

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050072

TO: Department of Market Regulation
NASD

RE: **Credit Suisse First Boston LLC**, Respondent
Broker-Dealer
CRD No. 816

Pursuant to Rule 9216 of NASD Code of Procedure, Credit Suisse First Boston LLC (the "firm" or "FBCO") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against FBCO alleging violations based on the same factual findings.

FBCO understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against FBCO; and
3. If accepted:
 - a. this AWC will become part of FBCO's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against FBCO;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about FBCO's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. FBCO 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 allegation in this AWC or

create the impression that the AWC is without factual basis. Nothing in this provision affects FBCO's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

FBCO also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

The firm has been a member of NASD since October 16, 1936 and its registration remains in effect. On December 23, 2003, an AWC became final in which FBCO was censured and fined \$15,500 for violations of NASD Marketplace Rule 6130(d) and SEC Rule 11Ac1-4. The fine was composed of a \$7,500 fine for Automated Confirmation Transaction Service ("ACT") reporting violations, and an \$8,000 fine for violations of the Limit Order Display Rule.

On October 31, 2003, an AWC became final in which FBCO was censured and fined \$38,000 for violations of NASD Conduct Rules 2110 and 3370, NASD Marketplace Rules 4642(b) and 6955(a), and SEC Rule 10b-10. The fine was composed of a \$25,000 fine for OATS violations, a \$10,000 fine for the trade reporting violations, a \$2,000 fine for the affirmative determination violations and a \$1,000 fine for the SEC Rule 10b-10 violations.

On February 11, 2000, an AWC became final in which FBCO was censured and fined \$40,000 for violations of NASD Conduct Rules 2110, 3010, 3360 and 3370, and NASD Marketplace Rule 6130. Among other things, the firm failed to establish, maintain and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the short sale rules.

I.

WAIVER OF PROCEDURAL RIGHTS

FBCO specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, FBCO specifically and voluntarily waives any right to claim bias or prejudice of the General Counsel, 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 acceptance or rejection of this AWC.

FBCO further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

II.

ACCEPTANCE AND CONSENT

In MRD200341537 (n/k/a 20042000100), staff of NASD's Department of Market Regulation ("staff") reviewed FBCO's compliance with NASD Marketplace Rule 6130(b) during the period April 1, 2003 through June 30, 2003.

In MRD200341660, the staff of NASD's Department of Market Regulation ("staff") conducted a Trading and Market Making Surveillance Examination of the firm. The staff reviewed the following items:¹

- Forty-two customer sale transactions, for compliance with NASD Rules 3110 and 3370 and SEC Rule 10a-1,
- Eight proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1,
- Three short sales in CQS securities, for compliance with SEC Rule 10a-1,
- Fifty limit orders in market making securities, for compliance with NASD Rules 2110, IM-2110-2, 6440 and 2320; and SEC Rule 11Ac1-4,
- Eighteen marketable orders received while holding "non-displayed" limit orders in the same security, for compliance with NASD Rule 2320,
- Three market orders executed as principal, for compliance with NASD Rule 2320,

¹ Unless otherwise noted, all items reviewed are from trade dates June 18 and 19, 2003, except for 1) the April 2003 report (and trades contained therein) made in compliance with SEC Rule 11Ac1-5, and 2) the supervisory items, where the staff reviewed the written supervisory procedures in effect in June 2003.

- Fifty-six limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules,
- Four order groups and 27 orders to review security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5,
- Data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6,
- The firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers for execution, for compliance with NASD Rules 2320 and 3010,
- Ten transactions in OTCBB and/or OTC equity securities, for compliance with SEC Rules 2320(g) and 3110(b),
- Eight persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,
- Two hundred fifty-five order/trade records prepared and maintained for the above samples, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,
- Three hundred forty-four trades reported to ACT, for compliance with NASD Trade Reporting and ACT rules,
- Ninety-two customer trade confirmations, for compliance with SEC Rule 10b-10, and
- The firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010.

A. FBCO hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

MRD200341537

1. FBCO failed to accept or decline in ACT 352 transactions in eligible securities within twenty minutes after execution, approximately nine percent of all transactions that FBCO had an obligation to accept or decline in ACT as the OEID during the period April 1, 2003 through June 30, 2003.

2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6130(b) and a violation of NASD Conduct Rule 2110.

MRD200341660

3. FBCO failed on 18 occasions to provide written notification disclosing to its customer its correct capacity in the transaction.
 4. The conduct described in paragraph three above constitutes separate and distinct violations of SEC Rule 10b-10.
 5. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning best execution, trade reporting and OATS. Specifically, the firm's supervisory system included written supervisory procedures concerning: 1) best execution that did not include a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented; 2) trade reporting that did not adequately address procedures for accepting or entering trades reportable by other firms in a timely manner, and for reporting of the correct indicator for short sale transactions; and 3) OATS that failed to identify person(s) responsible for supervision with respect to the applicable rules, and failed to include a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. In addition, the firm failed to provide evidence of supervision with respect to best execution, trade reporting, and OATS.
 6. The conduct described in paragraph five constitutes a violation of NASD Conduct Rules 2110 and 3010.
- B. FBCO also consents to the imposition, at a maximum, of the following sanctions:

A censure and fine of \$17,500 (consisting of \$7,500 for OE Late, \$2,500 for SEC Rule 10b-10, and \$7,500 for supervision).

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. FBCO understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. FBCO 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 NASD, nor does it reflect the views of NASD or its staff.

- B. FBCO agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. FBCO specifically and voluntarily waives any right to claim that FBCO is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

FBCO certifies that it has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce FBCO to submit it.

Date: 4/20/05

Credit Suisse First Boston LLC

By: Allen Meyer

Name: ALLEN MEYER

Title: MANAGING DIRECTOR
LEGAL & COMPLIANCE

Reviewed by:

Counsel for Respondent

Accepted by NASD:

6/3/05
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

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

April 25, 2005

Ms. Louise Corso
Counsel
NASD Department of Regulation
9509 Key West Ave
Rockville, MD 20850

**Re: Letter of Acceptance, Waiver and Consent Review No. MRD200341537 (Incl.
MRD200341660/ 20042000100) Statement of Corrective Action**

Dear Ms. Corso:

This Corrective Action Statement is submitted by Credit Suisse First Boston LLC ("FBCO" or the "Firm") in accordance with Section III (A) of the above-referenced document. It does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff. Enclosed herewith, please find the signed Letter of Acceptance, Waiver and Consent ("AWC") of April 18, 2005.

In MRD2003412537, the Staff alleged that FBCO failed to accept or decline 352 transactions in eligible securities within twenty minutes after execution. FBCO has identified the areas responsible for the trade reporting cited by the Staff. These transactions in Nasdaq securities originated primarily from the Firm's Agency desk which is used to route orders in equity securities to market making firms in which FBCO does not itself make a market. FBCO has identified the brokers with which the majority of the trades were executed and has set up Attachment 2 agreements for those brokers to lock in both sides of the trade report in ACT. Additionally, in September of 2004 the firm's Equity IT Department created a real-time exception report that is distributed to members of Equity Surveillance team for monitoring. The exception report generates alerts if FBCO has not accepted an open ACT report within 10 minutes to allow for an entry to be made within 20 minutes.

In MRD200341660, the Staff alleged eighteen instances where FBCO did not provide its correct capacity via written confirmation to customers in violation of SEC Rule 10b-10. FBCO has automated its trading accounts to systematically generate the proper capacity on the confirmation statements (i.e. a facilitation account will generate a principal or mixed capacity confirm). There are instances in which a trader must manually execute a trade that could yield an inaccurate capacity on a confirmation statement if the appropriate account is not used. The traders have been made aware of the issue and trained on the proper use of each account.

Eleven Madison Avenue Telephone 212 325 1825
New York, NY 10010-3629 Telefax 212 325 8102

Scott E. Palmer
Director
Legal & Compliance Department

This matter also included instances where the Staff alleged that the Firm's supervisory system did not provide for supervision reasonable designed to achieve compliance with applicable securities laws and regulations, and Rules of NASD.

Best Execution- FBCO uses exception reports generated daily to surveil for instances where customer executions may not have received best execution. FBCO currently uses reports generated by its Atlas trading system as well as by the vendor-based Mantas system. During the review period, the Firm used Sungard's BRASS system which produced a daily exception report titled "Daily Auto Price Improvement Report". To the best of the Firm's knowledge, a copy of this report for the review period was furnished to the Staff during the examination.

Trade Reporting- As mentioned above, the Equities Surveillance team of the Firm's Compliance Department has set up Attachment 2 agreements and initiated the use of a dynamic exception reporting system to detect instances where FBCO has had open trades in ACT for ten minutes or more. Any trends or failure to accept trades in ACT are brought to the relevant desk manager for review.

OATS- During the examination, FBCO's Compliance Department reviewed daily OATS rejects and worked with its Equity IT department to make system repairs as appropriate. Since the review period, FBCO has re-engineered its entire OATS reporting system, created weekly and monthly OATS committees consisting of Compliance, Information Technology, and business management representatives to discuss outages and trends, and has created OATS procedures that describe the committees that supervise the Firm's OATS process and the documentation with completion steps of such supervision. Additionally, the OATS time clock synchronization process was described and an example of such was supplied for a specific date as per the examiner's request during the examination.

Credit Suisse First Boston LLC appreciates the opportunity to furnish the Staff with this Statement of Corrective Action in connection with the above referenced matter. Should the Staff require additional information please contact the undersigned at (212) 325-1825.

Very Truly Yours,



Scott E. Palmer

Enclosure