DOL Post-Hearing Joint Comment – Short Summary

BY: Federal eRulemaking Portal: (*www.regulations.gov*)
DATE: January 6, 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.

This is a Short Summary of Our Joint Supplemental Comments on Docket ID number EBSA–2022–0008 submitted today by: Mr. James S. Henry, Esq., Mr. Ralph Nader, Dr. Paul M. Morjanoff, Mr. Andreas Frank and Mr. John Christensen. Refer to the full document with attachments for more details.

Compliance & Regulatory Issues

Under ERISA, Section 406(a) exemptions can only be granted by the DOL. They cannot be granted by FI's (Financial Institutions) to exempt themselves, much less so anonymously. This approximates the current practice which is simply illegal. It puts FI's at risk of litigation and penalties.

The DOL, as the responsible regulatory authority, does not know which or how many FI's are pretending to be exempt, having unilaterally appropriated exemptions. The DOL proposal for QPAM registration is the ONLY legally compliant proposal submitted.

QPAM Registration could be combined with an enforceable undertaking to indemnify clients for losses incurred if QPAM privileges are lost. A standard clause could later be included in all new / renewed contracts to explicitly state this.

Divestment by / of Barred QPAM's

The DOL has asked for a 1-year divesting period, calculated from the *date of sentencing*. This translates to between 18 and 48 months from when the offending FI reasonably knew it would be liable. This is ample.

Loss of QPAM status is rare. With one recent case, Credit Suisse, the bank is simply selling its asset management business.

Target date funds (TDFs) and some other legitimate financial products may "hang over" the statutory deadline. Perhaps they could be sold on. This and other minor details warrant further examination, but not to delay the substantial proposals.

One proposal was that FI's should be left to choose which QPAM's were unsuitable and voluntarily divest. History alone shows this could never be embraced. Following Credit Suisse's US felony criminal conviction, BlackRock, the world's largest asset manager ($10 trillion) announced that CS's criminal status would have no impact on its relationship. BlackRock was then Credit Suisse's biggest counterparty. It is now a major shareholder in the bank, making it a risk for AML and conflict of interest.

AML and Parties in Interest

A broad claim was made that "parties in interest are too numerous to be listed" even though they are the basis of the Section 406(a) exemption and AML compliance. If zero AML compliance was currently in effect, then it might be perceived as an arduous task.

The DOL will have to decide on a program, e.g. 90% in 12 months, 98% in 2 years and 99% in 3 years. 0% transparency is not statutorily permitted – either under ERISA or AML.

Foreign Convictions, NPA's, DPA's or Criminal Informations

The attached history of Credit Suisse[1] following its 1999 criminal conviction proves the necessity of allowing the DOL to bar QPAM's in such cases. Crime has become globalized and sophisticated, making "USA only convictions" an anachronism.

The attached Criminal Information[2] for Danske Bank's $200+ billion money laundering scheme, shows that extreme deceit and industrial scale lying goes on behind "respectable business names". Danske's deceit was astonishingly like that of other criminal banks, like Credit Suisse. It sets a standard for compliance to be credible. None of the submissions opposing the DOL's proposals came remotely close to meeting that standard.

Danske was only penalized around $2 billion or 1%. The low cost of crime is an incentive to expand crime and force honest FI's out of business or engage in illegal conduct. Most objections to the DOL's proposals would have the effect of unacceptably reducing the cost of crime.

Relevant NPA's or DPA's refer to behaviour that was so illegal that a full prosecution would likely have forced the offender out of business. The DOL has stated that there is a substantial threshold of credible entrenched egregious behaviour required before losing QPAM status. The suggestion that foreign actors could cook up a fake but credible conviction is fanciful.

The DOL is trying to bring QPAM's into compliance and set a level playing field to protect honest FI's.

Dr. Paul Morjanoff
Financial Recovery and Consulting Services Pty Ltd

[1] Both attachments are with the full document. They have not been repeated with the short summary.

[2] Both attachments are with the full document. They have not been repeated with the short summary.