

RON WYDEN, OREGON, CHAIRMAN

DEBBIE STABENOW, MICHIGAN
MARIA CANTWELL, WASHINGTON
ROBERT MENENDEZ, NEW JERSEY
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
SHERROD BROWN, OHIO
MICHAEL F. BENNET, COLORADO
ROBERT P. CASEY, JR., PENNSYLVANIA
MARK R. WARNER, VIRGINIA
SHELDON WHITEHOUSE, RHODE ISLAND
MAGGIE HASSAN, NEW HAMPSHIRE
CATHERINE CORTEZ MASTO, NEVADA
ELIZABETH WARREN, MASSACHUSETTS

MIKE CRAPO, IDAHO
CHUCK GRASSLEY, IOWA
JOHN CORNYN, TEXAS
JOHN THUNE, SOUTH DAKOTA
RICHARD BURR, NORTH CAROLINA
ROB PORTMAN, OHIO
PATRICK J. TOOMEY, PENNSYLVANIA
TIM SCOTT, SOUTH CAROLINA
BILL CASSIDY, LOUISIANA
JAMES LANKFORD, OKLAHOMA
STEVE DAINES, MONTANA
TODD YOUNG, INDIANA
BEN SASSE, NEBRASKA
JOHN BARRASSO, WYOMING

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

April 27, 2021

Mr. Thomas Gottstein
Chief Executive Office
Credit Suisse Group AG
Paradeplatz 8
8070 Zurich

Dear Mr. Gottstein:

I write to request information from Credit Suisse Group AG (Credit Suisse) regarding the plea agreement it signed with the U.S. Department of Justice (DOJ) following its participation in a conspiracy to assist thousands of wealthy U.S. citizens in hiding assets in offshore accounts in order to evade U.S. taxes.¹ I also seek information related to statements regarding this matter made by Credit Suisse executives in sworn testimony before members of the United States Senate.²

As you are aware, in May of 2014 Credit Suisse entered into a plea agreement with the DOJ. As part of the plea agreement, Credit Suisse admitted that for decades prior to and through 2009 it “operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts and concealing their offshore assets and income” from the Internal Revenue Service (IRS).³ As part of this plea agreement, Credit Suisse agreed to pay a fine of approximately \$1.3 billion, the lowest end of the Guideline Fine Range, in exchange for its full cooperation with the DOJ and a commitment to “promptly disclose all evidence and information described in Sections II.D.1. and II.D.2 of the *Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks* and in the format requested by the United States.”⁴

¹ *Plea Agreement, United States v. Credit Suisse AG*, No. 1:14cr188 (E.D. Va. Sep. 29, 2014); *Statement of Facts*, 2, *United States v. Credit Suisse AG*, No. 1:14cr188 (E.D. Va. Sep. 29, 2014).

² S. Hrg. 113-397, *Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts*, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Feb. 26, 2014.

³ *Statement of Facts*, 2-3, *United States v. Credit Suisse AG*, No. 1:14cr188 (E.D. Va. Sep. 29, 2014).

⁴ *Plea Agreement*, 3, 5, *United States v. Credit Suisse AG*, No. 1:14cr188 (E.D. Va. Sep. 29, 2014); *Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks*, Department of Justice, Aug. 29, 2013, [<https://www.justice.gov/tax/file/631356/download>].

Credit Suisse further agreed that it would “close any and all accounts of recalcitrant account holders [. . . , would] implement procedures to prevent its employees from assisting recalcitrant account holders [from engaging] in acts of further concealment in connection with closing any account or transferring any funds; and [would] not open any U.S. Related Accounts [. . .] except on conditions that ensure that the account [would] be declared to the United States and [would] be subject to disclosure by Credit Suisse AG.”⁵ The plea agreement is expressly contingent on Credit Suisse’s performance of all of its material obligations as set forth in the plea agreement, and specifies that if Credit Suisse should fail to fully perform its obligations, the “agreement not to further prosecute shall be null and void.”⁶

Public reports and federal court documents raise important questions as to whether Credit Suisse has fully complied with its plea agreement, including the bank’s failure to disclose over \$200 million in undeclared assets it held in offshore accounts for U.S. client Dan Horsky. In 2016, Mr. Horsky pled guilty to conspiring to defraud the United States and to submitting false documents to the IRS, and, in 2017, he was sentenced to seven months in prison.⁷ Mr. Horsky’s sentence was based, in part, on a filing by the DOJ that detailed how employees of Credit Suisse (identified in the filing as “International Bank”) helped Mr. Horsky go “deep[] into the shadows to conceal his ownership of his foreign financial accounts from U.S. authorities.”⁸

Public reports also suggest that a whistleblower informed the DOJ of Mr. Horsky’s undisclosed assets in July 2014 and also alleged that Credit Suisse had continued to conceal assets held by Mr. Horsky and other U.S. account holders after May 2014.⁹ In addition, the case against Mr. Horsky reportedly led to a separate investigation of Credit Suisse by the DOJ to assess whether Credit Suisse’s failure to disclose Mr. Horsky’s accounts was willful or could be attributed to a lapse in controls. It appears Mr. Horsky cooperated with this investigation.¹⁰

In light of these reports, I seek to verify the accuracy of statements made by Credit Suisse executives in sworn testimony before the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Governmental Affairs. In February 2014, Credit Suisse CEO Brady Dougan testified that “we feel the combination of the steps we have taken, with the waiver, with the full implementation of the projects that we have laid out, with FATCA,

⁵ *Plea Agreement*, 6, *United States v. Credit Suisse AG*, No. 1:14cr188 (E.D. Va. Sep. 29, 2014).

⁶ *Id.* at 9.

⁷ *Former University Business Professor sentenced to Prison for Hiding over \$220 Million in Offshore Banks*, Department of Justice, Feb. 10 2017, [<https://www.justice.gov/opa/pr/former-university-business-professor-sentenced-prison-hiding-over-220-million-offshore-banks>].

⁸ *Position of the United States With Respect to Sentencing*, 7, *United States v. Horsky*, No. 1:16cr224 (E.D. Va. Feb 10, 2017).

⁹ *Whistle-Blower Says Credit Suisse Helped Clients Skip Taxes After Promising to Stop*, NEW YORK TIMES, Mar. 13, 2021, [<https://www.nytimes.com/2021/03/13/business/whistle-blower-credit-suisse-taxes.html>] (“In the interview, Mr. Neiman, the whistle-blower’s lawyer, said that in July 2014, after the plea deal was signed and as Credit Suisse awaited its final sentencing, he told officials at the tax division of the Justice Department and federal prosecutors who had worked on the case that his client had information that the bank had continued to cloak money held by some U.S. account holders. He gave them one name in particular — Dan Horsky, the retired business professor, who lived in Rochester, N.Y.”).

¹⁰ *Credit Suisse Probe Opens Old Wounds*, WALL STREET JOURNAL, Feb. 23, 2017, [<https://www.wsj.com/articles/credit-suisse-under-investigation-for-aiding-tax-evasion-at-israeli-unit-1487807226>].

will allow us to be 100 percent compliant with those requirements around the U.S. taxpayer.”¹¹ Credit Suisse General Counsel Romeo Cerutti similarly asserted that “we have put all the FATCA requirements in place, so we are really looking at whether someone is a U.S. person from a tax perspective.”¹² Mr. Dougan reiterated, “we will be completely compliant going forward with FATCA.”¹³ The Foreign Account Tax Compliance Act¹⁴ (FATCA) generally requires foreign financial institutions to determine whether accounts they maintain belong to U.S. persons and annually report to the IRS detailed information about accounts held by such U.S. persons, subject to certain withholding requirements and penalties for noncompliance.¹⁵

In order to better understand Credit Suisse’s compliance with its plea agreement and the circumstances surrounding the disclosure of Mr. Horsky’s hidden offshore assets to the U.S. government, please provide answers to following:

1. When did Credit Suisse first disclose Mr. Horsky’s accounts to the DOJ, IRS or any other element of the U.S. government? What prompted this disclosure and which employees initiated and approved the disclosure? Please provide copies of all communications between and among Credit Suisse employees related to this matter, including when Credit Suisse first became aware of the existence of Mr. Horsky’s undeclared accounts.
 - a. If Credit Suisse did not report Mr. Horsky’s accounts to the DOJ, IRS or any other element of the U.S. government prior to July 2014, please explain why. Is this attributable to a lapse in internal controls in which Credit Suisse failed to identify Mr. Horsky as the beneficial owner of these accounts, or a willful decision not to report the existence of these accounts to U.S. government entities?
 - b. Please also provide a detailed description of any due diligence followed by Credit Suisse to determine whether its accounts were held by U.S. persons, including specifically as it relates to Mr. Horsky. Were these screening procedures able to identify the existence of Mr. Horsky’s accounts?
2. When was Credit Suisse first contacted by the DOJ and IRS regarding the \$200 million in undeclared assets held by Mr. Horsky in Credit Suisse accounts?
3. Please provide a detailed timeline of the efforts undertaken by Credit Suisse to comply with Sections II.D.1. and II.D.2 of the *Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks* and the provision of its plea agreement specifying that Credit Suisse would “close any and all accounts of recalcitrant account holders [. . . , would] implement procedures to prevent its employees from assisting recalcitrant account holders [from engaging] in acts of further concealment in connection with closing any account or transferring any funds; and [would] not open any U.S. Related Accounts [. . .]

¹¹ S. Hrg. 113–397, *Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts*, 35, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Feb. 26, 2014.

¹² *Id.* at 26.

¹³ *Id.* at 45–46.

¹⁴ Pub. L. No. 111-147, 124 Stat. 97-117.

¹⁵ I.R.C. §1471.

except on conditions that ensure that the account [would] be declared to the United States and [would] be subject to disclosure by Credit Suisse AG.”

- a. For each year since 2014, how many accounts at Credit Suisse held by U.S. clients have been determined to be in non-compliance with the terms of the non-prosecution agreement? How many of those accounts were closed? How many of those accounts were referred to DOJ?
 - b. If any of these efforts identified Mr. Horsky’s accounts as being held by a U.S. person, please specify when and how this occurred. If these efforts failed to identify Mr. Horsky’s accounts as being held by a U.S. person, please explain why.
4. In his February 2014 testimony, Credit Suisse CEO Brady Dougan testified that “[a]t the end of 2008, we had about 22,000 accounts [for U.S. customers], and the total—I think the total amount of assets that has been referred to by the Subcommittee is about \$12 billion.”¹⁶ Were Mr. Horsky’s accounts identified as part of this review cited by Mr. Dougan in his Senate testimony?
 5. According to the DOJ, in 2008, Credit Suisse employees (which the DOJ refers to as “International Bank employees” in the cited filing) assisted Mr. Horsky as he “put into motion an elaborate plan” to conceal approximately \$80 million in investment proceeds from U.S. authorities.¹⁷ Did the significant amount of money in Mr. Horsky’s Credit Suisse accounts and the apparent extensive involvement of Credit Suisse employees in the management of his accounts trigger any enhanced due diligence to determine whether or not Mr. Horsky was a U.S. person? If so, please describe that due diligence in detail.

Please contact Committee staff no later than May 11, 2021 with responses to these questions and to schedule a staff briefing on this matter. If you have any questions you may contact my Senate Finance Committee oversight staff at 202-224-4515. Thank you for your prompt attention to this matter.

Sincerely,



Ron Wyden
Chairman
Committee on Finance

¹⁶ S. Hrg. 113–397, *Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts*, 14, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Feb. 26, 2014.

¹⁷ *Position of the United States With Respect to Sentencing*, 3, *United States v. Horsky*, No. 1:16cr224 (E.D. Va. Feb 10, 2017).