

**BY: Federal eRulemaking Portal:** ([www.regulations.gov](http://www.regulations.gov))

**DATE:** October 10, 2022

**TO:** Mr. Erin Hesse  
Office of Exemption Determinations  
Room N-5700  
Employee Benefits Security Administration U.S. Department of Labor, 200 Constitution  
Avenue N.W., Washington, DC 20210

Telephone: (202)-693-8546.

**RE: Request to Testify: Docket ID number EBSA-2022-0008**

Regards. I understand that the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, is seeking comments on the Department's proposed Amendments to its current "Qualified Pension Asset Manager" regulations. (See proposed QPAM Amendment of July 27, 2022, Docket ID EBSA-2022-000. See <https://www.regulations.gov/document/EBSA-2022-0008-0001>). DOL has also extended the initial comment period to October 11, 2022 (11:59 pm Eastern).

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

I have already added my name to a Joint Letter that is also being signed and submitted this week by Mr. John Christensen, Mr. Andreas Frank, Dr. Paul Morjanoff, and Mr. Ralph Nader. That letter will be submitted by your deadline. Some signatories may also submit their own separate individual comments. Give the fact that we are not part of any "group," and all have deep expertise and rather different perspectives on this subject, **I would also like to request at last 10 minutes of my own to testify individually at the November 17, 2022 hearing.**

## **MY BACKGROUND**

I am a New York-based investigative journalist, attorney, economist, and corporate strategist who is now a Global Justice Fellow and a Lecturer on the faculty of Yale University. I have a long history of conducting pioneering investigations into financial misconduct of all kinds by major global financial institutions, including Credit Suisse. On the corporate side, I also have a long history of working with leading global enterprises like IBM/Lotus, ATT/Bell Labs, Daikin, TransAlta, CEMEX, and the Swedish Power Board on strategy issues.

In 2014-15, I was one of the lead organizers, along with Mr. Nader, Mr. Frank, and Dr. Morjanoff, of the hearings that DOL held on January 15, 2015 with respect to the QPAM waiver for Credit Suisse. Sadly, we were unsuccessful. But we appreciated the opportunity to be heard.

## **CREDIT SUISSE IN PARTICULAR**

That was hardly my first encounter with Credit Suisse. In the 1980s, while Director of Economic Research at McKinsey & Co., I unearthed the fact that major US banks like Citibank and JP Morgan Chase had established global private banking departments that were aggressively recruiting flight capital from the very same developing countries they were lending to -- indeed, in some cases helping to establish and manage offshore haven accounts for the very same public officials they were lending to.

My first encounter with Credit Suisse came in 1989, in the course of an investigation of the Philippines Central Bank. On a visit to Manila, I determined that several of Credit Suisse's lineal predecessors in Switzerland had received \$billions in proceeds diverted from foreign loans to the Central Bank. Remarkably, the proceeds had been essentially stolen and forwarded on to these Swiss banks by the Marcos dictatorship and its cronies, before the regime lost power in February 1986. The amounts involved were staggering -- at least \$7 billion of syndicated foreign loans, a quarter of the Philippines' entire foreign debt at that point. I was also able to establish that senior bankers and economists at leading New York banks -- like Manufacturers Hanover, the Central Bank's lead syndicator, which was later merged into Chemical Bank and acquired by JPMorganChase -- had full knowledge. But the post-Marcos governments were either too weak, under too much pressure from the banks, or too corrupt, or all three, to resist. Ironically, they were unwilling to assert the traditional "odious debt" doctrine, a legal rule that had actually first been invoked by the US Government in the late 1890s with respect to Cuba's fraudulent debt. So the Philippines Government continues to service these Central Bank loans to this day; Credit Suisse and other Swiss banks and the Marcos cronies just made off with the money; and "Bong Bong" Marcos has just recently been elected President of the Philippines.

This and other similar investigations started me off on more than four decades of research into offshore banking, tax havens, and financial crime. Along the way, I have travelled to more than 70 developing countries, audited the foreign debts of at least a dozen countries in detail, produced the first estimates of the volume of offshore financial "flight wealth" that escapes taxation and regulation; and written numerous books and articles about the global haven industry and the role that leading banks play in it. I served as a Senior Advisor to the Tax Justice Network and a Board member of TJN US from 2005 to 2022; a Board member of Amnesty US; an advisor to Iceland's Commission on the Panama Papers and Offshore Wealth; and most recently, a leading collaborator on OCCRP's 2021-22 stunning "Suisse-Secrets" investigation.

## MY FOCUS

I will focus my ten minutes of testimony on three topics where I have special expertise:

(1) **The potential value of having a complete public data base for existing and applicant QPAMs, plus regular estimates of their AUMs.** Here I'll offer my expertise with respect to an analogy that I know well: the IRS audit selection process. That process presumes a complete list of taxpayers and measures of relative activity (for the IRS, reported incomes and expenses). Armed with just that basic information, the IRS has long been able to conduct sophisticated stratified audits and taxpayer surveys -- which, in turn, had led to more predictive enforcement measures. Over time, this "TCMP" process has proved to be a very low-cost way of increasing taxpayer compliance. This has important implications for the proposed QPAM Amendment,

**(2) QPAM's need for more rigorous enforcement and more predictable penalties, in order to curb FI misbehavior.** I've published several extensive studies on this subject.

**(3) The high likelihood that many more FI QPAMs than just Credit Suisse will turn out to be worthy of investigation and perhaps sanction, if the proposed DOL QPAM Amendment is adopted.** I will consider several strategies to minimize the burden of handling this additional enforcement activity. These include, for example, conducting open-ended interviews with QPAM industry members to identify "best" and "worst" practices; developing predictive indicators of malfeasance, like country of incorporation; and encouraging industry members to become "cooperators" and recognized "best practice" leaders.

**SUMMARY**

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

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

Respectfully submitted,



10/10/2022

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(NY-based investigative writer, economist, and lawyer; Global Justice Fellow and Lecturer, Yale University; member, NY Bar, 1979-; former Senior Advisor, Tax Justice Network; former Director of Econ Research, McKinsey & Co.; helped organize the 2015 DOL CS hearings, the Panama Papers et al investigations, and the 2022 OCCRP Credit Suisse whistle-blower investigation.)

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