

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2009016627501**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Credit Suisse Securities (USA) LLC ("CSSU") 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 herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent 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 FINRA, or to which FINRA 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 FINRA:

**BACKGROUND**

Credit Suisse Securities (USA) LLC has been a FINRA member firm since 1936. CSSU engages in a variety of financial services including private banking, investment banking and asset management, focusing on institutional and high net worth clients. The firm is headquartered in New York, NY, has 35 branch offices and approximately 4,300 registered representatives.

**RELEVANT DISCIPLINARY HISTORY**

CSSU does not have any relevant disciplinary history.

**OVERVIEW**

From approximately November 2007 to December 2008, CSSU used communications

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with the public and internal materials that contained false statements concerning due diligence efforts that the firm claimed it had performed or would perform with respect to offerings of hedge funds. Specifically, CSSU represented in the communications that the firm engaged in and would engage in a variety of qualitative and quantitative due diligence activities for offerings of hedge funds and funds of hedge funds that it, in fact, did not undertake. CSSU also failed to establish and maintain procedures that were reasonably designed to ensure that it was performing the due diligence it represented to customers it would perform. As a result, CSSU violated NASD Rules 2210, 2211, 3010 and 2110.

## **FACTS AND VIOLATIVE CONDUCT**

### **1. CREDIT SUISSE PRIVATE BANKING USA**

CSSU maintained a Private Banking USA unit (PBUSA) that offered and sold alternative investments, including hedge funds and funds of hedge funds, to customers. Funds of hedge funds are investment companies that may be registered closed-end funds or unregistered funds that contain largely unregistered hedge funds as underlying investments. CSSU marketed these products primarily to high net worth individuals and institutions that met the “accredited investor” standard as defined by the Securities Act of 1933 and/or the “qualified purchaser” standard under the Investment Company Act of 1940.

PBUSA relationship managers were located in various CSSU offices and were supported in their sales of those hedge funds and funds of hedge funds by the Alternative Investments group of CSSU located in New York City. The Alternative Investments group was responsible for performing ongoing due diligence of hedge funds and funds of hedge funds not affiliated with CSSU, prior to a product receiving review and approval for sale by CSSU’s Product Development Committee. A separate group at CSSU was responsible for performing due diligence of affiliated hedge funds and funds of hedge funds.

### **2. THE MARKETING MATERIALS**

PBUSA relationship managers used a marketing pitch book to market CSSU alternative investment products, including hedge funds and funds of hedge funds, to customers and prospective customers.

The pitch book’s purpose was to introduce qualified, high net worth customers and prospective customers to, among other things, the various types of hedge funds and funds of hedge funds offered by CSSU. The pitch book described in general terms the benefits of the various product categories for PBUSA customers, contained a discussion of hedge funds as part of an overall investment portfolio, provided brief overview information about certain representative offerings, described the general due diligence process at CSSU, and contained a summary description of alternative investment offerings at the firm. The Alternative Investments group made the pitch book available to PBUSA relationship managers for use with their customers. The pitch book was often used by PBUSA registered representatives to guide

their discussions at introductory presentations with prospective or existing customers and to describe CSSU's offerings of and capabilities with respect to alternative investments. CSSU sold a large amount of the products discussed in the materials to customers.

The pitch book contained a number of statements regarding the firm's due diligence efforts. In particular, during the period from approximately November 2007 to December 2008, the pitch book represented that CSSU would conduct continuous and ongoing due diligence of the funds. The statements included the following:

- Under the heading, "Due Diligence: Quantitative & Qualitative Analysis:" the firm represented that "Our due diligence is continuous through out the life of the fund to provide our clients optimum products and outstanding returns."
- Under the heading of "Quantitative Analysis:" the firm stated that "[t]his kind of analysis focuses on manager style, risk, and performance including ... [e]valuation of hedge fund performance using econometric testing program ... [o]ngoing due diligence monitored by 'triggers,' such as underperformance and outsized favorable performance."
- On a slide entitled "Risk Management for Hedge Funds," under "post investment:" the firm represented that it performed "[o]ngoing analysis of market and liquidity risks and compliance with guidelines," "[o]ngoing monitoring of market and liquidity risk exposures," and "[o]ngoing operational follow-up due diligence on approved managers."
- Another portion of the pitch book stated "Benefits enjoyed by Private Banking USA clients include . . . thorough due diligence ... [e]conometric analysis applied to track deviations from each fund's benchmark ... analysis facilitates consistent monitoring ... seeks out portfolio managers with consistent, favorable risk adjusted performance and sound investment process."

These statements were not accurate. In fact, for certain funds, the firm performed little ongoing due diligence and when it was performed it was done on a sporadic and irregular basis. In the case of at least one fund CSSU did not perform any ongoing due diligence.

In addition, during the period from approximately November 2007 to December 2008, CSSU failed to have sufficient procedures and systems to ensure that the due diligence efforts it promised in the materials described above were occurring. In fact, the firm did not maintain any written procedures detailing specific steps and requirements for either initial or ongoing due diligence.

### **3. VIOLATIONS**

Violations of Rules 2210 and 2211

NASD Rule 2210 sets forth the standards for members' communications with the public. Rule 2210(d)(1) prohibits the use of false statements in communications with the public. NASD Rule 2211(d)(1) provides that the content standards of Rule 2210 apply to materials given to registered persons of a member firm.

In Notice to Members 03-07 (entitled "NASD Reminds Members of Obligations When Selling Hedge Funds"), issued in January 2003, FINRA reminded firms that "[s]ales material and oral presentations that promote hedge funds (or funds of hedge funds) raise particular investor protection concerns. . . . Hedge funds are complex investment vehicles, which are often risky and lacking in transparency. Consequently, many investors . . . may not understand the risks associated with investing in hedge funds and funds of hedge funds."

As described above, CSSU used marketing materials that stated that the firm had performed or was performing continuous and ongoing due diligence of hedge funds and funds of hedge funds products. In fact, that was not true. CSSU therefore violated NASD Rules 2210, 2211 and, as a result, also violated Rule 2110.<sup>1</sup>

#### Violations of Rule 3010

NASD Rule 3010 requires that a member firm establish, maintain and enforce a supervisory system, including written procedures, that is reasonably designed to achieve compliance with NASD rules. As stated in NTM 03-07, it is important that member firms establish and maintain adequate procedures to ensure that sales of hedge funds and funds of hedge funds comply with all relevant SRO and SEC rules.

CSSU's procedures failed to set out any process for undertaking, monitoring, or ensuring that the due diligence activities its materials stated it would undertake were in fact occurring. The firm thus failed to establish and maintain procedures reasonably designed to ensure that the materials were accurate and that it was performing the due diligence it represented to customers it would perform. CSSU therefore violated NASD Rule 3010, and, as a result, violated NASD Rule 2110.

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

1. A censure; and
2. A fine of \$350,000.

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

CSSU specifically and voluntarily waive any right to claim that the firm is unable to pay,

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<sup>1</sup> NASD Rule 2110 provides that "[a] member in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against CSSU;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, CSSU specifically and voluntarily waives any right to claim bias or prejudgment 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.

CSSU 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

CSSU 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 CSSU; and*
- C. *If accepted:*
  - 1. *this AWC will become part of CSSU’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against CSSU;*
  - 2. *this AWC will be made available through FINRA's public disclosure program in response to public inquiries about CSSU’s disciplinary record;*
  - 3. *FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and*
  - 4. *CSSU 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. CSSU 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.*
- D. *CSSU may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. CSSU 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 or its staff.*

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 have been given a full opportunity to ask questions about it; that the undersigned, behalf of the Firm has agreed to its 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.

09/15/2011  
Date (mm/dd/yyyy)

AYB  
Credit Suisse Securities (USA) LLC, Respondent  
By: Alan Reiter, Director

Reviewed by:  
Harry Weiss / NWR  
Harry J. Weiss, Esq.  
WilmerHale  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
202.663.6993

Counsel for Respondent

Accepted by FINRA:  
11/7/11  
Date

Signed on behalf of the  
Director of ODA, by delegated authority  
Thomas B. Lawson  
Thomas B. Lawson  
Vice President and Chief Counsel  
FINRA Department of Enforcement  
1801 K Street NW Suite 800  
Washington, DC 20006