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Credit Suisse U.S. Clients in Limbo as Probe Inches Ahead

By David Voreacos - Mar 6, 2014

Thousands of [Credit Suisse Group AG \(CSGN\)](#)'s U.S. clients still don't know whether tax authorities will learn their identities as prosecutors work to conclude a three-year probe of how the bank helped them evade taxes.

U.S. senators last week faulted the Justice Department for securing names for only 238 of 22,000 Americans with Credit Suisse accounts, saying the bank helped them hide as much as \$10 billion from the Internal Revenue Service. The pressure of a subcommittee report and hearings will force prosecutors to act more aggressively as they negotiate a settlement with Credit Suisse to end the probe and get more names, said Jeffrey Neiman, a former federal prosecutor.

"These hearings are going to give some sort of momentum to the Justice Department," said Neiman, now at Marcus Neiman Rashbaum LLP in Fort Lauderdale, [Florida](#). "Criminal cases are all about momentum, where one event leads to another, which leads to culmination."

Credit Suisse is the largest of 14 Swiss banks under criminal investigation for helping Americans cheat the IRS. At the Feb. 26 Senate hearing, Chief Executive Officer Brady Dougan apologized, saying a small group of Swiss-based bankers appear to have broken U.S. law and fooled top managers. The bank began slashing its U.S. client list in 2008, and the 3,500 remaining comply with U.S. tax laws, General Counsel Romeo Cerutti said.

Senator Carl Levin, the Michigan Democrat who led the hearing, said that wasn't enough. Credit Suisse, the largest Swiss bank after [UBS AG \(UBSN\)](#), can't move forward until it helps the Justice Department identify account holders still shielded by Swiss bank secrecy, he said.

Bank Accountability

"If you're serious about the future, and all of us want to talk about the future, you damn well better have accountability for the past," Levin told reporters after the hearing.

Levin, chairman of the Senate Permanent Subcommittee on Investigations, criticized the Justice Department for failing to enforce grand jury subpoenas or file civil court actions known as John Doe summonses to identify account holders. He said prosecutors relied too heavily on requesting names under a U.S.- Swiss tax treaty, which he said is a “highly restrictive, maddeningly slow and unproductive process.”

Swiss law makes it a crime to release account holders’ names, except in treaty requests involving suspected tax fraud rather than evasion. Levin repeatedly criticized Deputy Attorney General James Cole for deferring to Swiss bank secrecy instead of enforcing U.S. laws more vigorously.

Crackdown Offshore

Cole pointed to successes in a five-year crackdown on offshore tax evasion, including the 43,000 Americans who told the IRS about offshore accounts and paid back taxes and penalties to avoid prosecution and the 106 Swiss banks seeking non-prosecution deals. Cole declined to answer the subcommittee’s questions about the criminal probe of Zurich-based Credit Suisse. Seven of its bankers were indicted in 2011, when prosecutors said the bank was a target of the probe.

Levin said an amendment to the U.S.-Swiss tax treaty, which has been blocked in the Senate, is intended to give Swiss regulators more authority to identify owners of accounts held after September 2009. The bank disclosure program would only reveal data for accounts held after August 2008 without naming customers. Both limitations hamper the ability of prosecutors to identify people who held accounts before 2008, Levin said.

Voluntary Disclosures

Bank customers driven by fear of prosecution have voluntarily disclosed their offshore accounts, said tax attorney Bryan Skarlatos. He said his firm, Kostelanetz & Fink LLP in New York, has helped 1,300 such clients since 2009.

“In large part, the Senate is focusing on last year’s problems,” said Skarlatos. “The overwhelming majority of people who hid their accounts at Credit Suisse and other places have made voluntary disclosures.”

Levin’s subcommittee detailed how Credit Suisse sent Swiss-based bankers to the U.S. to woo potential clients at golf tournaments and an annual Swiss ball. To cover their tracks, bankers delivered account statements they wouldn’t mail and advised clients to shred them. Clients came to a bank office at the Zurich airport so they could bypass a trip into town.

Dougan admitted to the panel that bankers worked with outside intermediaries to help U.S. clients set up offshore shell entities with money deposited at Credit Suisse in the names of the entities rather than the clients. Such conduct, Dougan said, was egregious. While two intermediaries are under U.S. indictment, prosecutors know of three others, Cerutti said. He said no one had been fired for such conduct at Credit Suisse.

UBS Lessons

In questioning U.S. tax prosecutors, Levin urged Cole to draw lessons from the case five years ago against UBS.

The U.S. asked a court in 2008 for authority to serve a John Doe summons seeking the identities of UBS account holders.

In February 2009, UBS avoided prosecution by paying \$780 million, admitting it fostered tax evasion, and handing over data on more than 250 accounts. A day after the deferred-prosecution agreement, the IRS filed a lawsuit to enforce the summons while also seeking the names of 52,000 UBS clients.

The Swiss government helped UBS defend the case before U.S. District Judge Alan Gold in Miami. Gold changed the direction of the litigation in July 2009 when he ordered the U.S. to disclose “how far it intends to proceed by way of request for enforcement, up through and including receivership and/or seizure of UBS’ assets within the United States” if the Swiss prevented the Zurich-based bank from complying.

Clinton, Banks

Within days, the U.S. and Swiss governments and UBS began settlement talks. Gold’s order spurred those negotiations, said Stuart Gibson, then the Justice Department attorney litigating the case. After Secretary of State Hillary Clinton stepped in, UBS and the Swiss agreed to hand over data on 4,450 accounts.

“The general perception was that there was a significant likelihood that the judge would order UBS to comply in full with the John Doe summons,” said Gibson, who now works as a consultant. “I believe that there were serious concerns about what the consequences would be to the bank if they lost.”

Such an option remains in the Credit Suisse case, Gibson said.

“It would seem that based on the evidence of Credit Suisse’s conduct cited in the committee report, there would be ample evidence to issue and enforce a John Doe summons,” he said.

Skarlatos said the Swiss disclosure program will lead to 106 banks producing information short of client names. Those banks will encourage clients to make disclosures themselves.

Leveraging Resources

“That’s a much bigger bang for the buck than issuing 106 John Doe summonses that have to be enforced in federal court,” Skarlatos said. “The Justice Department did a good job of leveraging its resources.”

[Marc Agnifilo](#), a former federal prosecutor who represents Swiss banks as well as a Swiss banker under indictment, said the Justice Department isn’t deploying all of its legal weapons now, even with the success of the UBS case.

“The prospect of the U.S. taking measures against UBS alone is different than the prospect of taking the same measures against many, if not all, Swiss banks handling U.S. accounts,” said Agnifilo of Brafman & Associates in New York. “It’s just too broadsided and the U.S. doesn’t want to do it.”

Prosecutors find it “impossible” to tell someone in Switzerland to disclose account data, he said.

“The DOJ is very aware that this is the current state of Swiss law, and they can’t direct Swiss citizens to violate the law of their country,” he said.

Charges Probable

The U.S. will probably file charges against Credit Suisse and suspend them in return for the bank paying penalties, admitting a statement of facts, and taking compliance measures, said Charles Rettig, a tax attorney.

“I believe they’ll pay far in excess of \$1 billion, perhaps as much as \$1.5 billion,” said Rettig, of Hochman, Salkin, Rettig Toscher & Perez PC in Beverly Hills, [California](#).

Rettig’s firm handled more than 50 voluntary disclosures involving Credit Suisse clients, he said. Two of his partners, Edward Robbins and Steven Toscher, said they think the price will be closer to the \$780 million paid by UBS.

The voluntary disclosure program for Swiss banks allows them to obtain non-prosecution

agreements if they pay graduated penalties of 20 percent to 50 percent of the value of undeclared U.S. assets.

“The Justice Department is going to want to use those figures as a starting point, and Credit Suisse wants to be well below those figures,” said Neiman, the ex-UBS prosecutor. “Maybe the manner in which names are produced, and the number of names that are produced, can be used to find that middle ground.”

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