

**NYSE ARCA, INC.**  
**LETTER OF ACCEPTANCE, WAIVER, AND CONSENT**  
**NO. 2019062945703**

TO: NYSE Arca, Inc.

RE: *Credit Suisse Securities (USA) LLC*, Respondent  
CRD No. 816

**On March 8, 2019, Credit Suisse Securities (USA) LLC violated Securities Exchange Act of 1934 Rule 14e-4 by over-tendering 85,000 shares on behalf of its affiliate in Company A. From January 1, 2019 to August 12, 2021 (the “Relevant Period”) Credit Suisse Securities (USA) LLC violated NYSE Arca Rule 11.18 by failing to have a supervisory system reasonably designed to achieve compliance with Exchange Act Rule 14e-4. Consent to a censure and, a \$41,666 fine (resolved simultaneously with similar matters for a total fine of \$125,000).<sup>1</sup>**

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Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, Credit Suisse Securities (USA) LLC (“Credit Suisse” or the “Firm”) 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, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I. ACCEPTANCE AND CONSENT**

- A. Credit Suisse hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE Arca, or to which NYSE Arca 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 NYSE Arca:

**BACKGROUND AND JURISDICTION**

1. Credit Suisse became registered as an Equities Trading Permit (“ETP”) holder with NYSE Arca in November 2002, and became registered as an Options Trading Permit (“OTP”) holder in December 1971. It is headquartered in New York, NY and has 31 branches with approximately 2,500 registered representatives. The Firm’s business includes options, underwriting, proprietary trading, and market making. The Firm has no relevant disciplinary history.

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<sup>1</sup> Those matters were brought by NYSE American LLC (“NYSE American”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”).

## VIOLATIONS

2. 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 order to avoid or reduce the risk of pro rata acceptance in a partial tender offer.
3. 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.”
4. 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.”
5. 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.
6. 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.
7. 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).
8. NYSE Arca Rule 11.18(a) requires an OTP holder to supervise associated persons with respect to compliance with federal securities laws and Exchange rules. Further, Rule 11.18(b) requires an OTP holder to establish and maintain a supervisory system that is reasonably designed to ensure compliance with applicable federal securities

laws and regulations and Exchange rules. Rule 11.18(c) requires an OTP holder to establish, maintain, and enforce written procedures to supervise its business and associated persons. The procedures must be reasonably designed to ensure compliance with applicable securities laws and regulations and Exchange rules.

9. 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 reviews 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 NYSE Arca Rule 11.18.

### **SANCTIONS**

B. The Firm also consents to the imposition of the following sanctions:

1. **Censure and a \$41,666 fine (resolved simultaneously with similar matters for a total fine of \$125,000).<sup>2</sup>**

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 FINRA.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

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

## **II. WAIVER OF PROCEDURAL RIGHTS**

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca Code of Procedure:

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<sup>2</sup> Those matters were brought by NYSE American and FINRA.

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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 Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE Arca; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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**

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE Arca pursuant to NYSE Arca Rule 10.9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
  - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B);
  - 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;

3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
  4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
  5. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

May 26, 2022

\_\_\_\_\_  
Date

Credit Suisse Securities (USA) LLC  
Respondent

By: \_\_\_\_\_

Name: Lara Leaf

Title: Director

Reviewed by:

*Derek Lacarrubba*

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

Accepted by FINRA

May 26, 2022

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Date

*Elisabeth Grippando*

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Elisabeth Grippando  
Principal Counsel  
FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by  
delegated authority from its Chief  
Regulatory Officer