Misconduct could cost global banks dear over pension funds

Groups may balk at proposed new regulations on retirement plan assets

PATRICK TEMPLE-WEST

Credit Suisse officials were subjected to a rare public hearing in 2015, that included finger-wagging from consumer advocate Ralph Nader, left © Jonathan Ernst/Reuters

Patrick Temple-West 47 MINUTES AGO

Sitting in a windowless conference room at the US Department of Labor in January 2015, Credit Suisse officials endured a day of public shaming.

It was not enough that the bank had pleaded guilty a year earlier to helping US clients evade taxes and paid $2.6bn in fines. A face-to-face chastising from liberal politicians was scheduled at an odd venue for global financiers.

Better known to Wall Street for publishing the monthly employment report, the DoL also regulates US retirement funds. And criminal charges, such as Credit Suisse's, force asset managers to go hat-in-hand to the department to seek permission to continue managing US pension fund assets.

Credit Suisse's asset management division got its exemption from disqualification. But now, President Joe Biden's DoL wants to broaden its pension rules to make waivers harder to secure. In July, the department proposed rule changes to its "qualified professional asset manager" (QPAM) programme and public comments are due in September. These changes mean the punishment Credit Suisse and other global banks have faced will be ramped up.

The stakes are enormous. By the labour department's own estimates, the retirement plans it regulates cover about 141mn people, and include more than $7.6tn in assets.

"The DoL is signalling that [asset] managers should be prepared to lose their QPAM status," said Joshua Lichtenstein, a partner at law firm Ropes & Gray. And the proposed rules are "trying to blunt the risks to [pension] plans" when an asset manager fails to win a waiver, he said.

Before the financial crisis of 2008-09, the DoL liberally rubber-stamped the waivers that allow convicted firms to continue to manage retirement plan assets. But as banking scandals unfolded during the Obama administration, the battle over waivers intensified.

Credit Suisse officials got the worst of it. They were subjected to a rare public hearing that included finger-wagging from Ralph Nader, a liberal crusader and one-time US presidential candidate.

Now, the DoL wants misconduct in far-off corners of the world also to have consequences in the US. Convictions abroad for offences that would also be crimes in US law would violate pensions legislation and force firms to rush for waivers.

Royal Bank of Canada, which has disclosed years of litigation problems in France for alleged tax misconduct, has said in regulatory filings that "any conviction in a French court would not trigger disqualification" in the US. But the DoL's changes would mean that if convicted in France, RBC might need to seek permission to stay in the US pension market.

The proposals go further. Misbehaving financial groups would not be able to rely on deferred or non-prosecution agreements to continue to manage US retirement assets. Such deals have been criticised by the liberal firebrand senator Elizabeth Warren as a mere "slap on the wrist". The DoL's proposed rules say the days of sweetheart agreements "to sidestep the consequences" of a criminal conviction are over.

To win DoL waivers, banks such as Credit Suisse have argued that it would be costly for funds to abruptly lose a fund manager. They would suffer liquidation costs and other expenses if waivers were denied. The DoL proposes that convicted banks would have to pay those break-up costs. They would need to "promptly restore actual losses" to retirement plans resulting from law violations, the department said.

These rule changes are likely to prompt global financial groups to rethink their US retirement fund businesses. Asset managers might give up on the US market, said Sabrina Glaser, a partner at law firm Kirkland & Ellis. “If you don’t manage a whole lot you may decide that you won’t manage plan assets any longer,” she said.

Credit Suisse found itself in legal trouble again in 2021 in the Mozambique “tuna bonds” scandal. This year the DoL again gave the bank an exemption, but only for one year — setting up another showdown in 2023. Warren has already called for the labour department to deny the Swiss bank an exemption.

With Democrats in power for now, Wall Street is on the defensive. But rather than swallowing costly new regulations, companies might test their luck in court by suing the Biden administration to stop the proposed changes.

“If serious concerns are ignored in any final rulemaking, the labour department would be at a significant risk of litigation” from financial groups, said Ryan Stewart, a counsel at Gibson Dunn.

These waiver changes might pale beside enforcement threats Wall Street faces from the Federal Reserve or the Securities and Exchange Commission. But Biden’s labour department is sharpening its knives to punish global banks.