

Press release

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Settlement between Credit Suisse and U.S. authorities regarding breach of U.S. sanctions – clarifications by FINMA

On 16 December 2009, Credit Suisse signed a settlement with various U.S. authorities regarding breaches of U.S. law. The settlement covers USD payments processed for persons from countries subject to U.S. economic sanctions. FINMA has followed this case closely from the outset. It has harshly reprimanded the Bank for its actions in light of Swiss supervisory law and has requested disciplinary measures.

On 16 December 2009, Credit Suisse AG, Zurich, and various U.S. authorities signed an agreement to settle investigations underway since 2007. The subject matter of the investigations was the processing of USD payments by Swiss-based Credit Suisse employees from 1995 to the beginning of 2007 for countries and individuals subject to unilateral economic sanctions of the USA. The U.S. authorities accused the bank of deliberately circumventing U.S. sanctions by its actions in Switzerland and of preventing its U.S. correspondent banks from complying with the regulations by which they are bound. Such actions are deemed impermissible by the U.S. authorities under various sections of U.S. law, and institutions domiciled outside the USA can also be punished. The main penalty imposed on the bank for the infringements of which it is accused is a fine totalling USD 536 million. It must also, to the extent this has not already taken place, implement a global compliance programme to ensure compliance with the USA's embargo regulations. FINMA will assist with the implementation and monitoring of the compliance programme agreed between the bank and the competent U.S. supervisory authority.

FINMA (up until the end of 2008, the Swiss Federal Banking Commission) has kept a very close watch on this case from the outset. It has cooperated with the U.S. authorities and provided administrative assistance to the Federal Reserve Bank of New York. It also assessed the accusations made against Credit Suisse in the light of Swiss supervisory law and, in September 2009, harshly reprimanded the bank for its actions.

This case makes Credit Suisse the fourth non-U.S. bank to reach an agreement with the U.S. authorities on this matter. Foreign rules with an extra-territorial scope, such as the U.S. embargo law administered by the U.S. Office of Foreign Assets Control (“OFAC”), can possibly be applied to financial institutions and employees which qualify as “U.S. persons”, even if the actions in question take place outside U.S. territory. The U.S. authorities have also recently started applying their embargo regulations to non-U.S. persons who export services from the USA to sanctioned countries. Although FINMA has no remit to directly enforce foreign regulations (such as the OFAC-rules) against the entities it supervises, Swiss supervisory law does however require supervised entities to pay due consideration to the legal risks associated with standards of this type which have territorial and extra-territorial scope. In particular, they must take all possible organisational measures to prevent such risks from materialising.

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