Etikkrådet for Statens pensjonsfond utland
Postboks 8008 Dep
N-0030 Oslo

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Vedrørende Statens Pensjonsfond - Utlands investering i Credit Suisse

Anmodning om gjennomgang med tanke på uttrekk av fondets investeringer.

Tax Justice Network – Norge ønsker å anmode om uttrekk av Credit Suisse med bakgrunn i at selskapet over lang tid har vært et versting-selskap på skatteetikk. Credit Suisse er dømt for flere skatteunndragelsesforhold i enormt omfang over lengre tid. Selskapet har et mønster av gjentatte lovbrudd bak seg, noe vi mener sannsynliggjør at dette er en praksis som det er stor risiko for at vil opprettholdes eller gjentas i framtiden. Dette mener vi kvalifiserer for anbefalelse av utelukkelse basert på Etikkrådets kriterier.

Etikkrådets mandat til å anbefale uttrekk med begrunnelse i skatteunndragelser

Etikkrådet har etter det vi erfarer aldri tidligere anbefalt uttrekk på bakgrunn av skatteunndragelse og skatteetikk hos selskaper i Statens Pensjonsfond – Utlands portefølje.

Skatteunndragelse er likevel innenfor mandatet til Etikkrådet. I en artikkel fra 15.08.2014 uttalte Etikkrådets daværende leder Ola Mestad at skatteunndragelse falt under § 3. Kriterier for atferdsbasert observasjon og utelukkelse av selskaper, punkt f) «andre særlig grove brudd på grunnleggende etiske normer», og dermed kunne være tilstrekkelig begrunnelse for anbefaling om utelukkelse fra fondet fra Etikkrådet.

Det har i senere tid blitt etterspurt en sterkere bevissthet rundt etiske problemstillinger knyttet til skatt i SPU fra Stortinget. I behandlingen av «Oljefondsmeldingen» for 2015/2016 anmodet en samlet finanskomité i Stortinget regjeringen «om å be Norges Bank vurdere å utarbeide et forventningsdokument om skatt for de selskaper de investerer i».

Komiteen vurderte det videre som lite hensiktsmessig at utelukkelse alene basert på tilknytning til skatteparadiser skulle være et utelukkelseskriterium, men presiserte derimot at uetisk adferd knyttet til skatt og skatteparadis kunne føre til uttrekk av enkeltselskaper basert på råd fra Etikkrådet:

«Komiteen peker imidlertid på at ulovlig eller uetisk selskapsaktivitet i skjul av hemmelighold i lukkede jurisdiskusjoner uansett vil kunne medføre uttrekk av enkeltselskaper basert på råd fra Etikkrådet.»

At Etikkrådet pålegges dette ansvaret forsterker behovet for at Etikkrådet trekker en grense for hva som kan anses som akseptabel minimumsetikk når det kommer til skatt, noe som bare kan gjøres gjennom å sette et eksempel gjennom råd om uttrekk av selskap som representerer «versting-standarden» innenfor området.

Begrunnelse for at Credit Suisse bør gjennomgås med tanke på uttrekk
Credit Suisse har gjentatte lovbrudd på skatteområdet, noe som har vært bredt omtalt i media. I en artikkel fra 15.08.14 i Finansavisen blir det avdekket at Oljefondet satser tungt i Credit Suisse, til tross for at den sveitsiske storbanken har utmerket seg som en «skatteversting» og blant annet erkjent seg skyldig i å ha bidratt til grov skatteunndragelse.

Sveitsiske Credit Suisse ble i 2014 den første banken som innrømte skyld i en straffesak i USA på over et tiår. Banken har hjulpet amerikanere med skatteunndragelser i flere tiår og satt opp anonyme truster og skallselskaper i skatteparadis for å unngå amerikansk beskatning. Etter å ha havnet under etterforskning av amerikanske skattemyndigheter endte banken om å med å erkjenne seg skyldig i å ha hjulpet amerikanere med skatteunndragelse, og aksepterte en bot til amerikanske myndigheter på 2,5 milliarder dollar.

Banken har siden 2014 vært under etterforskning også i flere EU-land for medvirkning til skatteunndragelser, hvitvasking og å skjule verdier for såkalte PEPs (politisk eksponerte personer). I et av EU-landene, Italia, har Credit Suisse i 2016 vært under etterforskning for å hjelpe rike klienter overføre så mye som 14 milliarder euro i verdier til skatteparadis, ifølge Reuters.

Bankens ukultur tydeliggjort av gjentatte tilfeller av lovbrudd og svindel
Risikoen for at bankens forseelser vil gjenta seg forsterkes av at Credit Suisse også ut over skatte-området har gjentatte forseelser og tilfeller av uetisk oppførsel. Banken ble i 2014 bøtelagt av det britiske finanstilsynets for å ha villedet mer enn 83.000 småsparere i sin markedsføring av strukturerte spareprodukter og ilagt en bot på 2,4 millioner pund. De er i juli 2016 ventet å inngå et forlik med sveitsiske finansmyndigheter for sin rolle i manipulasjon av Libor-renten.

Et eksempel lengre tilbake i tid er at Credit Suisse og UBS i 1998 ble tvunget til å betale ut $1,25 milliarder i oppreising til slektninger av Holocaustofre i USA, etter at bankene hadde holdt tilbake eiendeler i flere tiår. Dommeren i saken anklaget senere bankene for å blokkere utbetalingen av oppgjøret. Dette er kun få eksempler fra en lang liste av domfellelser og brudd på grunnleggende etiske normer som strekker seg over flere tiår. Vi har samlet disse i et eget vedlegg.

Credit Suisse- Norges Bank kjøper seg opp mens etiske fond selger seg ut
Statens Pensjonsfond - Utland er en betydelig aksjonær i Credit Suisse, med 4,94% av aksjene i 2015. Fondet har en indeksbasert tilnærming til fondsporteføljen sin og har derfor sjelden mer enn 2% av eierskapet i selskaper. Av de over 8000 selskapene fondet var investert i i 2014, var det bare 45 selskaper hvor fondet hadde mer enn 5% eierskap, ifølge Finansavisen. Credit Suisse er altså blant en liten gruppe selskaper som NBIM har satset ekstra mye på. Det er uheldig at Norges Bank har valgt å assosiere seg spesielt sterkt med et selskap som har utmerket seg med så dårlige skussmål på skatteetikk. Etter Credit Suisse-skandalen stoppet pensjonsfondet «Employees Retirement System of Texas» sin handel med banken. «Vi har en policy mot å bruke straffedømte selskaper» uttalte fondet. Vi mener Etikkrådet bør behandle om Credit Suisse også skal utelukkes fra det norske statlige pensjonsfondet – SPU.

Med vennlig hilsen

Sigrid Jacobsen

Sigrid Klæboe Jacobsen, daglig leder

Tax Justice Network – Norge, Pb 265 Sentrum, 0103 Oslo. Besøksadresse: Tollbugata 32
Org. nr: 995 414 007 / www.taxjustice.no / info@taxjustice.no / +47 46861189

Vedlegg A - Credit Suisse: Corporate Rap Sheet

By Philip Mattera

Dette faktaarket lister opp domfellelser og andre brudd på etiske normer. Det er utarbeidet av The Corporate Research Project (crp). CRP er en filial av Good Jobs First, en amerikansk organisasjon som forsker på, og fremmer standarder for mer etterrettelig og ansvarlige standarder hos selskaper. Faktaarket er publisert her: http://www.corp-research.org/credit-suisse.

Credit Suisse, which used an alliance with First Boston to become a force in U.S. investment banking, has in recent years been caught up in a variety of scandals involving its role in helping wealthy U.S. and German customers evade taxes, its apparent violations of U.S. laws prohibiting dealings with countries such as Iran and Sudan, and its involvement in selling toxic subprime mortgage securities to investors. In 2014 it pleaded gulity to a federal criminal charge related to the tax issue and was forced to pay a penalty of $2.6 billion.

Founded in 1856, Credit Suisse functioned during its early decades largely as a source of venture capital, providing financing to new industrial enterprises, railroads and insurance companies. In the early 20th century it focused more on commercial banking as well as stock underwriting and brokerage. During the 1960s it became one of the leading players in the Euromarket by forming an alliance with the U.S. investment bank White Weld.

In the late 1970s Credit Suisse faced a scandal when managers of its branch in Chiasso were found to have diverted more than $1 billion of the bank's money into off-the-books investments for their personal benefit. The bank recovered the assets and prosecuted the managers.

In 1988 Credit Suisse, along with the other major Swiss banks, was embroiled in a controversy involving money laundering. The banks were reported to have been used by a Turkish-Lebanese drug ring to launder some $1 billion in cash, which was said to have arrived in suitcases at Zurich airport and taken directly to the banks (see *Wall Street Journal,* November 7 and 9, 1988). The banks denied doing anything wrong. Credit Suisse also played a role in the Reagan Administration's Iran/Contra scandal.

A decade later, the Swiss banks were also hit with lawsuits filed in the United States by relatives of Holocaust victims who had been unable to access assets held by the banks for decades because of a lack of documentation. There were also charges that the banks profited by receiving deposits of funds that had been looted by the Nazis. In 1998 the banks agreed to pay a total of $1.25 billion in restitution. The judge in the case later accused the banks of stonewalling in paying out the settlement.

A Rocky Alliance with First Boston

After White Weld merged with Merrill Lynch, Credit Suisse found a new Euromarket partner in another U.S. firm, First Boston. Created in the 1930s out of the investment banking subsidiaries of First National Bank of Boston and Chase National Bank (which had to be spun off to comply with the Glass-Steagall Act), First Boston was a defendant in the antitrust suit brought by the Truman Administration against 17 investment banks. Although the case was ultimately dismissed, it kept First Boston and the other firms in a legal morass for six years.

After Credit Suisse-First Boston was formed in 1978, the joint venture gained a dominant position in the Eurobond market and moved aggressively into new financial instruments such as mortgage-backed securities and municipal bond index futures. First Boston also embraced the takeover mania that started in the late 1970s. Its merger specialists Bruce Wasserstein and Joseph Perella became the hottest practitioners in the field. This led to fat profits in the mid-1980s, but the firm was seriously weakened by the after-effects of the 1987 stock market crash. Another blow came early the following year, when Wasserstein and Perella, in disagreement with the strategy of top management, left to form their own M&A boutique firm.

First Boston sought to gain greater stability in 1988 by merging with its European affiliate, creating a new privately held company called CS First Boston (CSFB) with Credit Suisse as the largest shareholder. It had to contend with the crash of the junk bond market and the financial collapse of one of First Boston's biggest clients, Canadian retail magnate Robert Campeau, who left the firm holding the bag on more than $1 billion in bridge loans. In 1990 Credit Suisse stepped in to deal with the problems at CSFB by injecting $300 million of new capital and increasing its stake to 60 percent.

CSFB was a target of U.S. divestment activists in the early 1990s because of Credit Suisse's operations in apartheid-era South Africa. Later that decade, it was one of the investment banks sued for their role in the 1994 bankruptcy of California's Orange County. In 1998 CSFB agreed to pay $870,000 to settle SEC charges of having misled investors in Orange County bonds and then settled a suit brought against it by the county for $52.5 million.

In 1999 Japan's Financial Supervisory Agency revoked the business license of a CSFB unit after investigating the firm for using derivatives transactions to help companies conceal losses—and for impeding that investigation by destroying evidence. The latter also led to a criminal conviction in a Japanese court and a £4 million fine by Britain's Financial Services Authority.

Dot Com and Analyst Conflict of Interest Scandals

In 2000 CSFB sought to bolster its position on Wall Street by arranging to acquire investment house Donaldson, Lufkin & Jenrette, the leading U.S. trader of junk bonds, from French financial services giant AXA Group. Instead, CSFB found itself in the middle of a controversy over the way in which it allocated shares of initial public offerings of tech stocks. In 2002 the SEC announced that the firm would pay $100 million to settle allegations that it charged inflated commissions to customers for shares of "hot" IPOs. Industry regulator NASD (now FINRA) later fined and suspended two CSFB executives for failing to prevent those practices.

In 2003 Frank Quattrone, a CSFB star who handled high-profile IPOs during the dot.com boom, was charged by NASD with conflicts of interest between his research and his investment banking activities. Quattrone, who was also reported to be under investigation by federal and New York prosecutors, resigned from the firm. NASD later permanently banned him from the securities industry, and Quattrone was convicted of federal obstruction of justice charges. The court verdict was later reversed, and the NASD action was overturned by the SEC.

Also in 2003, CSFB was one of ten major investment firms that agreed to pay a total of $1.4 billion in penalties, disgorgement and investor education spending to settle federal and state charges involving conflicts of interest between their research and investment banking activities. CSFB's share was $200 million.

In 2004 NASD fined CSFB $170,000 and ordered $600,000 in restitution for failing to provide customers the best price in an initial public offering. In 2005 CSFB agreed to pay $12.5 million to settle a lawsuit brought by investors against it and other investment banks for their role in helping WorldCom sell bonds to the public prior to its collapse amid an accounting scandal.

In 2006 NASD fined Credit Suisse Securities (the new name given to CSFB that year) $225,000 for numerous violations of research analyst conflict of interest rules. In 2007 the Financial Services Authority fined Credit Suisse £1.75 million for failing to provide accurate and timely transaction reports.

In 2008 Credit Suisse agreed to pay 172.5 million euros to settle litigation relating to its dealings with the dairy company Parmalat, which had collapsed five years earlier in Italy's largest bankruptcy case. That same year, its UK operation was fined £5.6 million by the Financial Services Authority for management's failure to recognize that some of the firm's traders had mis-priced asset-backed securities.

In 2009 FINRA fined Credit Suisse Securities $275,000 for failing to fully comply with the 2003 Global Research Analyst Settlement. Later that year, Credit Suisse had to agree to pay $536 million and enter into a deferred prosecution agreement to settle accusations by U.S. government and New York State authorities that it violated laws prohibiting dealings with customers in countries such as Iran and Sudan. The charges alleged that the bank altered wire transfers to remove names that appeared on official lists of banned entities.

In December 2014 FINRA fined Credit Suisse Securities $5 million as part of a case against ten investment banks for allowing their stock analysts to solicit business and offer favorable research coverage in connection with a planned initial public offering of Toys R Us in 2010.

In February 2016 the SEC announced that Credit Suisse Securities would pay $84.3 million to the agency and the New York Attorney General to resolve allegations that it violating securities laws by operating alternative trading systems known as dark pools.

Tax Evasion Charges

In 2010 Credit Suisse's offices in Germany were searched by police and prosecutors as part of an investigation of the role the bank's employees may have played in helping clients evade taxes. The following year, four employees of Credit Suisse were indicted in U.S. federal court on charges of providing banking services designed to enable tax evasion. (The case is pending.) Credit Suisse later disclosed that it was being investigated by U.S. authorities for such activity. In September 2011 Credit Suisse agreed to pay German authorities 150 million euros to put an end to an investigation of whether it helped clients conceal assets. The investigation of those clients continued, and in July 2012 German authorities conducted a series of raids at the homes and offices of an unspecified number of wealthy Credit Suisse customers.

In 2011, FINRA fined Credit Suisse Securities $4.5 million for abuses, including the misrepresentation of delinquency rates, relating to the sale of subprime mortgage securities, and later added another fine of $1.75 million for failing to properly supervise short sales. That same year, the Federal Housing Finance Agency sued Credit Suisse and other firms for abuses in the sale of mortgage-backed securities to Fannie Mae and Freddie Mac (in 2014 Credit Suisse agreed to pay $885 million to settle the case). And the Financial Services Authority imposed a fine of £5.95 million for failing to exercise proper controls in the sale of complex financial instruments known as structured capital at risk products.

In February 2012 federal prosecutors brought criminal charges against three former Credit Suisse investment bankers and traders for inflating the value of subprime mortgage securities during 2007 and 2008 in a scheme to increase their year-end bonuses. Two of the traders, David Higgs and

Salmaan Siddiqui, each pleaded guilty to one count of conspiracy to falsify records and commit wire fraud. U.S. Attorney Preet Bharara called on the third trader, Kareem Serageldin, who was living in London, to return to the United States to face the charges against him. (In early 2013 he was extradited to the U.S.)

In November 2012 the SEC announced that Credit Suisse Securities would pay $120 million to settle charges of misleading investors in the sale of mortgage-backed securities; specifically, it was charged with failing to tell investors of the fees it received from mortgage originators when packing delinquent loans into the securities.

Despite the settlement, Credit Suisse was then sued by New York Attorney General Eric Schneiderman, acting on behalf of a federal working group on mortgage-backed securities, on charges similar to those that had been brought by the SEC.

In February 2014 the SEC announced that Credit Suisse would pay $196 million and admit wrongdoing to settle charges that it had provided cross-border brokerage and investment advisory services to U.S. clients without first registering with the agency.

That same month, Credit Suisse's woes on the tax evasion issue escalated as a lengthy report by a Senate investigative committee provided extensive details of ways in which the bank allegedly helped wealthy U.S. customers evade taxes. At a hearing on the report, Credit Suisse executives faced intensive grilling from both Republican and Democratic senators.

In May 2014 the Justice Department announced that Credit Suisse would plead guilty to one criminal count of conspiring to aid tax evasion and would pay penalties of $2.6 billion.

Human Rights

A 2010 report commissioned by the Swiss corporate accountability group Berne Declaration criticized Credit Suisse for its role in providing financing to companies involved in human rights abuses.

In 2002 a lawsuit was filed in U.S. federal court accusing Credit Suisse and numerous other companies of propping up the South African government during the apartheid era. The action, filed under the Alien Tort Statute, was dismissed by a district judge, but an appeals court allowed it to proceed. In 2008 the U.S. Supreme Court was unable to hear the matter, because four justices recused themselves due to conflicts of interest, including the fact that Justice Anthony Kennedy’s son worked for Credit Suisse. The case was sent back to the district court, where it is still pending.