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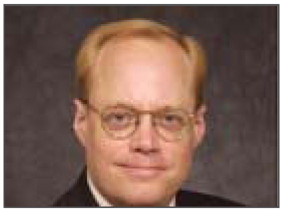

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Credit Suisse: Guilty, $2.6 Billion Fine, But Avoids Death in U.S. -- UBS Was Luckier

Comment Now

Credit Suisse—not just a subsidiary but the parent—has plead guilty of conspiring to help Americans evade taxes. Plus, Switzerland's second-largest bank more than *triples* the $780 million fine UBS paid over similar charges. But while UBS got off with a deferred prosecution agreement—criminal charges against it were quietly dropped in 2010—Switzerland's Number 2 bank will carry a felony conviction.

Some heads will surely roll, but perhaps not CEO Brady Dougan and Chairman Urs Rohner. UBS changed top management after its deal, and this one is far bigger and involves a guilty plea to criminal charges. But whatever the cost, the key benefit for Credit Suisse is getting the inevitable deal behind it and still being allowed to operate in the U.S.

Even so, pleading guilty to a crime carries a taint, so there is speculation over whether the bank's ratings or business will suffer. Yet in Switzerland, where bank secrecy used to prevail, concepts of what violates Swiss law have metamorphosed in recent years. The IRS took on Swiss banking and won. And that is that. The important thing seems to be to move on.

The IRS wins big. Plus, the IRS earns dividends in the form of account holders applying for amnesty. And for the IRS, it isn't just Switzerland, but everywhere now that FATCA has expanded U.S. tentacles almost worldwide. Attorney General Eric Holder wins big too, getting the benefit of a guilty plea. He can't be accused of letting another big bank off the hook for being too big to fail.

The U.S. Treasury and New York State both make out well. Credit Suisse will pay nearly $1.8 billion to the Justice Department, $100 to the Federal Reserve, and a whopping $715 million to New York's Department of Financial Services. The latter is a particularly big winner, particularly considering that it was the newest entrant in the hunt for Credit Suisse. It only recently queried the bank's statements to New York authorities.

But New York regulators have some authority to revoke licenses in the wake of a criminal conviction. Having the clout to revoke a bank's license to operate in New York is a big stick. It could give New York's Department of Financial Services and chief Benjamin Lawsky even more power in the future.

Under the deal, Credit Suisse's parent must plead guilty to a conspiracy charge, admitting that it fostered U.S. tax evasion. That may sound similar to what UBS said, but for UBS it was in a deferred prosecution agreement, not a guilty plea. UBS also turned over accounts and names. It seems hard to imagine that Credit Suisse will not be forced to as well.

The UBS deal launched a raft of IRS disclosure initiatives that netted the U.S. billions in taxes and penalties. But a parade of sheepish Swiss banks took a deal that means full disclosure of American accounts and tiers of fines depending on how aggressively the banks behaved. The deal was not offered to the 14 Swiss banks under U.S. investigation, but 106 Swiss institutions took the IRS deal by the Dec. 31, 2013, deadline.

The experience of UBS, Wegelin and Bank Frey surely meant resistance would be expensive, futile or both. For Credit Suisse and other ineligible banks, though, the pressure was mounting. The U.S. indicted current and former Credit Suisse bankers, and Credit Suisse had already struck a $196.5 million deal with the SEC over cross-border brokerage and investment services to U.S. clients. There too, Credit Suisse admitted wrongdoing.

Credit Suisse recently set aside 425 million francs ($476 million) to settle the Justice Department probe, in addition to 295 million francs for U.S. tax matters in 2011. But as it's turned out, much bigger dollars will be sent stateside.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.