility is what you're saying is that if we would actually deny this exemption it would have a deterrent impact, and to me, I'm just having a harder time seeing that piece because it just doesn't seem that the magnitude of the relief -- if the penalties that the Justice Department got in their case weren't good enough and the money that these folks have already paid wasn't good enough to deter them, it's hard to imagine just from a cold cash kind of standpoint that this is going to be the thing that puts us over the top. You know what I mean? And so I'm just -- that was a little bit rambling, but how do you -- I'd appreciate a response.

MR. NADER: Thank you. I think, first of

all, in any legal system worth its salt Credit Suisse would have had its charter pulled right there. That's the way you do it. I mean, history of corporate charter, they pulled the charter of Standard Oil in Ohio in the 1890s. So, I mean, there's a tradition here. But that sort of is off the table these days.

But secondly, just look at laser-like on the pension plans. Put yourself in the place of that world when a Department of Labor in effect does not require Credit Suisse to rebut a presumption that they are going to continue their ways. You would think they would have a severe burden of proof here for a rebuttable presumption all the way down to the plans to find out are they wining and dining, is there something going on here, are the plans oblivious as one of you mentioned to what's going on.

So I think you would be assisted if you saw yourself in an educational role to confer with these plans, and you already have one that's quit, and say, look, do you really want to be associated with somebody like this? Do you want to have a reputational taint? Do you want to have an unrebutted presumption by a corporate criminal that it's going to be as clean as a whistle from the top down from now on?

And, of course, I don't buy this idea that this is a subsidiary, you know, that didn't engage in all this. That's just another example of how corporations evade responsibility. This is a centralized bank. All these banks are centralized from the top. They make mistakes and they don't know what's going on sometimes, but there's no doubt about how authority is hierarchical and top down.

So I suggest that you go to the pension plans, survey them or do all the things you know a lot better how to do than any of us, that's your work, and say do you really want this, and if they say, no, we love Credit Suisse, we can even pronounce it in French, you're still not finished with your obligation because you have a parallel obligation reflecting the criminal nature of this, this whole operation.

You know, there must have been something that happened in Austin to immediately put this press release out for the Texas Workers Retirement System. Maybe they know something none of us know. Maybe they can sort of extend this reputational taint that they said they didn't want to have anything to do with.

Also, it's all part of the thing that corporate crime pays, that corporate crime pays. The Texas system, the retirement system gave \$800,000 in

fees a year to Credit Suisse. So isn't that something to ponder? Why should corporate crime pay?

MS. BORZI: Well, I think that you've raised some very interesting issues. I do notice -- I quickly scanned down some of your suggestions that some of these things are questions that I asked this morning. We have one more Credit Suisse witness, and my staff reminded me I forgot to ask one of the questions because the first group couldn't answer it. So I'll try to get to the bottom of some of these, but I think you pose some very interesting things for us.

MR. NADER: I do want to thank my colleague, John Richard, for helping in preparing this, and I want to make one other point.

There is a remarkable correlation in the world of corporate crime and how easy corporations get off by who represents them, and if they're represented by any of the top 20 or 30 giant law firms, it's just remarkable the effectiveness of watering down what would otherwise be more strict sanctions, and this is part of the routine press release that we see where the top enforcement officer of the SEC leaves, and there he is, he's got a 4 or 5 million dollar job now with a law firm. This is a merry-go-round that is extremely corruptive, and nobody who knows anything

about top level government employees and what they're paid, the moment they see that they have a real capital asset in their expertise they're jumping ship, and that has an effect in terms of their anticipation of do they want to be known to be patsies? No. Do they want to be known to be partly firm? Yes. Do they want to be known to be really tough? No. And this all comes from shrunken enforcement budgets. The budgets are spectacularly deficient compared to the size of the corporate crime scene. The entire legal staff of the Justice Department can fit in the room of Baker & Botts in criminal prosecution.

You know, as I say, I did go beyond the cul-de-sac, but it is important to look at these from a broader frame of reference because the broader frame of reference is going to be affected by what you do. Thank you.

MR. HAUSER: Thank you for your testimony.

Emidio Morizio. You folks travel in twos.

MR. RADEY: I'm Bill Johnson. We tried to confuse you today.

MR. MORIZIO: Sure, my name is Emidio Morizio, and I'm here today with Neil Radey, our general counsel.

MS. BORZI: I'm sorry.

MR. RADEY: Oh, I'm sorry. Go ahead.

MR. MORIZIO: My name is Emidio Morizio.

MS. BORZI: Yes.

MR. RADEY: And my name is Neil Radey. I'm the general counsel in the Americas.

MR. MORIZIO: Okay. Before we start I thought it might be helpful if we address a couple of points that were raised earlier by some of the commenters. One of the most important was on ethical behavior. One thing I would like to point out is that CS has instituted training with respect to ethical behavior and it impacts all employees, and what this does is effectively states how employees should be conducting themselves on a daily basis, and it addresses transparency; integrity, which I know has been addressed quite a bit this morning; respect; compliance with law; confidentiality; and trust.

Secondly, I want to point out that Asset Management has a long history of complying with all applicable laws. I know there's been a number of discussions today about, you know, failure to comply with laws with many CS entities around the globe, but for the QPAMs themselves, which we're speaking about today, there is a long history of compliance with laws.

Also, Asset Management, we are a fiduciary to the plans and to their participants, and we take that role and responsibility very seriously.

The culture of compliance of the QPAMs is very strong in my impression. I've been with the organization for over 15 years. The tone at the top from both senior management as well as with legal and compliance professionals is exemplary from my perspective.

I also want to rebut a few points that were made a few moments ago. Texas Retirement System is not a client of CSAM. It is not a client, so they have not terminated us, so that statement is not correct.

Also, I'd like to point out that we do have a robust gifts and entertainment program policy. All gifts and entertainment with ERISA plan officials must be pre-cleared with the legal compliance department.

Okay, now to my prepared testimony.

Good afternoon. My name is Emidio Morizio. I'm the global head of compliance for Asset Management. I'm here with Neil Radey, our general counsel, and so Neil?

MR. RADEY: I also had one question that I wanted to address that's come up a couple times this



afternoon and this morning, and it relates to Swiss secrecy. So Swiss secrecy relates to activities in Switzerland and it's for the benefit of clients, so it's not for the benefit of banks, and it has no extraterritorial application. So, again, the QPAM entities that we're talking about, none of their activities are in Switzerland. Every activity will be auditable by the auditor. We can give you trade information. We can give you time of execution. There is absolutely no limitation on your ability to examine any of those activities, so that question we should really take off the table for this.

MR. MORIZIO: In addition, they use U.S. custodians, so all that information is accessible in the U.S.

MR. RADEY: And then I have some prepared remarks and I'll go through those and then I'll also try to address some of the other questions that have come up and then, of course, you know, we'll obviously answer any other questions that you have.

So, again, as I think all of the CS witnesses have said, we really do appreciate you taking the time today, giving us the opportunity to come in and talk to you a little bit about this. And what I thought we'd try to do is talk a little bit

more about some of the legal standards applicable to this particular exemption.

You know, my understanding and our understanding is, notwithstanding what we've heard about Credit Suisse and Credit Suisse activities around the world, that the exemption is only granted by you and you have complete discretion to do this when it's in the interest of plan participants and beneficiaries and those parties are adequately protected. The other conditions, interesting but generally not relevant.

So what we want to do today, Emidio and myself, is give you probably three or four major points. One is to really focus on our compliance program. We've had a lot of criticism of other parts of our business. Some of those criticisms date back to the late '90s, but I think what we really want to do is give you a very solid snapshot of what we look like today.

We want to let you know that that program and that framework is robust. We want to assure you that we can and we will meet every condition that you have included, and one of the things that we'll do is we'll also touch on some of the other comments that other witnesses have made.

A lot has been said about the tax case. That's really not a surprise. But we really are a leader in transparency globally. We were one of the first adopters of FATCA, and as we've heard, many of these matters, although resolved recently, relate to conduct that ended years and years ago. So what we're trying to do, again, is look at the lens, today's lens, today's compliance program, today's management team, and our commitment to being transparent and being a forthright and compliant organization.

The conditions that you've proposed are far more rigorous than those that have been contained in the QPAM exemption, and I think maybe everybody in the room knows by now they're far more rigorous than any that have been proposed historically. Notwithstanding that, we think that we absolutely will be able to meet those conditions and we share your concern. The conditions are all designed, they're detailed, they're all designed to protect plans and plan beneficiaries, and really that's our interest, that's Emidio's interest, it's what he wakes up, goes to bed thinking about every single day.

So a little bit about the legal and compliance department in the U.S. Today it approximately consists of about 400 professionals. We

cover all aspects of our business. Our firm and our department are committed to a strong culture of compliance, ethical responsibility, and doing the right thing for our clients. We take pride in what we do and we've got a strong record in the U.S. We invest in hiring and retaining top legal talent. Some actually come from the law firms that Ralph was alluding to, but we invest and maintain systems, processes, controls designed to ensure compliance with all relevant laws and regulations.

The asset management business and the U.S. professionals who provide investment management services to ERISA and IRA clients were not in any way involved in the tax settlement or the conduct underlying the tax settlement.

Emidio is now going to detail how strong our compliance culture is at our CS QPAMs. As he said, he's the managing director. He's been with us for 15 years, and he's been a compliance professional in that business the entire length of his career. Emidio.

MR. MORIZIO: Thank you, Neil.

So, as the head of compliance for Credit Suisse Asset Management, I take great pride in the culture of compliance that senior business and legal compliance personnel have instituted in the asset

management business. Now I said it earlier, but I think it's important enough to reiterate.

At Credit Suisse we have developed a comprehensive compliance framework, and we work closely with the business in order to understand the current new business initiatives and to provide day-to-day advisory support; assist in identifying potential conflicts, risks and control gaps; performing appropriate monitoring, testing, and surveillance which I know was something that, you know, was of much concern to the DOL to ensure that if there are gaps that they are being adequately addressed; to ensure compliance with all laws and Credit Suisse policies; monitor for regulatory developments; and lastly, develop and implement comprehensive compliance training, which I also know is very important to you.

The asset management business in the U.S. is separated physically, informationally and organizationally from securities trading and sales and other investment banking activities and from Credit Suisse in Switzerland. You know, our corporate parent is not involved in any investment decision making by the QPAMs. These determinations are made by asset management professionals who serve these ERISA plans.

We know mistakes happen. You know, no organization is perfect, but we require that all errors in guidelines be escalated to compliance, risk and asset management senior management, you know, as soon as possible. When these errors are identified, we fix them promptly. Corrective actions are always taken in the best interest of clients and with applicable law.

We use automated systems with pre-trade compliance functionality where possible to reasonably ensure that investment guidelines and regulatory restrictions are complied with on a trade-by-trade basis.

We do not trade with our affiliates for ERISA and IRA portfolios, and to the extent our systems can be designed to identify these accounts and monitor these limitations automatically, we have done so. Where that cannot be done we monitor manually. The legal and compliance team of the GC division is an independent control function covering the Credit Suisse asset management organization. We have over 20 dedicated professionals providing legal and compliance coverage support to the asset management business in the U.S.

We are supported by other groups within the

general counsel division which report to Neil which are responsible for a number of different functions, some of them being anti-money laundering rules, sanctions, client identification, position limit monitoring, watch and restrictive monitoring. We also monitor for rules that apply to gifts and entertainment, which I mentioned earlier; for standard anti-corruption rules like the Foreign Corrupt Practices Act. We are responsible for the review and maintenance of registrations, associated regulatory filings, as well as for enforcing and interpreting the personal trading policy.

Compliance also performs risk-based testing. This would include targeted reviews of businesses or ad hoc unscheduled reviews where we think there might be a potential control gap to ensure compliance with firm policies and procedures.

The legal and compliance teams are the main contact with regulators to address inquiries and examinations. The activities I just described help to ensure that we satisfy all legal and regulatory compliance requirements and also to properly identify, assess, mitigate potential conflicts of interest, and ensure our clients are being treated equitably and fairly. I cannot emphasize enough that in the U.S. we

have and will continue to maintain a culture of compliance. That is what the head of our asset management business expects, that is what our general counsel expects, that is what we expect of ourselves, and this is what our clients expect of us.

I hope my presentation this afternoon and my additional more detailed written statement will help the Department better understand how we at Credit Suisse Asset Management run this business in accordance with all applicable laws and regulations and with pride and integrity. Our strong track record with regulators and clients takes hard work, I can assure you of that, and we will diligently apply ourselves to meet every expectation under the interim and final rules. Neil?

MR. RADEY: I have just a few more things. You're going to hear shortly from the independent auditor, so we've heard a little bit about the independent auditor already today. Just a couple responses already. There was a question about providing the contract. We've agreed, since the question came up, to provide the contract to you, so that is something that we will be doing, but just a few more points on them.

They have a track record of acting as an



independent auditor. This is not going to be a tick-the-box audit. This is a very serious audit. The compliance program is not a tick-the-box program. It is a serious substantive program and that's what I suspect they will find, and we welcome you and your examiners in too and we'll be completely forthcoming and transparent with you, with the auditor, and we will also -- we'll give you anything you want, and we have other regulators on site. We'd be happy to have you there for, you know, as long as you want, quite frankly. We'll give you whatever information you want.

You know, one small point, the Fried Frank point has come up. We checked over lunchtime. Apparently on their list of clients we're somewhere like 198, so we are not a significant client to them. We don't use them very much. Our thought here was to really get experts, experts who had ERISA expertise, bring the benefit of what they've seen at other firms and bring that to bear for the benefit of the plans and the participants in those plans who we manage. So that was really the thinking behind the Fried Frank choice.

MR. MORIZIO: If I can interject for one second.

MR. RADEY: Sure.

MR. MORIZIO: We intentionally did not use a law firm we typically use in asset management. We have not engaged Fried Frank for any, you know, typical advisory support or activities, and so we intentionally wanted to use a law firm we do not typically use, where we did not have a regular relationship with because we wanted that independence and we wanted a fresh set of eyes to look at our ERISA compliance program to ensure that we have not overlooked anything.

Sorry, Neil.

MR. RADEY: That's fine. And, you know, there are a number of other points that were made throughout the presentation. I'm not going to reiterate those but happy to respond. I would say a question of the tone at the top. You know, for probably -- I've been at the firm for over 20 years. I would say the tone at the top has been a very significant part of our message for probably 15 of those years. Really it's permeated the firm.

You know, you know that you've tailored an exemption to address this kind of conduct before. We think that the last 19 or 20 times that you've done it, plus all the additional conditions that you've

added to our proposed exemption, you know, should be enough to give participants and plans the adequate protection that they need. Again, any additional conditions we're happy to talk to you about, you know, how we can make those work, how they can be audited, what are the substantive benefits that those could achieve because I think what we really are here is we're looking for substance and we're happy to come up with any good substantive ideas here.

You know, I guess the last topic I do want to say is, and, Madam Chairman, you addressed this a little bit. You know, there's not a back and forth between the witnesses, but I must say that a lot of what I've heard today, you know, some of it is very old. Some of it is unsubstantiated and obviously there's a lot that applies to the industry and other financial institutions.

So I guess when we all leave the room and you step back and, you know, take it all in really think about, you know, what is the legal standard, what is Credit Suisse, what is Credit Suisse Asset Management, what are these conditions, and I guess to me, you know, what's going on in the rest of the industry, I'm actually quite proud of what we've done in the U.S., and I do think that as you get to know us

and the auditor gets to know us and your examiners get to know us, I think that you'll walk away with a very different impression.

There's one or two other things I need to say. Some commenters have alleged that senior management at Credit Suisse knew of the active assistance to U.S. customers evading taxes described in the plea agreement. These are claims that are unsubstantiated. Indeed, it was an independent investigation. It was conducted by external counsel, but it concluded that senior management was not aware of that misconduct.

I also want to point out that during the financial crisis our firm has played a very constructive role. We worked with the government to study the economy, worked through necessary Dodd-Frank improvements to the system, and designed clearing functions and other reforms that make sure that these industry issues do not reoccur.

Credit Suisse did not take any taxpayer money, and some of my colleagues originated and have been thought leaders and worked tirelessly for the last six years to address the too big to fail issue; really come up with a concept called "bail-in" which really will move the risk of some of these large

financial institutions away from the taxpayer to debt holders.

We've not been implicated in LIBOR rate setting, foreign exchange or robo-signing matters, and this, I think, demonstrates a careful adherence to the law and some of our good business practices.

So I guess with that I want to say one last thing, which is, you know, we are an organization globally and in the U.S. We're made up of, you know, thousands of employees, and many of our employees give back to their communities. They do so financially but also with hours and hours of volunteer time, and you will hear from some of the grantees that the foundation, our foundation supports.

But volunteerism is really the way that we try to do this. It's in our DNA. Some of the organizations we support are in the fields of education, nonprofit legal services, mentoring. We don't ask for recognition for what we do here, but we do think that, you know, to help understand who we are a little bit more. There has been a lot of criticism of the institution, but there is very much a side of the institution that's composed of people giving back every day, dedicated to their jobs, pride in their institution, and that's who I think Emidio and myself

and the other CS witnesses you have seen earlier today are representing.

Again, I want to thank you for your time. I want to thank you for the process that you've conducted, and I really want to thank you for your continued thoughtfulness as you go through all that you've heard today. So thanks very much for having us.

MS. BORZI: Yes, I have a question. So, in my immediate prior life, my life with the Department of Labor, among the many things that I did is I developed and ran a corporate compliance graduate certificate program in the School of Public Health at GW. So I'm extremely committed and concerned about the compliance culture, and one of the things I started my class with was something you actually alluded to and other witnesses have alluded to, which is this notion of it starts at the top. If the top of an organization does not overtly project that compliance is a core value of the company, it's not going to trickle down.

And so, as I listened to your description of the corporate compliance activities and the commitment that you have to that and I juxtapose that against other testimony that we've heard and certainly what

I've read in the newspapers about what appears to me, Phyllis Borzi, citizen, taxpayer, not assistant secretary, but what appears to me as a lack of commitment to a compliance mentality, I can't help but wonder how you exist, because that's what you would like us to take away from this, as an oasis of ethical compliance adherence in a swamp of a culture clearly from the top down that doesn't appear to have those same values. So can you help me out?

MR. RADEY: Yeah, yeah. I'm sure I would not call it a swamp, but, you know, and I guess I'm also limited because, as I think you know, we've settled the matter with the DOJ, so we can't get into that.

MS. BORZI: Right. All I'm concerned about is why we should assume that you are as committed to that as some of the other parts of the business, including, as I said before, the mothership doesn't appear to be.

MR. RADEY: Yeah. Well, even some of the things at the mothership are really historical, and I think one of the things, and I think this is a good example, is in 2008 one of the witnesses this morning talked a little bit about the UBS matter and the UBS clients leaving UBS, and I think one of the first

things that we did, and we did this in Switzerland in 2008, was we said we are not going to take any new accounts from UBS.

Now you might say that, well, 2008 is a little late, but I think that that is indicative of the way that we started to address this issue very early, well before there was any, you know, CS matter, and this was, again, if you turn your clock back to 2008, that was also the time that, you know, Lehman was filing for bankruptcy. There were a myriad of different things going on in the world, in the financial industry, and at that particular time we recognized these -- you know, there is going to be a problem here. We are not perpetuating this problem. We are cutting it off then, and here we are, you know, seven years later and we're still talking about it a little bit.

But I think that that is the culture. And when I talk about a legal and compliance department of 400 people here today, you know, I joined the firm, as I said, about 20 years ago. The department at that time was probably about 27 or 30 people, so what we --

MS. BORZI: You service all three?

MR. RADEY: Well, no. For the QPAM business you'd have to say how big the QPAM business was, you



know, historically.

MR. MORIZIO: Well, you know, the business has changed over the years since I was associated --

MR. RADEY: Yes.

MR. MORIZIO: -- with the organization, so, you know, we've divested of certain businesses and the like.

MS. BORZI: Right.

MR. MORIZIO: But I think in terms of the level of resources in asset management that we have dedicated to, you know, legal compliance to the asset management business, I think it's in line with what I would expect you would see at a typical asset management organization.

But like I said earlier, we have a substantial amount of resources behind it in the core legal compliance team who are providing additional resources to us and to our clients, being, you know, watch and restrict illicit monitoring, gifts and entertainment, you know, FCPA, things like that. So we have a core team which services the business, you know, very carefully, but we also have other support that we rely upon to ensure that, you know, we were covering all aspects of compliance.

MR. RADEY: And I think what you've also

seen over the years is, you know, if you again go back in time in the U.S., you know, starting with the insider trading cases in the mid '80s, mid to late '80s, what you've really seen since then is in the U.S. a very, very quick development of very sophisticated compliance and regulatory regimes. I don't think that those have been mimicked or quite developed at the same pace in other parts of the world, but I think that what we're seeing globally, regulators learning very, very quickly from other regulators, business practices in one jurisdiction being adopted and compliance practices being adopted that are effective in one jurisdiction being exported.

I think on that particular point Emidio has really been in the forefront of developing those practices in the U.S. for the QPAMs predominantly, which is, I think, your question, but then also exporting them to other areas of our bank globally.

MS. BORZI: Of just asset management or beyond?

MR. RADEY: I would say beyond, yes, very much beyond.

MR. MORIZIO: I've helped out on other projects where Neil has asked me to help out, you know, to help and just, you know, bring best practice

where we can to addressing, you know, control gaps where we think we can, you know, improve things. So, while historically my focus has been on asset management, you know, I'll always lend a helping hand in other parts of the organization where I think I can add value.

MS. BORZI: Okay. And then I just want to sort of tick off some other questions because I've got a bunch of loose ends.

MR. RADEY: Sure.

MS. BORZI: You don't necessarily have to answer all these questions, but I'd like for the record my questions about how you selected the firms to do your training --

MR. RADEY: Yes.

MS. BORZI: -- and the audit.

MR. RADEY: Okay.

MS. BORZI: You kept talking about we selected Fried Frank --

MR. RADEY: Sure.

MS. BORZI: -- because they have done no other business with us. That really wasn't an answer.

MR. RADEY: Okay.

MS. BORZI: That was part of my question.

MR. RADEY: Sure.

MS. BORZI: But really what I wanted to know is have they done any business at any point for the bigger -- anybody in the bigger organization --

MR. RADEY: Yeah.

MS. BORZI: -- because obviously, as Mr. Nader suggested --

MR. RADEY: Sure.

MS. BORZI: -- and the point of my question this morning was to make sure that we weren't just -- you weren't thinking about complying for these -- with these conditions by having a same-old, same-old --

MR. RADEY: No.

MS. BORZI: -- who has a prior relationship to the bank and, of course, I understand having --

MR. RADEY: Sure.

MS. BORZI: -- been at a law firm that there is always an interest in having a future relationship and that that --

MR. RADEY: Yeah.

MS. BORZI: -- sometimes might affect your ability.

MR. RADEY: Yeah, sure, go ahead.

MS. BORZI: So tell me -- we want to know about how you selected the firm to do the training and the other big component of the additional conditions

is the audit, so what was your selection process like for that? And again, the same question, to what extent were the service providers you selected, have they had any prior relationship with Credit Suisse, the company as a whole, and its affiliates?

Thank you for telling us that you are going to give us copies of the contract. I'd like to see one for both of these service providers because I want to know what exactly the scope and nature of their duties is, what restrictions there might be, certainly what they're being paid. And I think that's -- I know we'll have some other questions.

MR. RADEY: Okay. That's fine.

MS. BORZI: But I just wanted to let you know those are the kinds of things that we are interested in.

MR. MORIZIO: Sure, sure. I can speak to the engagement of the law firm.

MS. BORZI: Okay.

MR. MORIZIO: With respect to Evercore, unfortunately I was not directly involved in that.

MS. BORZI: So did I miss the one person I didn't ask the question to?

MR. RADEY: Well, actually, Evercore is going to be coming shortly. You can ask them. They

won't know why we picked them, but --

MR. MORIZIO: Yes.

MR. RADEY: -- we'll tell you a little bit about that.

MR. MORIZIO: Yes.

MR. RADEY: Fried Frank, yeah.

MR. MORIZIO: So, with respect to Fried Frank, so we interviewed three law firms that have very strong ERISA practice groups, and we intentionally went to law firms that we typically don't work with in asset management because, like I said earlier, we wanted to get a fresh set of eyes. So while we have very strong and competent in-house ERISA lawyers, we wanted to go to people who we typically don't go to with questions on a routine basis because we wanted, again, to have somebody come in and do a little tire kicking and make sure we're not overlooking anything.

MS. BORZI: So did somebody give you advice on how to select these three firms?

MR. MORIZIO: No, I think, you know, we're very competent in terms of choosing, you know, ERISA counsel, like we engage law firms for many different projects.

MS. BORZI: Sure.

MR. MORIZIO: And, you know, we --

MS. BORZI: So it was all done internally?

MR. MORIZIO: All done internally. So we had, you know, three law firms come in. They presented on their capabilities. We met after, you know, internally after we interviewed the three law firms. We had concluded that, you know, Fried Frank had done an excellent job. We felt very, you know, confident in their capabilities, and at that point I know we had done no business whatsoever with Fried Frank on the asset management space because I'm very familiar with what we do.

MS. BORZI: Did you ask them if they represented other clients who had been involved in other things, some of these issues?

MR. MORIZIO: I believe that question may have come up, but I can't say with certainty.

MS. BORZI: Okay.

MR. MORIZIO: But we do know they have a very strong practice group in that area, and that's really what we were concerned about mostly. And from that we determined that, you know, they were a great choice. They had a very strong asset management practice group. They had very strong ERISA counsel, so that was another big consideration of ours. And we

just learned, you know, a short while ago that Fried Frank has done very little business with Credit Suisse as a whole. As Neil said, I think we are number 198 in terms of their total billing.

MS. BORZI: Yes, you said "we". I wrote that down because I wasn't sure who "we" meant.

MR. MORIZIO: Yes, Credit Suisse as a whole.

MR. RADEY: Credit Suisse, the big Credit Suisse.

MR. MORIZIO: The big Credit Suisse. So, I mean, the amount of revenue which Fried Frank attains from Credit Suisse is negligible, and when I mean negligible, it's less than one-half of one percent of their total revenue.

MR. RADEY: Just maybe a few comments on how we selected the auditor. You know, obviously it was very similar in terms of the kinds of expertise that we wanted. We really wanted somebody who was well versed in ERISA. We considered, you know, some of the consulting firms associated with the Big Four, but what we really wanted was that specific ERISA background. We also wanted somebody who understood from their own perspective the fiduciary business. So Evercore Trust suits that bill as well.

And then we looked at, as Emidio said, what



kinds of similar engagements have they done. You know, do they have really the expertise here? And we are aware that they have done other engagements that are much larger, more sophisticated, more complicated, so that gave us also some comfort that they would be able to handle ours. But I think you could talk to them a little bit more about their capabilities, but that's where we ended up, yeah.

MR. HAUSER: You did a very nice job of anticipating also my questions.

MR. RADEY: Okay.

MR. HAUSER: So maybe just a couple more document requests, I'm afraid.

MR. RADEY: Okay.

MR. HAUSER: It would be helpful to get whatever compliance manuals, compliance procedures you now have for the fiduciaries --

MR. RADEY: Okay.

MR. HAUSER: -- as updated. Presumably you --

MS. BORZI: All the training materials.

MR. HAUSER: Presumably you reflect the terms of the exemption.

MR. RADEY: Sure, absolutely.

MR. HAUSER: You know, the conditions. I

know you've given us material like that in the past, but if we could just be sure we have the current --

MR. RADEY: Most recent, sure.

MR. HAUSER: -- versions. Similarly, I'd appreciate it if you could provide us with a syllabus, materials, whatever you can on the training program.

MR. RADEY: Uh-huh.

MR. HAUSER: I think that would be helpful as well. And probably this could wait for a more precise formulation, but a number of the witnesses throughout the day have faulted I think both you and us really for not having received necessarily precise answers to some of the more numerical questions about the number --

MR. RADEY: Okay.

MR. HAUSER: -- of participants, plans --

MR. RADEY: Yeah.

MR. HAUSER: -- the size of assets.

Certainly, to the extent we can get precision, we should try to do that, I think.

MR. MORIZIO: Yeah. But for today's discussion, so a good approximation is \$2 billion in institutional ERISA money and approximately 1 million plan participants behind that.

MR. RADEY: And we'll supplement that

though.

MR. HAUSER: Okay. Thank you.

MR. RADEY: Sure thing. Thank you.

MR. MORIZIO: Thank you.

MR. HAUSER: Alan Lebowitz and William Ryan.

MR. LEBOWITZ: Good afternoon. I just need a second to get oriented here being on this side of the table.

Good afternoon, ladies and gentlemen. I'm Alan Lebowitz, Senior Advisor at Evercore Trust. With me here today on my left is William Ryan, Managing Director and Chief Fiduciary Officer of our firm. We have submitted a longer statement for the record, so I'll just take a few minutes to summarize it at this point and then we're obviously open to try to answer any questions that you might have.

We appreciate the opportunity to testify this afternoon in our capacity as the designated independent auditor required by Section I(i)(1) of the proposed exemption involving Credit Suisse AG. We recognize the important role played by the independent auditor in the protective scheme developed by the Department in the proposed exemption. Our objective here today is to provide you with information about our firm, with a specific emphasis on our history,

qualifications, and independence. In addition, we'll discuss our proposed approach to this engagement, which hopefully you will find helpful as you consider the final disposition of the proposed exemption.

Evercore Trust is a wholly-owned, indirect subsidiary of Evercore Partners, Incorporated. It's a national trust bank chartered and regulated by the Office of the Comptroller of the Currency. Evercore Trust's primary expertise is in providing specialized investment management, independent fiduciary and trustee services to employee benefit plans. In addition, Evercore Trust provides personal trustee, executor and custody services for clients of Evercore Wealth Management, LLC, an affiliated wealth management firm.

Our firm was founded in 1987 as Special Fiduciary Services, a part of U.S. Trust Corporation, which was acquired by Bank of America in 2007. Evercore Trust was established in connection with Evercore's 2009 acquisition of the Special Fiduciary Services business from Bank of America.

With over \$37.9 billion in assets under management and administration as of December 31, 2014, Evercore Trust provides discretionary fiduciary services for qualified and nonqualified employee

benefit plans sponsored by corporations and other institutions. Client plans include defined contribution plans, defined benefit pension plans, voluntary employees, beneficiary associations, employee stock ownership plans, and rabbi trusts.

Our team has served as the independent fiduciary responsible for monitoring compliance with the conditions of many complex prohibited transaction exemptions granted by the Department to large financial institutions and Fortune 500 corporations. These prohibited transaction exemptions have addressed issues arising out of the consolidation of financial institutions, in-kind contributions, in-kind redemptions, captive reinsurance arrangements, the sale of assets to plans, rights, offerings, demutualizations, the provision of services to plans, and other matters.

As a nationally chartered trust bank, Evercore Trust operates within a robust compliance infrastructure. Evercore Trust's processes are subject to periodic review by both our own internal audit group and the OCC. In addition, Evercore Trust has elected to undergo regular SSAE 16 reviews of its trust and custodial services related to its fiduciary engagements.

Evercore Trust maintains internal committees responsible for fiduciary decisionmaking and risk management. This oversight structure supports Evercore Trust's compliance with its policies and procedures which are designed to facilitate the prudent execution of the firm's responsibilities.

Evercore Trust employs approximately 50 professionals, including in-house ERISA legal counsel, financial analysts, relationship managers, and support personnel who work from offices in New York, Los Angeles, and Washington. Evercore Trust's senior management team averages more than 25 years of industry experience.

The proposed exemption requires the retention of an independent auditor "who has been prudently selected and who has the appropriate technical training and proficiency with ERISA to evaluate the adequacy of and compliance with the policies and training developed by the Credit Suisse affiliated QPAMs."

Of particular relevance to the proposed exemption, our team has developed, reviewed, implemented, and monitored operational compliance with policies and procedures and associated training programs for a number of financial institutions

through our experience with comparable prohibited transaction exemptions and prior professional experiences. Summaries of representative prohibited transaction exemptions where Evercore Trust served as independent fiduciary, independent monitor, or in a similar capacity are included as Exhibit B of our written submission.

Evercore Trust is independent of and unrelated to Credit Suisse AG and its affiliates. Evercore Trust is to be paid a fixed fee to serve as independent auditor. Evercore was previously retained by an affiliate of Credit Suisse AG in 2009 to serve as an independent fiduciary responsible for the allocation of settlement proceeds between affiliated parties. We were paid a fee representing less than a quarter of one percent of its annual revenue for this assignment, our annual revenue for this assignment. We currently have no business relationships with Credit Suisse AG or its affiliates other than in connection with the temporary and potentially proposed exemption.

Prior to accepting any new business Evercore Trust requests review and approval from Evercore's "control room", an internal group staffed by Evercore's legal and compliance personnel to identify

potential conflicts of interest across Evercore's platform. This process helps to ensure Evercore Trust's independence and undivided loyalty for fiduciary mandates.

There were no potential conflicts with Credit Suisse AG or any of its affiliates identified during the on-boarding process which would prevent Evercore from serving as independent auditor.

The proposed exemption requires that the independent auditor determine whether each Credit Suisse affiliated QPAM has developed, implemented, maintained, and followed policies in accordance with the conditions of the proposed exemption and related training. In making this determination, the independent auditor is required to test each Credit Suisse affiliated QPAM's operational compliance with these policies and training and to issue written reports describing the steps performed during its examination, specific determinations regarding the adequacy of these policies and training programs, and recommendations to strengthen the policies and training, and any instances of noncompliance with these policies and training.

If the proposed exemption is granted, Evercore will conduct a rigorous due diligence process



to ascertain whether each Credit Suisse affiliated QPAM is in compliance with the conditions of the proposed exemption that are subject to review by the independent auditor. We will initially gather and review information relevant to the proposed exemption, including the policies background of the Credit Suisse affiliated QPAMs and their clients subject to ERISA, account documentation, transactional data, compliance reporting, and training materials, and would then conduct on-site visits to interview relevant personnel and learn more about the specific business practices and compliance activities for each Credit Suisse affiliated QPAM. A detailed audit plan will be developed for each Credit Suisse affiliated QPAM which will include appropriate testing protocols.

The testing protocols will be structured and implemented to ensure the Credit Suisse affiliated QPAMs' operational compliance with the policies and training as set forth in the audit plan are complied with. In particular, Evercore Trust will run tests to ensure that each QPAM is in full compliance with the requirements of the exemption.

Evercore will conduct its testing based on a representative sample of transactions conducted by each Credit Suisse affiliated QPAM during the audit

period. Any instances of noncompliance will be investigated further, remediated, and fully documented. The due diligence process will culminate in the preparation of a comprehensive audit report describing the process and Evercore Trust's specific findings.

Again, we recognize that the independent auditor requirement is an important safeguard for the proposed exemption. We believe that we have the requisite experience and independence to serve in this role. We're prepared to conduct a thorough and objective evaluation of each Credit Suisse affiliated QPAM's operational compliance with the requirements of the exemption.

Again, we appreciate the opportunity to appear before you today and we'll try our best to answer any questions that you may have. Thank you.

MR. HAUSER: So we're going to get a copy of your contract.

MR. LEBOWITZ: Uh-huh.

MR. HAUSER: I think it would also be helpful as you proceed if we could get copies of your audit plans.

MR. LEBOWITZ: Sure.

MR. HAUSER: I guess a question I have is

what assurances have you received about having unfettered access to, you know, the employees? If you detect an instance of noncompliance, what will be your ability to talk directly to the people involved? What will be your access to the documents? You know, are there any restrictions on access to documents or witnesses that might interfere with your ability to do the work?

MR. RYAN: And I can categorically say we've been given assurances that are both in the documentation that you will receive with respect to our engagement as well as independently from Emidio, the compliance staff, the chief ERISA counsel of Credit Suisse, and others that we will have unfettered access to personnel as well as information.

MR. HAUSER: You know, one aspect of the audit requirements that maybe is a little different than in other exemptions that have similar things is that there is an audit requirement with respect not just to the specifics of various prohibited transaction rules but also more general --

MR. RYAN: ERISA compliance.

MR. HAUSER: Yes, sort of obligation to be looking at broader ERISA compliance, you know, prudence, loyalty, as well as the accuracy of

representations to various regulators. What thought have you given to how you would go about structuring such an audit to work?

MR. LEBOWITZ: Well, I think the process would largely be as described in the testimony. You first start by understanding the organization, its internal processes, its existing compliance structure, the transaction of data, and interviews with relevant personnel within each of the QPAM organizations.

And once we have a comprehensive understanding of the structure and operations of the organization, we would then put together a formal testing program, a formal compliance program based on what we've learned.

MR. RYAN: So if I'm trying to drill down maybe to one level slightly below with this. Tim, I take your point with respect to trying to test for fiduciary compliance with respect to 404 itself and its standards. I think that's indicated by a number of things, and that's been my own experience as well as working with Evercore Trust.

I'd say, number one, you would be looking clearly at the documentation that you have with respect to the particular engagement's acknowledgements of fiduciary status. Secondly, you'd

be looking at the aspects of training and/or professional experience with respect to the portfolio managers, their familiarity with the ERISA rules, and you can -- truthfully I've had situations in the past which I would expect as part of the protocol where we were asking not only about their training, background, experience, but their specific familiarity with the ERISA requirements, the restrictions of what QPAM, for example, applies to and doesn't apply to. The situation that it wouldn't apply, for example, to SEC lending, you know, asset-backed securitizations and the like.

I think with respect to -- and transactional testing can vary depending on the type of transaction we are talking about. The exemption I think has some very focused and very specific requirements with respect to information barriers and reporting, and we have done very similar work with that in our Barclay's exemption which the Department is aware of in terms of checking down on levels, and that can drill down in protocols, for example, not just saying whether or not -- to basically check email records, for example, as the transactions in case.

But when I think you're talking about the broader issues about ERISA fiduciary compliance, the

culture of doing the right thing for the client, part of this I think is indicated by what you see and what you don't see. Do you see a robust structure where mistakes are elevated quickly, trading errors, trading with affiliates? Is there a process and a clearly documented process that not only does compliance understand but the business people involved with the transactions understand that when there's a mistake the first reaction is not to hide it. The first reaction is to fix it and elevate the issues.

So I think part of that -- those I would say are more qualitative judgments at some point, but I think they're indicated by the quantitative information that you have from the policies, the information that the personnel themselves actually have with respect to not only the transactions and the transaction types they're engaged in but also their general fiduciary responsibilities.

I think it's safe to say that, and I know this from having to deal with Credit Suisse in the past, there is always, from my personal experience in dealing with especially the lawyers at Credit Suisse because that was my one direction, there was always a clear understanding that the firm's commitment was in fact to follow the rules of ERISA even when they're

not exactly transparent in some of the prohibited transactions side.

I don't expect that we will see anything differently, but as someone once said, you trust, but you verify, and that's, I think, the way we're approaching this.

MR. HAUSER: Are there -- let me -- trust but verify. Have you looked at the -- this morning, I don't think you were in the audience this morning, but, you know, I noted that last night I read through the stipulated facts in the criminal proceeding involving Credit Suisse AG, and, you know, there's a section in that stipulation that, you know, has as its header -- let me see if I can now put my hands on it, but essentially that heading is -- here we go. "Credit Suisse's Ineffectual Policies, Training, and Audits." And when you go through it, the thrust of it, and this isn't the entities you're auditing, it's a different set of entities, but what comes out of this is that they had internal procedures. Maybe on their face the procedures seemed okay. But in practice they weren't being followed at least with respect to these violations.

MR. RYAN: Right.

MR. HAUSER: And more than that, when the

auditors went to look, you know, they didn't get accurate production back. You know, documents were changed to avoid references to travel to the United States. There was some destruction of emails. You know, there was the appearance of a working policy of an audit system, but there wasn't really the reality of that, and what's alarming from the government's perspective obviously is we don't -- and from an auditor's perspective I would think is we don't -- that's what we have to rely on to some degree. It's what's in the documents, you know, what are the people telling us.

And so I understand your previous experience, but I just wondered -- I mean, I think you should read this. I just wondered if you haven't already, but I think I'd be very interested in hearing from you how you think you can guard against that sort of thing.

MR. RYAN: I have read them but not as recently as last night. I was, in fact, reading, among other things, our testimony. I think as a background matter, and I think the Department noted this in the exemption, the lack of a fact pattern itself may be indicative. So, for example, if you're dealing with email production, and I know that this



has occurred in other areas, you look not only for what has been produced but timing gaps, whether or not there are, for example, wholesale or random types of references that don't seem to apply. Again, that may not be applicable directly with respect to what's going on here, but there are ways to take a look at the documents. There are ways to take a look at the document production.

And to your point, Tim, part of what's being done here that Fried Frank was retained to is actually in some respects to pull together policies that are there as far as I've seen. We've seen one draft of a compliance manual for one of the Credit Suisse entities which is clearly pulling in material from related manuals and related investment advisory guidelines as we're dealing with some of the same issues from a fiduciary perspective under the Advisors Act, for example.

So I think the policies clearly are actually getting more focused and more centralized and on some levels easier to review and audit. I think with respect to the transaction testing, and you've noted this, as I've said, you look for what isn't there, and I say this having worked at financial services industries, and due to the best -- despite the best

efforts mistakes happen. The question isn't whether or not there are mistakes or errors, and if there are none, that to me is a red flag. The question is how people address them.

MR. HAUSER: Well, in following transactions, would you expect to have a system of red flags to --

MR. RYAN: I would expect -- yes, I would expect that there is an elevation process which I think Emidio could speak to in more detail, but I'm expecting to see, certainly in some of the oral conversations that we had talked, an elevation process for trade errors. Periodic review of investment management engagements, looking for foot faults, do you acknowledge ERISA fiduciary status, do you apply ERISA fiduciary rules to governmental plans, for example, or to ERISA plans uniformly, things along those lines.

MR. HAUSER: Have you been through their current set of compliance documents, policies and procedures and the like?

MR. RYAN: No, we have not. Technically we were actually engaged on Tuesday. So I really would love to have told you that we were all through them at this point, but we are not.

I will say that we have seen no evidence whatsoever that they are unwilling to provide any information that we were requesting. To the point with respect to transaction testing and looking at, you know, affiliate -- and I do understand, I actually was slightly taken aback that there were no related brokerage transactions involving these accounts. That to me is something I clearly want to understand exactly how they're monitoring and how they're in fact complying with that just on a regular basis because even if it's permitted under an agency trade, if you're promising something in your contract that you're not doing, that's a red flag as well.

MR. HAUSER: But you have been through the conditions in our exemption.

MR. RYAN: Yes.

MR. HAUSER: Are there any additional conditions that you think we should add that would help you better do your job?

MR. RYAN: I think in my own view, and Alan should feel free to agree, disagree, I think the Department has done a very good job of trying to put real conditions on that you would not normally have in any of the other exemptions dealing with criminal status with a recognition of the fact it has to be

administrable. So I think part of this is also served by how the asset management business at Credit Suisse is run and that the U.S. QPAMs are in fact the ones doing the U.S. trading. Truthfully, that's one thing that we would verify as part of an audit process.

But I do think as -- I think you've hit the right balance, and we saw obviously the earlier -- there were obviously discussions about other conditions and we heard some of them. From our perspective, we have not seen a lot directly with them. I don't think we are seeing anything that automatically comes to mind that would further enhance this. But part of our report and part of our audit function would be to indicate that if we're seeing systemic deficiencies or other issues that need to be considered we will raise them.

MR. HAUSER: And again I would just, since you weren't here this morning, I'll just repeat the other point I made in connection with the audits this morning. While the preamble to the exemption notes in connection with administerability that there is no requirement that the Department of Labor be taking a look at the compliance of the policies and procedures or the monitoring that, you know, partly you are there for --

MR. RYAN: Right.

MR. HAUSER: -- nevertheless, I've all but determined that we're going to have our investigators in. We're going to be taking a look --

MR. RYAN: Absolutely.

MR. HAUSER: -- at this.

MR. RYAN: To be perfectly honest, I kind of assumed that that's what you were going to do.

MR. HAUSER: It's very important to us given the problems in the Credit Suisse AG case and given sort of that these are central protections in the exemption that this not be a check-the-box sort of exercise or even as a cost saver.

MR. LEBOWITZ: That's clear in the proposed exemption. I don't know that I have anything at this point we would suggest that you add. There may well be provisions that seem a little ambiguous to us or difficult to figure out exactly what you're looking for, and we would certainly be happy to talk with you and your staff as we implement the audit plan or design the audit plan and then implement it to make sure that we're focusing on what you want us to.

MR. HAUSER: Well, if we move forward with the exemption, all the better if we can clear up any ambiguities before we publish the doc.

MR. LEBOWITZ: Understood.

MR. HAUSER: So the sooner the better. As you said, you have specifics in mind.

MR. RYAN: We'd be happy to provide them.

MS. BORZI: So a number of the prior witnesses have expressed skepticism at the representation that has been made that none of the employees of the QPAMs were involved in any way in the criminal behavior and at least one noted that while in the exemption the representation appears to deal with people who have directly benefitted from the criminal behavior, there was a suggestion that we broaden that criteria to also capture people who may have indirectly benefitted from the criminal behavior who are part of the QPAM operation. So is this part of what you're going to be looking at, whether or not that representation is accurate?

MR. RYAN: I can tell you that part of this would be -- we would consider this as part of the information barriers that we would be looking at, and one of the sample protocols not only searches through emails, not only phone logs, to the degree there are, you have simple checking of peoples' access to various floors where people -- I can tell you, especially in many of these organizations with security protocols,

people sign in, especially if they're -- and we want to see if there are access issues with respect to that on the various floors that the asset management unit presumably apply.

I will say if the Department goes down the road of direct and indirect benefit we would definitely appreciate the Department's view on what is meant by indirect.

MS. BORZI: Yes. I mean, I'm not expressing an opinion.

MR. RYAN: Understood.

MS. BORZI: I just wanted to make sure that I got that point out.

MR. RYAN: No, we appreciate that, but I think that is part of what we're seeing, among other things, as part of the information barriers.

MS. BORZI: And so I guess the other obvious question is at what point during your engagement if you find issues or concerns, at what point would you come to the Department about them, or would you attempt to only deal with them internally?

MR. LEBOWITZ: Well, the --

MR. RYAN: The exemption.

MR. LEBOWITZ: -- exemption itself laid out a framework for reporting and for communicating --

MS. BORZI: Right.

MR. LEBOWITZ: -- with the QPAMs instances of noncompliance. I think, as drafted, it would all be wrapped up in the report, but there may well be situations, I mean --

MS. BORZI: Well, that's specifically the question. Are you going to wait until -- if you find something of concern, would you wait until the report or would you give us a heads-up before?

MR. LEBOWITZ: Well, I think from my perspective the answer to that is it depends on what we see and what Credit Suisse does with our finding that there's been an instance of noncompliance or there's a significant issue with the policies and the training.

It seems like the exemption contemplates that we find something, communicate it with Credit Suisse, they fix it, then we report it, and including what remedial steps that they've taken.

MS. BORZI: Right.

MR. LEBOWITZ: You know, in a routine --

MS. BORZI: But what I'm asking is what if that isn't --

MR. LEBOWITZ: Well, then we would certainly come to the Department if we felt that it was a matter



that we were getting nowhere with Credit Suisse in terms of getting the matter addressed appropriately.

MS. BORZI: Or cell blocking, if you were experiencing that.

MR. RYAN: No, I would concur with that. I would say also to the degree obviously that there are people on site. I'm expecting that there would be some level of communication that would be going on on a regular basis anyway.

MS. BORZI: I mean, I'm not making any prejudgments about how this is going to play out.

MR. RYAN: No, understood. Understood. But no, I think it's safe to say, Madam Secretary, that if we were being stonewalled, if we were seeing that there was incomplete information, if the parties weren't cooperative, we would be raising red flags. That again is sort of the way I view -- I don't expect to see that based on the importance that I think Credit Suisse is putting on this entire effort, but if we do, we will in fact be having a vigorous discussion with a number of parties.

MS. BORZI: Thank you.

MR. HAUSER: Thank you.

MR. RYAN: Well, thank you very much. We appreciate the opportunity.

MR. HAUSER: We're going to take a five-minute break mainly just because I need to take a break. But then we will start back with George Arnstein.

(Whereupon, a short recess was taken.)

MR. HAUSER: Is George Arnstein here?

MR. ARNSTEIN: Yes.

MR. HAUSER: Whenever you're ready.

MR. ARNSTEIN: Good afternoon. My name is George Arnstein. I'm a U.S. citizen, and I object to any extension of the temporary waiver grant to Credit Suisse AG or the possible grant of a full waiver to serve as qualified professional asset managers to retirement plan clients.

I should add that my testimony is not going to be about billions, not about millions, but about a personal experience of Credit Suisse failing to exert its fiduciary responsibilities.

My testimony regards some 50,000 accounts of pre-World War II assets entrusted to it. The exact number is unknown but will be discussed below. And I can cite an illustrative case. I could even cite two, but one will be enough.

Since my great aunt, Claire Adler, a native born U.S. citizen, and I am the sole beneficiary of

that account, along with my sister, and seeing our claim was successful and was paid by the Foreign Claims Settlement Commission, the question arises -- it was probably inadequate -- the question arises why Credit Suisse AG failed in its fiduciary duties, and the answer emerges from the findings of the so-called Volcker Committee, the independent committee of eminent persons, chaired by Mr. Volcker, who I think qualifies as eminent, which determined that Swiss banks unilaterally and routinely closed most such accounts.

The International Claims Tribunal, which was set up to implement the findings of the committee of eminent persons, identified 53,880 probable or possible accounts, most of which were opened by Germans or residents of countries threatened by Nazi imperialism who were in political or other jeopardy under the Nazi Regime, such as my Great Aunt Claire, a native born U.S. citizen.

These accounts were closed unilaterally by most Swiss banks, explicitly including Credit Suisse AG, after service charges ate up the corpus or because they were inactive, which under the circumstances should be understandable and worthy of forbearance.

Claire Adler, for example, explicitly asked

that no correspondence be sent to her German residence and no disbursements be sent there precisely because this could have led to confiscation, and presumably this made her account inactive.

The Swiss banks at some point destroyed the records except for minimal data which in our case were adequate to validate the claims. The paid amounts were calculated according to a formula because the actual data had been destroyed and the actual amounts thus could no longer be determined.

The final settlement with the Claims Resolution Tribunal was signed, among others, by Credit Suisse Group. For details you can see the Claims Resolution Tribunal, the website is [crt-ii.org](http://crt-ii.org).

In summary, Credit Suisse is documented as having failed in its fiduciary duties and should be found ineligible in the present proceeding. Thank you for your courtesy. That's it.

MR. HAUSER: Thank you.

MS. BORZI: Thank you so much for your testimony.

MR. HAUSER: Our next witness is James Smalhout. I apologize if I got that name wrong.

MR. SMALHOUT: Pardon?

MR. HAUSER: I hope I got your name right.

MR. SMALHOUT: You did. Thank you.

Well, thank you very much for including me and for including George Arnstein. I'm going to talk about the Holocaust, of course, but let me start at the end, not the beginning.

We've heard from one of the lawyers for Credit Suisse that they have established a culture of accountability and that the abuses that we heard about from previous witnesses all occurred many years ago.

Well, I'm not convinced about whether or not they've established a culture of accountability. There are too many things on the record that say otherwise, and one of those blemishes involves the 1998 settlement for missing Holocaust era bank accounts, and that was a settlement that even though it occurred in 1998 continued to disburse funds as recently as the last two years.

So we are not talking entirely about history here, but history is a precedent, and I'm here because my father's Dutch family sent a lot of money to Switzerland in the late 1930s according to their surviving housekeeper, and she even told her family that they didn't need to worry about my grandparents because my grandparents had sent so much money to Switzerland.

It's like that movie "The Sound of Music", if you've seen it, but without the happy ending. My grandparents fled The Netherlands trying to get to safety in Switzerland, but the Nazis caught up with them in France and that was the end for them. They were dead at Auschwitz within a week.

We never found their bank accounts in Switzerland, and Credit Suisse is now coming here for an exemption like the one that UBS got a couple of years ago, and neither of these banks is worthy of these exemptions and can't meet the standards as an ERISA fiduciary based on my family's experience.

They need to take a lot more responsibility for depositors' losses before you give Credit Suisse this exemption, and I think you actually should go so far as to revoke the exemption you granted to UBS unless they agree to further remediation. No employee benefit plan relying on them is safe until they prove that they are accountable to their customers, to regulators, and also very importantly to our courts.

Your ERISA exemption process can be constructive only, only if this Department applies effective conditionality, and I'm going to argue that part of that conditionality involves undoing some of the damage that was done to depositor interests during

the course of administering the previous 1998 settlement.

I summarized in a column for Barron's that this whole problem started in 1934 when the Swiss parliament paved the way for an enormous sham by passing a law that imposed very severe penalties on bankers who disclosed information about Swiss bank accounts, secret Swiss bank accounts. After that law was passed well-to-do Jews from all over Europe terrified of Hitler poured huge fortunes into Swiss banks, and Swiss bank secrecy law made it almost impossible to trace those after World War II.

My father came here in 1935. His family sent the money in the late '30s. He didn't know where to begin in terms of finding these accounts, what bank to go to, that sort of thing. Banks in large numbers of cases just kept the money.

And so, in 1998, Credit Suisse and UBS agreed to a \$1.25 billion settlement. My family received \$7,250, but my grandparents' housekeeper said through her sister, and they were very close and her sister speaks excellent English, that they probably sent about \$85,000, the equivalent, in the late 1930s. So here we are 70 years later and what do we get? Seventy-two fifty out of the settlement. That

settlement made significant payments not to us but to other people in just 5 percent of all cases, and there were about 114,000 claims filed. And as the presiding judge wrote to me, we did not have \$25 billion or more to repay depositors. I share your frustration with the amount of funds available for distribution. Plaintiffs should have received a far greater sum.

Now a fiduciary responsible for bank settlements is obligated to proceed quite like a fiduciary entrusted with pension assets, but completely absent from Swiss treatment of Holocaust accounts was the care, skill, prudence, and diligence of ERISA's legendary prudent man. I'm quoting the statute now, that "that prudent man needs to act in like capacity in the conduct of an enterprise of like character with like aims."

ERISA demands absolute loyalty and faithfulness from fiduciaries to the interests of those who entrust money to them. Yet the core ERISA concept of exclusive purpose for the benefit of customers seems to have been completely anathema to these institutions.

The scale of this problem compares with the Deepwater Horizon oil spill settlement. That was a \$20 billion settlement. We get a billion and a



quarter.

Now exemption conditions that you published in November require accurate and complete information from Credit Suisse on statements submitted to the U.S. Government, but bank conduct before Judge Korman indicates that these conditions would not provide adequate safeguards. As one settlement official put it, the real culprits are the Swiss bankers who destroyed every trace of 2 million Holocaust era accounts and refused Korman's investigators adequate access to surviving bank records. The judge and his investigators were actually turned down by both banks to get more of these records. So how can you be confident that those two banks will cooperate if there's a problem in the future?

Plans simply do not have the reasonable assurance that Credit Suisse and UBS are going to be reasonably forthcoming.

My request is this: If you grant the waiver, insist that these banks finally repay Holocaust survivors. It was a huge mistake in 1998 to cap payments to claimants. The standards of evidence were also terribly unfair to claimants. The requirement was that some trace of bank records had to be found in order to justify a substantial claim.

And I see I've run out of time, but to conclude, the U.S. Department of Labor should not provide this exemption unless the bank agrees to remediation along the lines that I've described in documents I've submitted for the record, and you also should revoke the previous exemption for UBS unless they participate.

So that's essentially what I have to say, and if you have any questions, I'd be happy to recite the rest of my statement.

MS. BORZI: Well, I actually have a question about were we to grant an exemption, were we to add the condition that you're suggesting, how would we do it? I mean, I think I heard, and please correct me if I didn't hear correctly, that in this 1998 settlement part of the problem was that the records of the accounts were not available.

MR. SMALHOUT: Well, that's true. There are two categories of records that weren't available. Paul Volcker led a committee that hired an accounting firm to audit all the Swiss banks. Not all of them participated, but he determined that of I think about 6.6 million Holocaust-era accounts, all records concerning 2.8 had been completely destroyed. So they had an account total with no information whatsoever

about the others.

For many accounts where there was some trace, there was incomplete information. No information about the account balance. So one way the settlement shortchanged a lot of people like George Arnstein's family, who got more substantial awards than we got, was that they computed an average. So I know of some very wealthy families who had claims, who controlled huge commercial enterprises, and so they ended up with a quarter of a million dollars.

MS. BORZI: It was more a function of what kind of records --

MR. SMALHOUT: Survived, but that's a big part -- that may be the biggest part of the problem, but the other part of the problem was there were surviving records that were not made available to the -- quite intentionally, that were not made available to the settlement, and one settlement official complained about this in writing in a letter to the editor to Barron's Magazine in response to a column I wrote about the settlement.

And so it was a combination of both document destruction, and by the way, one very embarrassing episode attributable to UBS involving document destruction led to the settlement. A night watchman

walked into a shredding room and found a pile of records involving Holocaust victims waiting to be shredded, and he publicized this and became a pariah around Zurich as a result, but that was one of the factors that led to the settlement in the late 1990s.

So there is a long history and I have included a very short bibliography of books that have been written about this problem which at length describe abuses by the banks in turning away Holocaust survivors who appeared at bank branches in Switzerland to claim their family's money and also involving destruction of records over a course of decades.

MS. BORZI: Well, thank you. I just got your submission this morning and so I'll make sure that I go through it, so thank you so much.

MR. SMALHOUT: Thank you.

MR. HAUSER: David Garza.

MR. GARZA: Good afternoon.

MR. HAUSER: Good afternoon.

MR. GARZA: I've been known to clear out rooms but usually not this dramatically.

(Laughter.)

MR. GARZA: My name is David Garza. I am the Executive Director of the Henry Street Settlement in New York City. To be clear, I'm here today to

speak about our partnership with Credit Suisse and the corporate character and behaviors that are reflected in that partnership which is well over 20 years old.

I want to thank the Department of Labor for the opportunity to testify in support of Credit Suisse's QPAM exemption hearing, and in order to share those facts, I've prepared a brief statement that, if I may, I'll just read it directly so that I can be concise.

Based on the lower east side of Manhattan, Henry Street Settlement is a venerable institution having served New Yorkers' needs since our founding in 1893. Our programs are offered in four areas -- health and wellness, education and employment, shelter and transitional housing, and the arts -- to create a holistic network of support services that benefit individuals and families living in poverty. Last year we reached over 60,000 people across 17 program sites for the 25 local public schools. Quite simply, our work would not be possible without strong support from a range of key partners and stakeholders, including private foundations, government, corporations, individuals, volunteers, and the public.

For close to three decades, Henry Street Settlement has been the beneficiary of an

extraordinary relationship with Credit Suisse. Most importantly, Credit Suisse has become a model for other corporate partners as a direct result of their exemplary commitment, dedication, and sense of responsibility reflected in the partnership at all levels.

What makes our partnership with Credit Suisse unique is the breadth, depth, and consistency of their support at all levels. They have provided governance in the form of a senior representative that sat on our board for almost 15 years. They have provided technical support and assistance, advising us on key issues, and they've also helped us create an outstanding volunteer program. In fact, their volunteer support has made them the largest corporate volunteer partner in the history of our organization. Finally, they've been a consistent funder of our volunteer programs and have provided ongoing critical general operating support as well.

With Credit Suisse's support, we have been able to expand our volunteer program significantly. Over the past three years a total of 902 Credit Suisse volunteers contributed over 3,700 hours of service. In addition, this past fiscal year they added 310 children of Credit Suisse employees who provided

additional support during Take Your Child to Work Day. These volunteers have offered a broad range of services to our agency, all carried out with detailed planning, coordination, implementation, and thoughtful measurement and reflection of the results.

Some of the highlights of the past year include a summer carnival, job readiness workshops, academic and recreational workshops for back to school programs, a home for the holidays party where they've come to decorate our homeless shelters, Take Your Child to Work Day, and numerous gardening, painting, construction projects which help to maintain our facilities.

We've seen directly Credit Suisse's volunteer involvement goes beyond the actual hours they put in as the impact and benefit for our clients has exponentially increased by their involvement. Beyond providing their own staff as volunteers, Credit Suisse has been the lead partner in helping us develop our volunteer infrastructure for our large multifaceted agency, sharing expertise, technical assistance, and guidance. Their foundation has been providing critical support to help our agency develop a fully operational department. Volunteers play an invaluable role at Henry Street each year, utilizing

over 1,500 volunteers annually to support our program staff, revitalize our facilities, and help us provide direct services to those in need.

Thank you again for this opportunity to testify. The clients served by Henry Street and the entire organization has benefitted from our unique longstanding relationship with Credit Suisse, and in that regard they are a model corporate partner that we value very greatly. So I'm pleased to be here and I'm happy to answer any questions about information I've shared or otherwise.

MR. HAUSER: I have no questions.

MS. BORZI: I don't either except to acknowledge the great work that your organization does. I'm very familiar with it.

MR. GARZA: Thank you very much. We really appreciate that. Thank you.

MR. HAUSER: Thank you.

And our final witness of the day possibly, Denise Durham Williams.

MS. WILLIAMS: I hope I'm not the closing.

(Laughter.)

MR. HAUSER: There are special obligations that go with that.

(Laughter.)



MS. WILLIAMS: First, I'd like to thank the U.S. Department of Labor for the opportunity to participate in today's hearing and share my organization's experience and partnership with Credit Suisse.

Good afternoon. I'm Denise Durham Williams, the Executive Director of Student Sponsor Partners. Student Sponsor Partners is a not-for-profit founded in 1986 for the purpose of addressing the high school dropout rate in New York City by providing low-income, at-risk, average or below average students the opportunity to attain a quality high school education by attending parochial schools and live up to their full potential.

We at Student Sponsor Partners believe that a quality education offers our nation's youth the necessity and a tool kit to maximize their potential, pursue their dreams, and grow into responsible, independent adults and future leaders. The necessity of education is heightened for those at-risk children who may not have the benefit of a stable family life, adequate financial means, and the access to enriching community organizations. Therefore, improving the educational experience and increasing the high school graduation rate is one of the most important

challenges and opportunities that our nations face.

For 28 years, Student Sponsor Partners has provided an innovative and successful formula to improve the quality of education and improve New York City's high school graduation rate. Our model is fairly simple. We pair each student with a sponsor or sponsors who offer financial tuition support and provide a mentor who provide one-to-one mentoring for a student during their four years in high school.

For over 18 years, Student Sponsor Partners has worked closely with Credit Suisse and considered them a key and committed and compassionate partner. Given all of their support, Student Sponsor Partners' model has been sustainable and it works.

We are proud of our success rate of achieving a high school graduation of 85 percent compared to New York City's graduation rate that can range from anywhere from 50 to 65 percent depending on the school district. Seven thousand at-risk high school students have graduated from our program in New York City, with a growing percentage of our high school graduates being accepted in college. Ninety percent of Student Sponsor Partners' class of 2014, the graduating class of over 400, was accepted into college. The majority of these schools were being

four-year colleges and universities for low-income at-risk kids.

Through our partnership together with Credit Suisse we have and continue to end the cycle of poverty through education and empowering our at-risk, low-income youth to reach their full potential. But what's truly unique about Credit Suisse is their commitment to the success of Student Sponsor Partners fulfilling their mission.

The depth of our relationship is beyond the financial support that tends to be associated with corporate and community partnerships. The depth of our relationship is grounded with time, sincerity, genuine interest by the Credit Suisse employees and senior management. They are truly dedicated to my organization and really make a difference in the lives of our students and offer key leadership support to the organization and to my team. I'd like to take a few minutes to share with you examples of this sincere support.

For over 18 years, 600 employees on their own and volunteer have sponsored hundreds of my students and provided \$5.4 million in tuition support. That's their personal money. Over 10 years Credit Suisse employees have served as loyal and value-added

mentors, again supporting Student Sponsor's unique model. We actually consider this the secret source of our success. Our records reflect that over 300 employees have served as mentors in New York volunteering over 14,000 hours.

I speak from experience as a past national director of CitiBank's community relations and leading one of the largest financial services community relations department. Those numbers of volunteerism is very impressive.

Credit Suisse's employee support goes even further when Student Sponsor Partners was selected as Credit Suisse's holiday charity initiative in 2013. During this initiative alone the employees, not prompted by anyone but themselves, raised \$174,000 plus another \$25,000 in prizes. This was a matching gift program and so together based on that we were able to raise an additional \$200,000. This enabled my organization to focus on increasing our prep and readiness program for hundreds of our students as well as offer four-year scholarships to 10 new students.

Have you heard the notion let's not just talk the talk but walk the walk? Well, as I look at the commitment from the top of the house at Credit Suisse senior management, they have been unbelievably

generous with their resources and time, clearly reflecting their belief in Student Sponsor Partners.

We have been blessed to have two key Credit Suisse managing directors currently on our board. Collectively they have dedicated 16 years of board volunteer service to the organization, but much more, they personally sponsored 28 students over the last two decades and have been dedicated mentors.

Our past board chair and the prior head of Credit Suisse Equities Department has provided hundreds of hours offering leadership towards growing this organization, recruiting hundreds of sponsors internally and externally, and sponsoring himself 38 students over 26 years, and tirelessly and unselfishly contribute to the longevity and the continued success to Student Sponsor Partners.

The successful and meaningful story of Credit Suisse partnership with Student Sponsor Partners reaches the top of the house. This past April Student Sponsor Partners honored Credit Suisse for our longstanding and honorable relationship. It is unusual but incredibly meaningful when a CEO attends and accepts such an award and attends an event. We were honored and humbled that Mr. Brady Dougan, Credit Suisse's CEO, accepted the award on

behalf of Credit Suisse.

I was just hired two days before this event and therefore was personally blown away he was even there, but what really took my breath away was his true sincerity about the value of this partnership because he is also a sponsor, and over the past five years he has personally sponsored 35 of our students. This is a CEO who expressed firsthand why the partnership with Student Sponsor Partners made sense not just to Credit Suisse but to the kids we are serving.

Each year we support about 1,200 kids with scholarships and mentoring support. If it was not for SSP, if it was not for the partnership with Credit Suisse, these kids would not have the ability to get a quality education, reach their high potential, go to college, and maybe have a career in finance and move their family out of poverty.

At the same event of 700 people where we gathered we heard a story, a story about one of my alumni, which also turned out to be a rising star at Credit Suisse. This was a gentleman who grew up poor in the projects in the Bronx, a single mom. I talked to him personally and oftentimes they were on the verge of being homeless. But through the support of

Credit Suisse's general funding he was able to attend an SSP school. He graduated and successfully graduated from Wellesley University, and for the past 10 years this alumni has built a very, very successful career in the capital markets at Credit Suisse and now is working in the London office. In a few weeks we'll be announcing that he will be co-chairing Student Sponsor Partnership's Leadership Advisory Council. This is just one of many successful shared outcomes from our generation of our partnership with Credit Suisse.

In closing, I have been in the philanthropy world in many leadership roles for over 14 years. I am here to share that from my experiences a community organization, a not-for-profit is as strong and successful given their partner support, friendship, and commitment to fulfilling the not-for-profit's mission. We at Student Sponsor Partners are proud to have Credit Suisse as one of our loyal and committed partners. Our success is truly their success. Their dedication to Student Sponsor Partners and to our students is truly making a difference where it matters.

Thank you very much for your time.

MS. BORZI: I just want to thank you, Ms.

Williams, and also Mr. Garza because the important work that both of your organizations do are critical to the upkeep and success of our communities, and without organizations like yours and all of the committed volunteers and benefactors, government, we need private partnerships, and the work that you do is very important. I want to thank you so much for your service.

MR. GARZA: Thank you.

MS. WILLIAMS: Thank you very much.

MR. HAUSER: Thank you. Thank you all for attending.

MS. BORZI: May I just say one more thing?

I want to especially thank Erin for his hard work. As we have heard today, this is a complicated set of issues, and he has been our lead staff person on this project, and I really want to personally thank him both here and within our organization for the hard work and dedication, so thank you very much.

(Applause.)

MR. HAUSER: Well, as I said at the start, we'll keep the record open until January 26 if you have supplemental comments or submissions, and then we'll make decisions. Thank you very much.

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REPORTER'S CERTIFICATE

DOCKET NO.: None  
CASE TITLE: Proposed Individual Exemption  
Involving Credit Suisse AG  
HEARING DATE: January 15, 2015  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Department of Labor, Employee Benefits Security Administration.

Date: January 15, 2015

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