

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019062945701**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Credit Suisse Securities (USA) LLC (Respondent)
Member Firm
CRD No. 816

Pursuant to FINRA Rule 9216, Respondent Credit Suisse Securities (USA) LLC submits this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Credit Suisse became a member of FINRA in October 1936. It is headquartered in New York, NY, and has 31 branches with approximately 2,600 registered representatives. The firm's business includes underwriting, proprietary trading, and market making.¹

OVERVIEW

On March 8, 2019, Credit Suisse violated Securities Exchange Act of 1934 Rule 14e-4, as amended (the "Exchange Act"), by over-tendering 85,000 shares on behalf of an affiliate in Company A. From January 1, 2019 to August 12, 2021 (the Relevant Period), Credit Suisse violated FINRA Rules 3110(a) and (b) by failing to have a supervisory system reasonably designed to achieve compliance with Exchange Act Rule 14e-4.

FACTS AND VIOLATIVE CONDUCT

Credit Suisse violated Exchange Act Rule 14e-4

Exchange Act Rule 14e-4, "Prohibited Transactions in Connection with Partial Tender Offers," commonly referred to as the "Short Tender Rule," is generally designed to preclude persons from tendering more shares in a tender offer than he or she owns in

¹ For more information about the firm, visit BrokerCheck® at www.finra.org/brokercheck.

order to avoid or reduce the risk of pro rata acceptance in a partial tender offer. Rule 14e-4(b)(1)(i) provides in relevant part that “it shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer ... [f]or his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in ... [t]he subject security.” Rule 14e-4(b)(2) makes it unlawful to tender shares in a partial tender offer “[f]or the account of another person unless the person making the tender: (i) Possesses the subject security or an equivalent security, or (ii) Has a reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.”

Under Rule 14e-4, a person’s “net long position” in a subject security equals the excess, if any, of such person’s “long position” over a person’s “short position.” In addition, Rule 14e-4 defines an equivalent security as including certain options, warrants, or other rights to purchase the subject security. The calculation of the net long position must be done both at the time of tender and at the end of the proration period, or period during which securities are accepted by lot, including any extension thereof.

A partial tender offer involves “proration risk,” that is, a risk to shareholders of the subject security that less than all of the securities tendered will be accepted. Accordingly, short tendering is proscribed by Rule 14e-4 because the practice unfairly decreases the short tendering person’s proration risk at the expense of other tenderers, who will have proportionately fewer shares accepted.

On March 8, 2019, Credit Suisse over-tendered 85,000 shares on behalf of an affiliate in Company A. Credit Suisse miscalculated the affiliate’s long position for the PTO because it did not subtract in-the-money call options sold on and after the Company A’s PTO announcement date. All 85,000 shares that Credit Suisse tendered on behalf of its affiliate—of which 11,560 shares were accepted—were over-tendered. Therefore, Credit Suisse violated Rule 14e-4(b)(2) and FINRA Rule 2010.²

Credit Suisse did not have a reasonably designed supervisory system to comply with Exchange Act Rule 14e-4

FINRA Rule 3110(a) provides that a member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) provides that a member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the

² A violation of the federal securities laws or FINRA’s rules also constitutes a violation of FINRA Rule 2010, which requires member firms in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.”

activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

During the Relevant Period, Credit Suisse did not have a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Rule 14e-4. Credit Suisse's procedures did not include supervisory review regarding compliance with Rule 14e-4, including but not limited to a supervisory review concerning the treatment of options in the calculation of a net long position for the purpose of tendering shares.. Therefore, Credit Suisse violated FINRA Rules 3110 (a) and (b) and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a censure and
- a \$125,000 fine, of which \$41,667 will be paid to FINRA.³

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in the same matter between the Firm and NYSE American and the Firm and NYSE Arca.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;

³ The remainder of the fine shall be allocated evenly between the NYSE American LLC and NYSE Arca, Inc.

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and

4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

May 30, 2022

Date



Credit Suisse Securities (USA) LLC
Respondent

Print Name: Lara Leaf

Title: Director

Reviewed by:



Derek N. Lacarrubba
Counsel for Respondent
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

Accepted by FINRA:

June 8, 2022

Date

Signed on behalf of the
Director of ODA, by delegated authority

Elisabeth Grippando

Elisabeth Grippando
Principal Counsel
FINRA

Department of Enforcement
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