**FINANCIAL INDUSTRY REGULATORY AUTHORITY**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734501**

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

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

Pursuant to FINRA Rule 9216 of FINRA's 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, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

## I.

## ACCEPTANCE AND CONSENT

A. The firm 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 AND RELEVANT DISCIPLINARY HISTORY

Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936. Its registration remains in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

### OVERVIEW

During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple

exchanges for potential manipulative trading, including spoofing,[1] layering,[2] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[3] However, Credit Suisse did not meet its supervisory obligations pursuant to NASD Rule 3010 and FINRA Rule 3110 despite the implementation of Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[4] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant NASD Rule 3010 (for conduct occurring before December 1, 2014) and FINRA Rules 3110 (for conduct occurring on and after December 1, 2014) and 2010during the period of July 2010 through July 2014.

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[1] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[2] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[3] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on exchanges.

[4] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

During the period of July 2011 through August 2015, the firm also did not comply fully with Market Access Rule provisions related to the setting of credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(2)(iv), (e), NASD Rule 3010 (for conduct occurring before December 1, 2014) and FINRA Rules 3110 (for conduct occurring on and after December 1, 2014) and 2010.

## <u>Facts and Violative Conduct</u>

### <u>Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients</u>

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[5]

3. FINRA Rule 2010 require members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

4. NASD Rule 3010 (for conduct occurring before December 1, 2014) and FINRA Rule 3110 (for conduct occurring on and after December 1, 2014) require members to establish and maintain a system, including written procedures, 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.

*<u>Credit Suisse's DMA Business</u>*

5. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

6. LLDMA provided access to exchanges. LLDMA clients directed their orders to exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the

[5] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[6] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[7]

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by

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[6] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

[7] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

DMA clients.[8] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[9]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[10]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[11]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[12] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales

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[8] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[9] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[10] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

[11] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[12] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011), NASD Rule 3010 and FINRA Rule 2010.

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable**

20. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds

21. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

22. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

23. The acts, practices and conduct described in paragraphs 21 and 22 constitute a violation of Rule 15c3-5(b) and (c)(1)(i), NASD Rule 3010 (for conduct occurring before December 1, 2014) and FINRA Rules 3110 (for conduct occurring on and after

December 1, 2014) and 2010.

**Credit Suisse's Annual Review Was Not Reasonable**

24. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

25. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

26. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

27. The acts, practices and conduct described in paragraph 26 constitute a violation of Rule 15c3-5(b) and (e), NASD Rule 3010 and FINRA Rule 2010.

**Written Supervisory Procedures ("WSPs")**

28. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

29. The acts, practices and conduct described in paragraph 28 constitute a violation of Rule 15c3-5(b), NASD Rule 3010 (for conduct occurring before December 1, 2014) and FINRA Rules 3110 (for conduct occurring on and after December 1, 2014) and 2010.

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

1. A censure;

2. A total fine of $6,500,000 (of which $566,583 shall be paid to FINRA for the violations of Rule 15c3-5, NASD Rule 3010 (for conduct occurring before December 1, 2014) and FINRA Rules 3110 (for conduct occurring on and after

December 1, 2014) and 2010));[13]

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

    a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
    b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
    c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
    d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
    e. Updated its written supervisory procedures relevant to items a through d.

    In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

    The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions..

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGA, EDGX and NOM. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election

[13] FINRA investigated this matter on behalf of itself and various self-regulatory organizations, including the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"). The balance of the sanction will be paid to the self-regulatory organizations listed above.

of Payment Form.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, 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

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

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 National Adjudicatory Council ("NAC") 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 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 acceptance or rejection of this AWC.

The firm 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

The firm 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 the firm; and

C. If accepted:

1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;

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 the subject matter thereof in accordance with FINRA Rule 8313; and

3. 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 FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. 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. 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By: [signature]
Name: Lara Leaf
Title: Director

Reviewed by:

[signature] 11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by FINRA:

12/23/19
Date

[signature]
John P. Hewson
Senior Counsel
Department of Enforcement

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

Cboe

**<u>DISCIPLINARY DECISION</u>**
**Cboe BYX Exchange, Inc.**
**Star No. 20120347345/File No. USRI-2820**
**Credit Suisse Securities (USA) LLC**

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**<u>Applicable Rules</u>**

- BYX Rules 5.1 – <u>Written Procedures</u> and 3.1 – <u>Business Conduct of Members</u>.
- Rule 15c3-5 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 – <u>Risk Management Controls for Brokers or Dealers with Market Access</u>.

**<u>Sanction</u>**

- A censure and a monetary fine in the amount of $591,500. In addition, Credit Suisse Securities (USA) LLC must comply with the undertakings detailed in the Letter of Consent.

**<u>Effective Date</u>**

November 20, 2019

Greg Hoogasian, CRO, SVP

**Cboe BYX Exchange, Inc.**
**LETTER OF CONSENT**
**Star No. 20120347345**
**File No. USRI-2820**

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In the Matter of:

Credit Suisse Securities (USA) LLC
11 Madison Avenue
11th Floor
New York, NY 10010,

Respondent

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Pursuant to the provisions of Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) Rule 8.3, Credit Suisse Securities (USA) LLC (“Credit Suisse” or the “firm”) submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The firm neither admits nor denies the findings for Star No. 20120347345 (including merged matters 20140401645, 20140414311, 20140437253, 20140425628, 20150482629, 20160507055, 20170556243, 20170560054, 20170560916, 20160522839, 20170551246 and 20170531305)/File No. USRI-2820 and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been a registered Member of BYX since October 1, 2010. The firm’s registration remains in effect. The firm’s principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

2. This matter originated from surveillance conducted by Exchange Regulatory Staff and surveillance conducted by Financial Industry Regulatory Authority’s (“FINRA”) Department of Market Regulation, Quality of Markets team, on behalf of BYX.[1]

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[1] FINRA conducted the same surveillance on behalf of eleven other self-regulatory organizations: the NASDAQ Stock Market LLC (“Nasdaq”), Nasdaq BX, Inc. (“BX”), Nasdaq PHLX LLC (“PHLX”), the NASDAQ Options Market LLC (“NOM”), the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), NYSE American LLC (“NYSE American”), Cboe BZX Exchange, Inc. (“BZX”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”) and FINRA.

## VIOLATIVE CONDUCT

**Applicable Rules**

3. During relevant periods herein, the following rules were in full force and effect: Rule 15c3-5 promulgated by the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934 (the "Market Access Rule" or "Rule 15c3-5") – Risk Management Controls for Brokers or Dealers with Market Access and Exchange Rules 5.1 – Written Procedures and 3.1 – Business Conduct of Members.

4. Rule 15c3-5(b) required a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

5. Rule 15c3-5(c)(1)(i) required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

6. Rule 15c3-5(c)(1)(ii) required market access broker-dealers to establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

7. Rule 15c3-5(c)(2)(iv) required such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) included "post-trade obligations to monitor for manipulation and other illegal activity."[2]

8. Rule 15c3-5(e)(1) required a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

[2] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

9. Rule 15c3-5(e)(2) further required that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

10. BYX Rule 3.1 required Members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

11. BYX Rule 5.1 required Members to establish, maintain, and enforce written procedures, which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with BYX Rules.

**Overview**

12. During the period of October 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients.

13. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple exchanges for potential manipulative trading, including spoofing,[3] layering,[4] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a

[3] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[4] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[5] However, Credit Suisse did not meet its supervisory obligations pursuant to BYX Rule 5.1 despite the implementation of the Market Access Rule and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

14. During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[6]

15. During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to BYX Rules 5.1 and 3.1 during the period of October 2010 through July 2014.

16. During the period of July 2011 through August 2016, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

17. As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and BYX Rules 3.1 and 5.1.

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[5] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on BYX or other exchanges.

[6] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

**Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients**

*Credit Suisse's DMA Business*

18. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

19. LLDMA provided access to exchanges, including BYX, as well as other venues. LLDMA clients directed their orders to BYX and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

20. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

21. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

22. From October 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

23. Specifically, from October 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[7] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and

[7] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market-making unit.

May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

24. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[8]

25. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[9] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

26. From October 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[10]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

27. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[11]

28. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading.

[8] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[9] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[10] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[11] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[12]

29. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[13] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

30. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

31. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

32. The acts, practices and conduct described in paragraphs 12 through 31 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and BYX Rules 3.1 and 5.1.

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[12] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[13] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

**<u>Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders</u>**

33. From July 2011 through August 2016, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, a maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. As a result, Credit Suisse sent numerous erroneous orders to exchanges.

*<u>Order-by-Order Size Controls</u>*

34. For certain clients routing orders to BYX, the firm assigned SOQ control limits ranging from 250,000 to 2,000,000 shares, SOV control limits from $10 million to $50 million and Max % of ADV control limits of 15% to 300%. The SOQ, SOV and the Max % of ADV controls were unreasonably high to be effective for some clients, absent some other relevant risk management control. Thus, the controls were not reasonably designed to prevent the entry of erroneous orders for market access clients.

35. Furthermore, the firm did not accurately document the nature of its controls in its books and records as required by Rule 15c3-5(b). For example, the firm did not document either that the Max % of ADV control described above was a soft block or the processes that firm personnel would need to follow to operate the soft blocks.

*<u>Price Controls</u>*

36. Although the firm's smart order router ("SOR") generally applied a 2% price tolerance control for market orders, the SOR did not apply the control to orders that were below a certain volume, below a certain price or in securities displaying wide spreads. In those circumstances, instead of the 2% price tolerance, the SOR employed formulas that used historical spread data to re-price the market orders. However, in numerous instances, the SOR used erroneous historical spread data to re-price orders with limit prices that were less restrictive than otherwise would have been selected.

37. For example, between June 2016 and August 2016, certain Credit Suisse clients entered approximately 51 market orders through the firm's SOR that the SOR then re-priced as limit orders at prices outside the NBBO by between $3-$33 (69%-195%). In the absence of a further price control such as a price tolerance control, the firm's SOR routed the erroneously priced orders to BYX, which then applied its own price collars, repricing the orders.

*Equities Messaging Monitoring*

38. From October 2010 through October 2012, the firm did not have a control in place to prevent the entry of a potentially excessive number of orders by certain DMA clients routed through MAGic and certain principal and institutional order flow routed through the firm's algorithmic trading system.

39. For example, on October 27, 2011, a Credit Suisse client routed between 1,916 to 2,164 IOC orders per second in one security over six separate seconds into BYX. The firm did not have a control or review in place to prevent the excessive entry of these IOC orders. Although the firm had an "Agency Quote Stuffing Report" in place that captured instances where a customer sent more than 1,700 orders in one security per minute, the report did not generate exceptions because it excluded IOC orders.

40. The acts, practices and conduct described in paragraphs 33 through 39 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) (for conduct on or after July 14, 2011) and BYX Rules 3.1 and 5.1.

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable**

41. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

42. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

43. The acts, practices and conduct described in paragraphs 41 and 42 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i) and BYX Rules 3.1 and 5.1.

**Credit Suisse's Annual Review Was Not Reasonable**

44. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance, as required by Rule 15c3-5(c)(2)(iv).

45. The acts, practices and conduct described in paragraph 44 constitute a violation of Rule 15c3-5(b) and (e) and BYX Rules 3.1 and 5.1.

**Written Supervisory Procedures ("WSPs")**

46. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to assure its compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

47. The acts, practices and conduct described in paragraph 46 constitute a violation of BYX Rules 3.1 and 5.1.

## SANCTIONS

48. The firm does not have any prior relevant disciplinary history specifically related to the alleged violations described above.

49. In light of the alleged rule violations described above, the firm consents to the imposition of the following sanctions:

a. A censure;

b. A total fine of $6,500,000 (of which $591,500 shall be paid to BYX for the violations of Rule 15c3-5 and BYX Rules 3.1 and 5.1);[14]

c. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

i. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;

[14] The balance of the sanction will be paid to the self-regulatory organizations listed in footnote 1.

ii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access;
iii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
iv. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
v. Updated its written supervisory procedures relevant to items i. through iv.

In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

50. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, NYSE American, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

If this Letter of Consent is accepted, the firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the firm.

The firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.**

**Date:** 11/18/19

**Credit Suisse Securities (USA) LLC**

**By:** Lara Leaf

**Name:** Lara Leaf

**Title:** Director

Cboe

**DISCIPLINARY DECISION**
**Cboe BZX Exchange, Inc.**
**Star No. 20120347345/File No. USRI-2820**
**Credit Suisse Securities (USA) LLC**

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**Applicable Rules**

- BZX Rules 5.1 – Written Procedures and 3.1 – Business Conduct of Members.
- Rule 15c3-5 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 – Risk Management Controls for Brokers or Dealers with Market Access.

**Sanction**

- A censure and a monetary fine in the amount of $608,833. In addition, Credit Suisse Securities (USA) LLC must comply with the undertakings detailed in the Letter of Consent.

**Effective Date**

November 20, 2019

Greg Hoogasian, CRO, SVP

**Cboe BZX Exchange, Inc.**
**LETTER OF CONSENT**
**Star No. 20120347345**
**File No. USRI-2820**

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In the Matter of:

Credit Suisse Securities (USA) LLC
11 Madison Avenue
11th Floor
New York, NY 10010,

Respondent

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Pursuant to the provisions of Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") Rule 8.3, Credit Suisse Securities (USA) LLC ("Credit Suisse" or the "firm") submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The firm neither admits nor denies the findings for Star No. 20120347345 (including merged matters 20140401645, 20140414311, 20140437253, 20140425628, 20150482629, 20160507055, 20170556243, 20170560054, 20170560916, 20160522839, 20170551246 and 20170531305)/File No. USRI-2820 and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been a registered Member of BZX since September 3, 2008. The firm's registration remains in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

2. This matter originated from surveillance conducted by Exchange Regulatory Staff and surveillance conducted by Financial Industry Regulatory Authority's ("FINRA") Department of Market Regulation, Quality of Markets team, on behalf of BZX.[1]

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[1] FINRA conducted the same surveillance on behalf of eleven other self-regulatory organizations: the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX") and FINRA.

## VIOLATIVE CONDUCT

**Applicable Rules**

3. During relevant periods herein, the following rules were in full force and effect: Rule 15c3-5 promulgated by the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934 (the "Market Access Rule" or "Rule 15c3-5") – <u>Risk Management Controls for Brokers or Dealers with Market Access</u> and Exchange Rules 5.1 – <u>Written Procedures</u> and 3.1 – <u>Business Conduct of Members</u>.

4. Rule 15c3-5(b) required a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

5. Rule 15c3-5(c)(1)(i) required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

6. Rule 15c3-5(c)(1)(ii) required market access broker-dealers to establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

7. Rule 15c3-5(c)(2)(iv) required such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[2]

8. Rule 15c3-5(e)(1) required a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

[2] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

9. Rule 15c3-5(e)(2) further required that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

10. BZX Rule 3.1 required Members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

11. BZX Rule 5.1 required Members to establish, maintain, and enforce written procedures, which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with BZX Rules.

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14. During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[6]

15. During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to BZX Rules 5.1 and 3.1 during the period of July 2010 through July 2014.

16. During the period of July 2011 through August 2016, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

17. As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and BZX Rules 3.1 and 5.1.

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[5] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on BZX or other exchanges.

[6] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

**<u>Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients</u>**

*<u>Credit Suisse's DMA Business</u>*

18. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

19. LLDMA provided access to exchanges, including BZX, as well as other venues. LLDMA clients directed their orders to BZX and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

20. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

21. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*<u>Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading</u>*

22. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

23. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[7] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and

[7] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market-making unit.

May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

24. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[8]

25. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[9] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

26. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[10]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

27. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[11]

28. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading.

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[8] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[9] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[10] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales, and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[11] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[12]

29. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[13] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

30. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

31. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

32. The acts, practices and conduct described in paragraphs 12 through 31 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and BZX Rules 3.1 and 5.1.

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[12] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[13] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

**Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders**

33. From July 2011 through August 2016, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. Further, the firm did not establish controls or procedures reasonably designed to reject orders that exceeded appropriate size parameters submitted by a certain algorithmic client over a short period of time. As a result, Credit Suisse sent numerous erroneous orders to exchanges, seven of which led to market impact.

*Order-by-Order Size Controls*

34. For certain clients routing orders to BZX, the firm assigned SOQ control limits ranging from 250,000 to 2,000,000 shares, SOV control limits from $10 million to $50 million and Max % of ADV control limits of 15% to 300%. The SOQ, SOV and the Max % of ADV controls were unreasonably high to be effective for some clients, absent some other relevant risk management control. Thus, the controls were not reasonably designed to prevent the entry of erroneous orders for market access clients.

35. Furthermore, the firm did not accurately document the nature of its controls in its books and records as required by Rule 15c3-5(b). For example, the firm did not document either that the Max % of ADV control described above was a soft block or the processes that firm personnel would need to follow to operate the soft blocks.

*Short Period of Time Size Controls*

36. The firm did not establish controls or procedures to prevent the entry of orders exceeding an appropriate size parameter over a short period of time for a particular client ("Client D").

37. On April 17, 2015, Client D, entered thousands of orders through the firm onto BZX and other exchanges in symbol XYZ.[14] At one point, the firm, on behalf of Client D, had 25,000 resting offers in XYZ on exchanges, ranging in size from 80 to 40,000 shares and totaling 46 million shares. Client D, as a result of its own

[14] A generic symbol has been used in place of the name of the referenced security.

faulty automated hedging strategy, had entered most of those offers through Credit Suisse over a 37-second period.

38. When Client D's orders reached the $1 billion maximum notional daily limit that had been previously set for Client D, a Credit Suisse control halted the further entry of orders.[15] At the time of the halt, Client D attempted to cancel all open orders, but its own trading platform had crashed. Client D then requested that Credit Suisse cancel all open orders, but Credit Suisse was unable to do so immediately because the number of Client D orders had led to a slowing of a relevant system. Subsequent to Client D's request to Credit Suisse, another one-and-a-half million shares of XYZ were executed before Credit Suisse was able to cancel the balance of Client D's open orders.

39. Client D incurred a several million dollar loss when it covered its short position. Credit Suisse also incurred an approximately $723,000 loss, after having accepted the sale of approximately 1 million shares of XYZ in its error account. Finally, the number of orders also caused one of Credit Suisse's trading systems to operate more slowly than typical, slowing the processing of messages from other Credit Suisse clients.

*Price Controls*

40. Although the firm's smart order router ("SOR") generally applied a 2% price tolerance control for market orders, the SOR did not apply the control to orders that were below a certain volume, below a certain price or in securities displaying wide spreads. In those circumstances, instead of the 2% price tolerance, the SOR employed formulas that used historical spread data to re-price the market orders. However, in numerous instances, the SOR used erroneous historical spread data to re-price orders with limit prices that were less restrictive than otherwise would have been selected.

41. For example, in December 2014, certain Credit Suisse clients entered approximately 240 market orders through the firm's SOR that the SOR then re-priced as limit orders at prices outside the NBBO by between $2-$197 (53%-108%). In the absence of a further price control such as a price tolerance control, the firm's SOR routed the erroneously priced orders to BZX, which then applied its own price collars, repricing the orders.

*Equities Messaging Monitoring*

42. From October 2010 through October 2012, the firm did not have a control in place to prevent the entry of a potentially excessive number of orders by certain DMA

[15] The maximum notional daily limit, which is a credit limit for Rule 15c3-5 purposes, includes executed and unexecuted orders. At the time of the halt, Client D, through Credit Suisse, had executed about $140 million in notional value (about 7.3 million shares) and had $890 million in notional value of open orders (about 46.8 million shares) in XYZ.

clients routed through MAGic and certain principal and institutional order flow routed through the firm's algorithmic trading system.

43. Additionally, from March 2011 through August 2012, the firm did not have a review in place that was reasonably designed to monitor the rate of unintended message traffic for the firm's quantitative trading desk ("QTD"), which operated a market-making strategy. On August 8, 2012, QTD suffered an operational issue when it was employing a market-making strategy that led to as many as 3,386 unintended orders and cancellations within the same second on three occasions in an exchange-traded fund on BZX. The firm did not detect the issue internally, but discovered a system error upon inquiry by BZX. Although the firm had a control in place to limit the number of new orders to 1,700 per minute, at which time QTD would stop trading the symbol for one minute, the control did not count all message traffic, such as cancellations and amendments, during this period.

44. The acts, practices and conduct described in paragraphs 33 through 43 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) (for conduct on or after July 14, 2011) and BZX Rules 3.1 and 5.1.

**<u>Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable</u>**

45. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

46. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

47. The acts, practices and conduct described in paragraphs 45 and 46 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i) and BZX Rules 3.1 and 5.1.

**<u>Credit Suisse's Annual Review Was Not Reasonable</u>**

48. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance, as required by Rule 15c3-5(c)(2)(iv).

49. The acts, practices and conduct described in paragraph 48 constitute a violation of Rule 15c3-5(b) and (e) and BZX Rules 3.1 and 5.1.

**Written Supervisory Procedures ("WSPs")**

50. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to assure its compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

51. The acts, practices and conduct described in paragraph 50 constitute a violation of BZX Rules 3.1 and 5.1.

## SANCTIONS

52. The firm does not have any prior relevant disciplinary history specifically related to the alleged violations described above.

53. In light of the alleged rule violations described above, the firm consents to the imposition of the following sanctions:

a. A censure,

b. A total fine of $6,500,000 (of which $608,833 shall be paid to BZX for the violations of Rule 15c3-5 and BZX Rules 3.1 and 5.1);[16]

c. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

i. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
ii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access;
iii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
iv. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
v. Updated its written supervisory procedures relevant to items i. through iv.

[16] The balance of the sanction will be paid to the self-regulatory organizations listed in footnote 1.

In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

54. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, NYSE American, BYX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

If this Letter of Consent is accepted, the firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the firm.

The firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.**

**Date:** 11/18/19

**Credit Suisse Securities (USA) LLC**

**By:** [signature]

**Name:** Lara Leaf

**Title:** Director

# DISCIPLINARY DECISION
## Cboe EDGA Exchange, Inc.
## Star No. 20120347345/File No. USRI-2820
## Credit Suisse Securities (USA) LLC

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**Applicable Rules**

- EDGA Rules 5.1 – Written Procedures and 3.1 – Business Conduct of Members.
- Rule 15c3-5 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 – Risk Management Controls for Brokers or Dealers with Market Access.

**Sanction**

- A censure and a monetary fine in the amount of $591,500. In addition, Credit Suisse Securities (USA) LLC must comply with the undertakings detailed in the Letter of Consent.

**Effective Date**

November 20, 2019

Greg Hoogasian, CRO, SVP

**Cboe EDGA Exchange, Inc.**
**<u>LETTER OF CONSENT</u>**
**Star No. 20120347345**
**File No. USRI-2820**

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In the Matter of:

Credit Suisse Securities (USA) LLC
11 Madison Avenue
11th Floor
New York, NY 10010,

Respondent

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Pursuant to the provisions of Cboe EDGA Exchange, Inc. ("EDGA" or the "Exchange") Rule 8.3, Credit Suisse Securities (USA) LLC ("Credit Suisse" or the "firm") submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The firm neither admits nor denies the findings for Star No. 20120347345 (including merged matters 20140401645, 20140414311, 20140437253, 20140425628, 20150482629, 20160507055, 20170556243, 20170560054, 20170560916, 20160522839, 20170551246 and 20170531305)/File No. USRI-2820 and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been a registered Member of EDGA since May 25, 2010. The firm's registration remains in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

2. This matter originated from surveillance conducted by Exchange Regulatory Staff and surveillance conducted by Financial Industry Regulatory Authority's ("FINRA") Department of Market Regulation, Quality of Markets team, on behalf of EDGA.[1]

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[1] FINRA conducted the same surveillance on behalf of eleven other self-regulatory organizations: the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGX Exchange, Inc. ("EDGX") and FINRA.

## VIOLATIVE CONDUCT

**Applicable Rules**

3. During relevant periods herein, the following rules were in full force and effect: Rule 15c3-5 promulgated by the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934 (the "Market Access Rule" or "Rule 15c3-5") – Risk Management Controls for Brokers or Dealers with Market Access and Exchange Rules 5.1 – Written Procedures and 3.1 – Business Conduct of Members.

4. Rule 15c3-5(b) required a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

5. Rule 15c3-5(c)(1)(i) required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

6. Rule 15c3-5(c)(1)(ii) required market access broker-dealers to establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

7. Rule 15c3-5(c)(2)(iv) required such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) included "post-trade obligations to monitor for manipulation and other illegal activity."[2]

8. Rule 15c3-5(e)(1) required a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

[2] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

9. Rule 15c3-5(e)(2) further required that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

10. EDGA Rule 3.1 required Members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

11. EDGA Rule 5.1 required Members to establish, maintain, and enforce written procedures, which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with EDGA Rules.

**Overview**

12. During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients.

13. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple exchanges for potential manipulative trading, including spoofing,[3] layering,[4] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a

[3] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[4] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[5] However, Credit Suisse did not meet its supervisory obligations pursuant to EDGA Rule 5.1 despite the implementation of the Market Access Rule and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

14. During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[6]

15. During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to EDGA Rules 5.1 and 3.1 during the period of July 2010 through July 2014.

16. During the period of July 2011 through August 2016, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

17. As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and EDGA Rules 3.1 and 5.1.

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[5] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on EDGA or other exchanges.

[6] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

**Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients**

*Credit Suisse's DMA Business*

18. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

19. LLDMA provided access to exchanges, including EDGA, as well as other venues. LLDMA clients directed their orders to EDGA and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

20. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

21. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

22. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

23. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[7] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and

[7] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market-making unit.

May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

24. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[8]

25. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[9] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

26. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[10]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

27. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[11]

28. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading.

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[8] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[9] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[10] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[11] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[12]

29. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[13] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

30. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

31. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

32. The acts, practices and conduct described in paragraphs 12 through 31 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and EDGA Rules 3.1 and 5.1.

[12] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[13] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

**Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders**

33. From July 2011 through August 2016, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, a maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. Further, the firm did not establish controls or procedures reasonably designed to reject orders that exceeded appropriate size parameters submitted by a certain algorithmic client over a short period of time. As a result, Credit Suisse sent numerous erroneous orders to exchanges.

*Order-by-Order Size Controls*

34. For certain clients routing orders to EDGA, the firm assigned SOQ control limits ranging from 250,000 to 2,000,000 shares, SOV control limits from $10 million to $50 million and Max % of ADV control limits of 15% to 300%. The SOQ, SOV and the Max % of ADV controls were unreasonably high to be effective for some clients, absent some other relevant risk management control. Thus, the controls were not reasonably designed to prevent the entry of erroneous orders for market access clients.

35. Furthermore, the firm did not accurately document the nature of its controls in its books and records as required by Rule 15c3-5(b). For example, the firm did not document either that the Max % of ADV control described above was a soft block or the processes that firm personnel would need to follow to operate the soft blocks.

*Short Period of Time Size Controls*

36. The firm did not establish controls or procedures to prevent the entry of orders exceeding an appropriate size parameter over a short period of time for a particular client ("Client D").

37. On April 17, 2015, Client D, entered thousands of orders through the firm onto EDGA and other exchanges in symbol XYZ.[14] At one point, the firm, on behalf of Client D, had 25,000 resting offers in XYZ on exchanges, ranging in size from 80 to 40,000 shares and totaling 46 million shares. Client D, as a result of its own

[14] A generic symbol has been used in place of the name of the referenced security.

faulty automated hedging strategy, had entered most of those offers through Credit Suisse over a 37-second period.

38. When Client D's orders reached the $1 billion maximum notional daily limit that had been previously set for Client D, a Credit Suisse control halted the further entry of orders.[15] At the time of the halt, Client D attempted to cancel all open orders, but its own trading platform had crashed. Client D then requested that Credit Suisse cancel all open orders, but Credit Suisse was unable to do so immediately because the number of Client D orders had led to a slowing of the relevant system. Subsequent to Client D's request to Credit Suisse, another one-and-a-half million shares of XYZ were executed before Credit Suisse was able to cancel the balance of Client D's open orders.

39. Client D incurred a several million dollar loss when it covered its short position. Credit Suisse also incurred an approximately $723,000 loss, after having accepted the sale of approximately 1 million shares of XYZ in its error account. Finally, the number of orders also caused one of Credit Suisse's trading systems to operate more slowly than typical, slowing the processing of messages from other Credit Suisse clients.

*Price Controls*

40. Although the firm's smart order router ("SOR") generally applied a 2% price tolerance control for market orders, the SOR did not apply the control to orders that were below a certain volume, below a certain price or in securities displaying wide spreads. In those circumstances, instead of the 2% price tolerance, the SOR employed formulas that used historical spread data to re-price the market orders. However, in numerous instances, the SOR used erroneous historical spread data to re-price orders with limit prices that were less restrictive than otherwise would have been selected.

41. For example, between July 2016 and August 2016, certain Credit Suisse clients entered approximately 42 market orders through the firm's SOR that the SOR then re-priced as limit orders at prices outside the NBBO by between $0.68-$28 (58%-99%). In the absence of a further price control such as a price tolerance control, the firm's SOR routed the erroneously priced orders to EDGA, which then applied its own price collars, repricing the orders.

42. The acts, practices and conduct described in paragraphs 33 through 41 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) (for conduct on or after July 14, 2011) and EDGA Rules 3.1 and 5.1.

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[15] The maximum notional daily limit, which is a credit limit for Rule 15c3-5 purposes, includes executed and unexecuted orders. At the time of the halt, Client D, through Credit Suisse, had executed about $140 million in notional value (about 7.3 million shares) and had $890 million in notional value of open orders (about 46.8 million shares) in XYZ.

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable**

43. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

44. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

45. The acts, practices and conduct described in paragraphs 43 and 44 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i) and EDGA Rules 3.1 and 5.1.

**Credit Suisse's Annual Review Was Not Reasonable**

46. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance, as required by Rule 15c3-5(c)(2)(iv).

47. The acts, practices and conduct described in paragraph 46 constitute a violation of Rule 15c3-5(b) and (e) and EDGA Rules 3.1 and 5.1.

**Written Supervisory Procedures ("WSPs")**

48. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to assure its compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

49. The acts, practices and conduct described in paragraph 48 constitute a violation of EDGA Rules 3.1 and 5.1.

## SANCTIONS

50. The firm does not have any prior relevant disciplinary history specifically related to the alleged violations described above.

51. In light of the alleged rule violations described above, the firm consents to the imposition of the following sanctions:

a. A censure;

b. A total fine of $6,500,000 (of which $591,500 shall be paid to EDGA for the violations of Rule 15c3-5 and EDGA Rules 3.1 and 5.1);[16]

c. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

i. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
ii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access;
iii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
iv. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
v. Updated its written supervisory procedures relevant to items i. through iv.

In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

52. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

[16] The balance of the sanction will be paid to the self-regulatory organizations listed in footnote 1.

If this Letter of Consent is accepted, the firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the firm.

The firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's**

**provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.**

**Date:** 11/18/19

**Credit Suisse Securities (USA) LLC**

**By:** Lara Leaf

**Name:** Lara Leaf

**Title:** Director

Cboe

**DISCIPLINARY DECISION**
**Cboe EDGX Exchange, Inc.**
**Star No. 20120347345/File No. USRI-2820**
**Credit Suisse Securities (USA) LLC**

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**Applicable Rules**

- EDGX Rules 5.1 – Written Procedures and 3.1 – Business Conduct of Members.
- Rule 15c3-5 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 – Risk Management Controls for Brokers or Dealers with Market Access.

**Sanction**

- A censure and a monetary fine in the amount of $591,500. In addition, Credit Suisse Securities (USA) LLC must comply with the undertakings detailed in the Letter of Consent.

**Effective Date**

November 20, 2019

Greg Hoogasian, CRO, SVP

**Cboe EDGX Exchange, Inc.**
**LETTER OF CONSENT**
**Star No. 20120347345**
**File No. USRI-2820**

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In the Matter of:

Credit Suisse Securities (USA) LLC
11 Madison Avenue
11th Floor
New York, NY 10010,

Respondent

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Pursuant to the provisions of Cboe EDGX Exchange, Inc. ("EDGX" or the "Exchange") Rule 8.3, Credit Suisse Securities (USA) LLC ("Credit Suisse" or the "firm") submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The firm neither admits nor denies the findings for Star No. 20120347345 (including merged matters 20140401645, 20140414311, 20140437253, 20140425628, 20150482629, 20160507055, 20170556243, 20170560054, 20170560916, 20160522839, 20170551246 and 20170531305)File No. USRI-2820 and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been a registered Member of EDGX since May 27, 2010. The firm's registration remains in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

2. This matter originated from surveillance conducted by Exchange Regulatory Staff and surveillance conducted by Financial Industry Regulatory Authority's ("FINRA") Department of Market Regulation, Quality of Markets team, on behalf of EDGX.[1]

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[1] FINRA conducted the same surveillance on behalf of eleven other self-regulatory organizations: the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and FINRA.

## VIOLATIVE CONDUCT

**<u>Applicable Rules</u>**

3. During relevant periods herein, the following rules were in full force and effect: Rule 15c3-5 promulgated by the Securities and Exchange Commission ("SEC") pursuant to the Securities Exchange Act of 1934 (the "Market Access Rule" or "Rule 15c3-5") – <u>Risk Management Controls for Brokers or Dealers with Market Access</u> and Exchange Rules 5.1 – <u>Written Procedures</u> and 3.1 – <u>Business Conduct of Members</u>.

4. Rule 15c3-5(b) required a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

5. Rule 15c3-5(c)(1)(i) required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

6. Rule 15c3-5(c)(1)(ii) required market access broker-dealers to establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

7. Rule 15c3-5(c)(2)(iv) required such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) included "post-trade obligations to monitor for manipulation and other illegal activity."[2]

8. Rule 15c3-5(e)(1) required a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

[2] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

9. Rule 15c3-5(e)(2) further required that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

10. EDGX Rule 3.1 required Members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

11. EDGX Rule 5.1 required Members to establish, maintain, and enforce written procedures, which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with EDGX Rules.

**Overview**

12. During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients.

13. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple exchanges for potential manipulative trading, including spoofing,[3] layering,[4] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a

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[3] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[4] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[5] However, Credit Suisse did not meet its supervisory obligations pursuant to EDGX Rule 5.1 despite the implementation of the Market Access Rule and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

14. During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[6]

15. During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to EDGX Rules 5.1 and 3.1 during the period of July 2010 through July 2014.

16. During the period of July 2011 through August 2016, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

17. As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and EDGX Rules 3.1 and 5.1.

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[5] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on EDGX or other exchanges.

[6] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

**Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients**

*Credit Suisse's DMA Business*

18. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

19. LLDMA provided access to exchanges, including EDGX, as well as other venues. LLDMA clients directed their orders to EDGX and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

20. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

21. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

22. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

23. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[7] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and

[7] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market-making unit.

May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

24. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[8]

25. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[9] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

26. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[10]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

27. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[11]

28. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading.

[8] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[9] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[10] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[11] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[12]

29. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[13] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

30. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

31. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

32. The acts, practices and conduct described in paragraphs 12 through 31 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and EDGX Rules 3.1 and 5.1.

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[12] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[13] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

## Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders

33. From July 2011 through August 2016, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, a maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. Further, the firm did not establish controls or procedures reasonably designed to reject orders that exceeded appropriate size parameters submitted by a certain algorithmic client over a short period of time. Finally, the firm did not apply a reasonably designed price control in certain situations, including for principal orders routed by one of its desks. As a result, Credit Suisse sent numerous erroneous orders to exchanges.

*Order-by-Order Size Controls*

34. The firm did not apply price, SOQ, SOV or Max % of ADV controls on outbound riskless principal orders that it routed from one of its former desks to EDGX, although it did subject inbound orders from its clients to volume, notional value and price controls.[14] For example, without the benefit of any controls to prevent the entry of erroneous orders, in February 2015 the relevant firm desk routed 17 principal orders at prices outside the NBBO by between $2-$85 (29%-783%) to EDGX, which then applied its own price collars, repricing the orders.

*Short Period of Time Size Controls*

35. The firm did not establish controls or procedures to prevent the entry of orders exceeding an appropriate size parameter over a short period of time for a particular client ("Client D").

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[14] The relevant desk imposed a soft block on inbound client orders that exceeded 5 million shares and a hard block on orders that exceeded 10 million shares; imposed a soft block on inbound client orders exceeding $250 million in notional value and a hard block on orders exceeding $500 million; and imposed a soft block on inbound client limit orders priced more than 20% away from the last sale. None of these controls applied to outbound principal orders. Moreover, the inbound order controls would be considered unreasonable as Rule 15c3-5 controls were they to be considered applicable.

36. On April 17, 2015, Client D, entered thousands of orders through the firm onto EDGX and other exchanges in symbol XYZ.[15] At one point, the firm, on behalf of Client D, had 25,000 resting offers in XYZ on exchanges, ranging in size from 80 to 40,000 shares and totaling 46 million shares. Client D, as a result of its own faulty automated hedging strategy, had entered most of those offers through Credit Suisse over a 37-second period.

37. When Client D's orders reached the $1 billion maximum notional daily limit that had been previously set for Client D, a Credit Suisse control halted the further entry of orders.[16] At the time of the halt, Client D attempted to cancel all open orders, but its own trading platform had crashed. Client D then requested that Credit Suisse cancel all open orders, but Credit Suisse was unable to do so immediately because the number of Client D orders had led to a slowing of the relevant system. Subsequent to Client D's request to Credit Suisse, another one-and-a-half million shares of XYZ were executed before Credit Suisse was able to cancel the balance of Client D's open orders.

38. Client D incurred a several million dollar loss when it covered its short position. Credit Suisse also incurred an approximately $723,000 loss, after having accepted the sale of approximately 1 million shares of XYZ in its error account. Finally, the number of orders also caused one of Credit Suisse's trading systems to operate more slowly than typical, slowing the processing of messages from other Credit Suisse clients.

39. Finally, Credit Suisse set Client D's SOQ control at 2,000,000 shares and its Max % of ADV control at 100%, which were too high to be effective for Client D.

40. The acts, practices and conduct described in paragraphs 33 through 39 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) (for conduct on or after July 14, 2011) and EDGX Rules 3.1 and 5.1.

**<u>Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable</u>**

41. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

42. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any

[15] A generic symbol has been used in place of the name of the referenced security.

[16] The maximum notional daily limit, which is a credit limit for Rule 15c3-5 purposes, includes executed and unexecuted orders. At the time of the halt, Client D, through Credit Suisse, had executed about $140 million in notional value (about 7.3 million shares) and had $890 million in notional value of open orders (about 46.8 million shares) in XYZ.

changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

43. The acts, practices and conduct described in paragraphs 41 and 42 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i) and EDGX Rules 3.1 and 5.1.

**Credit Suisse's Annual Review Was Not Reasonable**

44. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance, as required by Rule 15c3-5(c)(2)(iv).

45. The acts, practices and conduct described in paragraph 44 constitute a violation of Rule 15c3-5(b) and (e) and EDGX Rules 3.1 and 5.1.

**Written Supervisory Procedures ("WSPs")**

46. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to assure its compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

47. The acts, practices and conduct described in paragraph 46 constitute a violation of EDGX Rules 3.1 and 5.1.

## SANCTIONS

48. The firm does not have any prior relevant disciplinary history specifically related to the alleged violations described above.

49. In light of the alleged rule violations described above, the firm consents to the imposition of the following sanctions:

a. A censure;

b. A total fine of $6,500,000 (of which $591,500 shall be paid to EDGX for the violations of Rule 15c3-5 and EDGX Rules 3.1 and 5.1);[17]

[17] The balance of the sanction will be paid to the self-regulatory organizations listed in footnote 1.

c. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

   i. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
   ii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access;
   iii. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
   iv. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
   v. Updated its written supervisory procedures relevant to items i. through iv.

In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

50. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGA, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

If this Letter of Consent is accepted, the firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The firm waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO") in connection with the CRO's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person's participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the firm.

The firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

The firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.**

**Date:** 11/18/19

**Credit Suisse Securities (USA) LLC**

**By:** Lara Leaf

**Name:** Lara Leaf

**Title:** Director

**THE NASDAQ STOCK MARKET LLC**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734502**

TO: The NASDAQ Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") 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, Nasdaq will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

## I.

## ACCEPTANCE AND CONSENT

A. The firm 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

### BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936 and with Nasdaq since July 12, 2006. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

### OVERVIEW

During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple

exchanges for potential manipulative trading, including spoofing,[1] layering,[2] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[3] However, Credit Suisse did not meet its supervisory obligations pursuant to Nasdaq Rule 3010 despite the implementation of Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[4] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to Nasdaq Rule 2110 (for conduct prior to November 21, 2012), Rule 2010A (for conduct on or after November 21, 2012) and Rule 3010 during the period of July 2010 through July 2014.

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[1] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[2] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[3] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on Nasdaq or other exchanges.

[4] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

During the period of July 2011 through August 2017, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and Nasdaq Rule 2110 (for conduct prior to November 21, 2012), Rule 2010A (for conduct on or after November 21, 2012) and Rule 3010.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[5]

3. Nasdaq Rule 2110 (for conduct prior to November 21, 2012) and Rule 2010A (for conduct on or after November 21, 2012) require members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

4. Nasdaq Rule 3010 requires members to establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.

*Credit Suisse's DMA Business*

5. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

6. LLDMA provided access to exchanges, including Nasdaq as well as other venues. LLDMA clients directed their orders to Nasdaq and other exchanges through the firm's

[5] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[6] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[7]

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[6] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

[7] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[8] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[9]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients. [10]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[11]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades

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[8] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[9] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales, and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[10] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

[11] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

executed by Client A on behalf of its client, which eventually became Client B.[12] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and Nasdaq Rules 3010, 2110 (for conduct prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

**Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders**

20. Rule 15c3-5(c)(1)(ii) requires market access broker-dealers establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

21. From July 2011 through August 2017, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum

[12] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. The firm also did not apply a reasonably designed price control in certain situations, including for directed orders.

22. For example, on February 13, 2014, a Credit Suisse DMA client routed a directed market order to buy 100,000 shares of XYZ[13] stock. The client intended for it to be a limit order. The NBBO at the time of entry was $61.51 at $61.58. Because the client entered the order as a directed market order, the order bypassed certain controls that Credit Suisse applied to orders routed through the relevant firm system. Instead, the only pre-trade erroneous order and size controls applied to the order were a $1 billion credit limit and a single one million share SOQ. Without the benefit of some other reasonably designed risk management control, the market order was allowed to enter the market and resulted in executions ranging from $61.58 to $67.78, a market impact of $6.20. Nasdaq and another exchange cancelled 176 transactions as a result of clearly erroneous order petitions filed by the firm.

23. The acts, practices and conduct described in paragraphs 21 through 23 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) and Nasdaq Rules 3010, 2110 (for conduct prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable**

24. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

25. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

26. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

27. The acts, practices and conduct described in paragraphs 25 and 26 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) and Nasdaq Rules 3010, 2110 (for conduct prior to

[13] A generic symbol has been used in place of the name of referenced securities.

November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

**Credit Suisse's Annual Review Was Not Reasonable**

28. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

29. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

30. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

31. The acts, practices and conduct described in paragraph 30 constitute a violation of Rule 15c3-5(b) and (e) and Nasdaq Rules 3010, 2110 (for conduct prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

**Written Supervisory Procedures ("WSPs")**

32. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

33. The acts, practices and conduct described in paragraph 32 constitute a violation of Rule 15c3-5(b), Nasdaq Rules 3010, 2110 (for conduct prior to November 21, 2012), and 2010A (for conduct on or after November 21, 2012).

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

1. A censure,

2. A total fine of $6,500,000 (of which $591,500 shall be paid to Nasdaq for the violations of Rule 15c3-5 and Nasdaq Rules 3010, 2110 (for conduct prior to

November 21, 2012) and 2010A (for conduct on or after November 21, 2012));[14]

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

    a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
    b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
    c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
    d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
    e. Updated its written supervisory procedures relevant to items a through d.

    In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

    The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and BX, PHLX, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

The firm specifically and voluntarily waives any right to claim that it is unable to pay,

[14] FINRA investigated this matter on behalf of Nasdaq and various self-regulatory organizations, including The Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the New York Stock Exchange LLC ("NYSE"), the NASDAQ Options Market LLC ("NOM"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"), as well as on its own behalf. The balance of the sanction will be paid to the self-regulatory organizations listed above.

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

The firm specifically and voluntarily waives the following rights granted under Nasdaq's Code of Procedure:

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 Nasdaq Review Council 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, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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 prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 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. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;

2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and

3. 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

D. 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. This Statement does not constitute factual or legal findings by Nasdaq, nor does it reflect the views of Nasdaq 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By:
Name: Lara Leef
Title: Director

Reviewed by:

11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by Nasdaq:

12/23/19
Date

John P. Hewson
Senior Counsel
Department of Enforcement

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

**NASDAQ PHLX LLC**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734503**

TO: Nasdaq PHLX LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of Nasdaq PHLX LLC ("Phlx") Code of Procedure, Credit Suisse Securities (USA) LLC (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, Phlx will not bring any future actions against the firm 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 Phlx, or to which Phlx 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 Phlx:

### BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

Credit Suisse is the U.S. based broker-dealer of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936 and with Phlx since October 8, 2010. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

### OVERVIEW

During the period of October 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple exchanges for potential manipulative trading, including spoofing,[1] layering,[2] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[3] However, Credit Suisse did not meet its supervisory obligations pursuant to Phlx Rule 748 despite the implementation of Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[4] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to Phlx Rules 707 and 748 during the period of October 2010 through July 2014.

During the period of July 2011 through August 2015, the firm also did not comply fully with

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[1] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[2] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[3] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on Phlx or other exchanges.

[4] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

Market Access Rule provisions related to the setting of credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(2)(iv), (e) and Phlx Rules 707 and 748.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[5]

3. Phlx Rule 707 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

4. Phlx Rule 748 requires each member to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of businesses in which the member organization engages and the written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect violations of the applicable securities laws and regulations, and rules of Phlx.

*Credit Suisse's DMA Business*

5. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

6. LLDMA provided access to exchanges, including BX, as well as other venues. LLDMA clients directed their orders to BX and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares

[5] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From October 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from October 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[6] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[7]

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[8] These reports generated alerts if the same client unique identifier was on

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[6] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

[7] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[8] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From October 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[9]

*<u>Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System</u>*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[10]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[11]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[12] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when

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[9] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[10] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

[11] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[12] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and Phlx Rules 707 and 748.

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Rfeasonable**

20. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds

21. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

22. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

23. The acts, practices and conduct described in paragraphs 21 and 22 constitute a violation of Rule 15c3-5(b) and (c)(1)(ii) and Phlx Rules 707 and 748.

**Credit Suisse's Annual Review Was Not Reasonable**

24. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

25. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

26. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

27. The acts, practices and conduct described in paragraph 26 constitute a violation of Rule 15c3-5(b) and (e) and Phlx Rules 707 and 748.

**Written Supervisory Procedures ("WSPs")**

28. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

29. The acts, practices and conduct described in paragraph 28 constitute a violation of Rule 15c3-5(b) and Phlx Rules 707 and 748.

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

1. A censure;

2. A total fine of $6,500,000 (of which $566,583 shall be paid to Phlx for the violations of Rule 15c3-5 and Phlx Rules 707 and 748);[13]

[13] FINRA investigated this matter on behalf of Phlx and various self-regulatory organizations, including the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"), as well as on its own behalf. The balance of the sanction will be paid to the self-regulatory organizations listed above.

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

    a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
    b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
    c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
    d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
    e. Updated its written supervisory procedures relevant to items a through d.

    In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

    The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions..

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and BX, Nasdaq, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, 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

The firm specifically and voluntarily waives the following rights granted under Phlx's Code of Procedure:

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 Phlx Review Council 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, the Phlx Review Council, or any member of the Phlx Review Council, 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 prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 FINRA's Department of Enforcement and the Phlx Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx Rule 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. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the firm;

2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3; and

3. 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 Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.

D. 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. This Statement does not constitute factual or legal findings by Phlx, nor does it reflect the views of Phlx 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By: Lara Leaf
Name: Lara Leaf
Title: Director

Reviewed by:

11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by Phlx:

12/23/19
Date

John P. Hewson
Senior Counsel
Department of Enforcement

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

**NASDAQ BX, INC.**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734504**

TO: Nasdaq BX, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of Nasdaq BX, Inc. ("BX") Code of Procedure, Credit Suisse Securities (USA) LLC (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, BX will not bring any future actions against the firm 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 BX, or to which BX 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 BX:

### BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936 and with BX since January 12, 2009. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

### OVERVIEW

During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple

exchanges for potential manipulative trading, including spoofing,[1] layering,[2] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[3] However, Credit Suisse did not meet its supervisory obligations pursuant to BX Rule 3010 despite the implementation of Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[4] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to BX Rules 2110 and 3010 during the period of July 2010 through July 2014.

During the period of July 2011 through August 2015, the firm also did not comply fully with

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[1] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[2] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[3] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on BX or other exchanges.

[4] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

Market Access Rule provisions related to the setting of credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(2)(iv), (e) and BX Rules 2110 and 3010.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[5]

3. BX Rule 2110 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

4. BX Rule 3010 requires, among other things, that each member firm establish, maintain, and enforce written procedures to enable it to properly supervise the activities of associated persons to assure compliance with applicable securities laws and regulations, and BX Rules.

*Credit Suisse's DMA Business*

5. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

6. LLDMA provided access to exchanges, including BX, as well as other venues. LLDMA clients directed their orders to BX and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its

[5] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[6] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[7]

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[8] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers.

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[6] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

[7] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[8] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[9]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[10]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[11]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[12] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA

[9] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[10] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

[11] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[12] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and BX Rules 2110 and 3010.

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable**

20. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

21. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

22. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

23. The acts, practices and conduct described in paragraphs 21 and 22 constitute a violation of Rule 15c3-5(b) and (c)(1)(i) and BX Rules 2110 and 3010.

**Credit Suisse's Annual Review Was Not Reasonable**

24. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall

effectiveness of its risk management controls and supervisory procedures.

25. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

26. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

27. The acts, practices and conduct described in paragraph 26 constitute a violation of Rule 15c3-5(b) and (e) and BX Rules 2110 and 3010.

**Written Supervisory Procedures ("WSPs")**

28. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

29. The acts, practices and conduct described in paragraph 28 constitute a violation of Rule 15c3-5 and BX Rules 2110 and 3010.

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

1. A censure;

2. A total fine of $6,500,000 (of which $566,583 shall be paid to BX for the violations of Rule 15c3-5 and BX Rules 2110 and 3010);[13]

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

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[13] FINRA investigated this matter on behalf of BX and various self-regulatory organizations, including the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"), as well as on its own behalf. The balance of the sanction will be paid to the self-regulatory organizations listed above.

a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
e. Updated its written supervisory procedures relevant to items a through d.

In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and PHLX, Nasdaq, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, 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

The firm specifically and voluntarily waives the following rights granted under BX's Code of Procedure:

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 BX Review Council 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, the BX Review Council, or any member of the BX Review Council, 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 prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 FINRA's Department of Enforcement and the BX Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to BX Rule 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. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by BX or any other

regulator against the firm;

2. BX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with BX Rule 8310 and IM-8310-3; and

3. 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 BX, or to which BX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which BX is not a party.

D. 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. This Statement does not constitute factual or legal findings by BX, nor does it reflect the views of BX 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 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.**

11/18/19
**Date**

**Credit Suisse Securities (USA) LLC**
**Respondent**

**By:**
**Name:** Lara Leaf
**Title:** Director

**Reviewed by:**

11/18/19
**Andrew J. Geist**
**O'Melveny & Myers LLP**
**Seven Times Square**
**New York, NY 10036**
**Counsel for Respondent**

**Accepted by BX:**

12/23/19
**Date**

**John P. Hewson**
**Senior Counsel**
**Department of Enforcement**

**Signed on behalf of BX, by delegated authority from the Director of ODA**

**THE NASDAQ OPTIONS MARKET LLC**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734505**

TO: The NASDAQ Options Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq")[1] 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, Nasdaq will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The firm 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

**BACKGROUND**

1. Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936 and with The NASDAQ Options Market LLC ("NOM") on March 28, 2008. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

**OVERVIEW**

2. During the period of July 2010 through 2016 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to NOM.

3. During the review period, the Securities and Exchange Commission adopted the Market

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[1] All NASDAQ Options Market LLC disciplinary matters are governed by the Nasdaq Code of Procedure.

STAR No. 20120347345 (incl. 20140401645, 20140414311, 20140437253, 20140425628, 20150482629, 20160507055, 20170556243, 20170560054, 20170560916, 20160522839, 20170551246 and 20170531305 (JPH)

Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[2] During the review period, Credit Suisse did not implement effective post-trade controls and procedures to monitor for potential marking the close in equity options by its DMA clients, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not satisfy its supervisory obligations pursuant NOM Rule Chapter III, Sec. 2, NOM Rule Chapter XI, Sec. 8 and Nasdaq Rules 2110 (for conduct prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012) during the review period.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

4. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

5. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[3]

6. NOM Rule Chapter III, Sec. 1 requires members to supervise persons associated with the member, including with respect to compliance with the Securities Exchange Act of 1934 and rules thereunder and NOM rules.

7. NOM Rule Chapter XI, Sec. 8 requires that members that conduct a public customer options business ensure that its written supervisory system policies and procedures adequately address the member's public customer options business.

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[2] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

[3] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

8. Nasdaq Rule 2110 (for conduct prior to November 21, 2012) and Rule 2010A (for conduct on or after November 21, 2012) require that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade

9. During the review period, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential marking the close conduct in equity options by its DMA clients.

10. During the review period, a Credit Suisse client engaged in potential marking of the close on NOM in three different options in 30 instances. Specifically, over the course of 18 days in June 2014, the client sent buy orders (between 1 and 10 contracts) through the firm immediately prior to the close seemingly to improve the mark in ABCD[4] January 15, 2016 115 Puts.[5] At all times, the DMA client held a position of 524 of the puts. The marks appeared to improve the position of the DMA client by between $6,550 and $53,710. The same client engaged in similar potential marking the close activity on NOM in two other options on 12 other days during June 2014 as well. The firm did not implement a surveillance or control specifically designed to detect or prevent marking the close conduct in options until 2016.[6]

11. The acts, practices and conduct described in paragraphs 9 through 10 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv), NOM Rules Chapter XI, Sec. 8 and Chapter III, Sec. 1 and Nasdaq Rule 2110 (for conduct prior to November 21, 2012), and Rule 2010A (for conduct on or after November 21, 2012).

**<u>Written Supervisory Procedures ("WSPs")</u>**

12. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the supervisory reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

13. The acts, practices and conduct described in paragraph 12 constitute a violation of Rule 15c3-5(b) and NOM Rules Chapter XI, Sec. 8 and Chapter III, Sec. 1 and Nasdaq Rule

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[4] A generic modifier has been used in place of the name of referenced securities.

[5] On 12 days, the DMA client entered the orders within a minute of the close. On all but one day, the DMA client entered the orders within two and half minutes of the close.

[6] The Firm's Compliance manual, its US Equities Surveillance Manual and its Desk appendices did not reference Marking the Close for Options, although it did have a Marking the Close Review in place for equities.

2110 (for conduct prior to November 21, 2012), and Rule 2010A (for conduct on or after November 21, 2012).

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

1. A censure;

2. A total fine of $6,500,000 (of which $50,917 shall be paid to NOM for the violations of Rule 15c3-5 and NOM Rules Chapter XI, Sec. 8 and Chapter III, Sec. 1 and Nasdaq Rules 2110 (for conduct prior to November 21, 2012), and 2010A (for conduct on or after November 21, 2012);[7]

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the Firm has:

   a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
   b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all Firm desks and systems that provide direct market access;
   c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all Firm desks and systems that provide direct market access;
   d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
   e. Updated its written supervisory procedures relevant to items a through d.

   In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

   The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

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[7] FINRA investigated this matter on behalf of NOM and various self-regulatory organizations, including Nasdaq, Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX") as well as FINRA.

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, NYSE American, BYX, BZX, EDGA, EDGX and FINRA. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, 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

The firm specifically and voluntarily waives the following rights granted under Nasdaq's Code of Procedure:

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 Nasdaq Review Council 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, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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 prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 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. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;

2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and

3. 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.

D. 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. This Statement does not constitute factual or legal findings by Nasdaq, nor does it reflect the views of Nasdaq 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By:
Name: Lara Leaf
Title: Director

Reviewed by:

11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by Nasdaq:

12/23/19
Date

John P. Hewson
Senior Counsel
Department of Enforcement

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

**THE NEW YORK STOCK EXCHANGE LLC**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734506**

TO: The New York Stock Exchange LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of the New York Stock Exchange LLC ("NYSE" 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 will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

## I.

## ACCEPTANCE AND CONSENT

A. The firm 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, or to which NYSE 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:

### BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936 and with NYSE since November 17, 1982. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

### OVERVIEW

During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple

exchanges for potential manipulative trading, including spoofing,[1] layering,[2] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[3] However, Credit Suisse did not meet its supervisory obligations pursuant to NYSE Rules 342 (for conduct prior to November 6, 2014) and 3110 (for conduct on or after November 6, 2014) despite the implementation of Exchange Act 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[4] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to NYSE Rules 342 and 2010 during the period of July 2010 through July 2014.

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[1] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[2] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[3] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on Nasdaq or other exchanges.

[4] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

During the period of July 2011 through April 2015, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and NYSE Rules 342 (for conduct prior to November 6, 2014), 3110 (for conduct on or after November 6, 2014) and 2010.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[5]

3. NYSE Rules 342 (for conduct prior to November 6, 2014) and 3110 (for conduct on or after November 6, 2014) requires, among other things, that every member: (i) supervise persons associated with it to ensure compliance with federal securities laws and the Constitution or the Rules of the Exchange; (ii) to establish and maintain a system to supervise the activities of its associated persons and the operation of its business; and (iii) establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations and with the NYSE Rules.

4. NYSE Rule 2010 requires that every NYSE member, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

*Credit Suisse's DMA Business*

5. During the review period, Credit Suisse provided DMA to clients through what was then

[5] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

known as its Low Latency DMA ("LLDMA") desk.

6. LLDMA provided access to exchanges, including NYSE, as well as other venues. LLDMA clients directed their orders to NYSE and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[6] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-

[6] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

market hours until July 2014 when it implemented a proprietary supervisory tool.[7]

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[8] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[9]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[10]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify

[7] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[8] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[9] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales, and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[10] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

potentially manipulative trading such as wash sales, marking, spoofing and layering.[11]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[12] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Despite the concerns raised by FINRA, Credit Suisse did not terminate Client A until May 2014 and Clients B and C until July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and NYSE Rules 342 (for conduct prior to November 6, 2014) and 2010.

**Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders**

20. Rule 15c3-5(c)(1)(ii) requires market access broker-dealers establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

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[11] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[12] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

21. From July 2011 through February 2014, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, a maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. Additionally, the firm did not apply a reasonably designed price control in certain situations, including for directed orders.

22. For example, on February 13, 2014, a Credit Suisse DMA client routed a directed market order to the NYSE to buy 100,000 shares of XYZ[13] stock. The client intended for it to be a limit order. The NBBO at the time of entry was $61.51 at $61.58. Because the client entered the order as a directed market order to the NYSE, the order bypassed certain controls that Credit Suisse applied to orders routed through the relevant firm system. Instead, the only pre-trade erroneous order price and size controls applied to the order were a $1 billion credit limit and a single one million share SOQ. Without the benefit of some other reasonably designed risk management control, the market order was allowed to enter the market and resulted in executions ranging from $61.58 to $67.78, a market impact of $6.20. NYSE and another exchange cancelled 176 transactions as a result of clearly erroneous order petitions filed by the firm.

23. The acts, practices and conduct described in paragraphs 21 and 22 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(ii) and NYSE Rules 342 and 2010.

**<u>Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable</u>**

24. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

25. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

26. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written

[13] A generic symbol has been used in place of the name of referenced securities.

procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

27. The acts, practices and conduct described in paragraphs 26 and 27 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i) and NYSE Rules 342 (for conduct prior to November 6, 2014), 3110 (for conduct on or after November 6, 2014) and 2010.

**Credit Suisse's Annual Review Was Not Reasonable**

28. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

29. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

30. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

31. The acts, practices and conduct described in paragraph 31 constitute a violation of Rule 15c3-5(b) and (e) and NYSE Rules 342 and 2010.

**Written Supervisory Procedures ("WSPs")**

32. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

33. The acts, practices and conduct described in paragraph 33 constitute a violation of Rule 15c3-5(b) and NYSE Rules 342 (for conduct prior to November 6, 2014), 3110 (for conduct on or after November 6, 2014) and 2010.

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

1. A censure,

2. A total fine of $6,500,000 (of which $591,501 shall be paid to NYSE for the violations of Rule 15c3-5 and NYSE Rules 342 (for conduct prior to November 6, 2014), 3110 (for conduct on or after November 6, 2014) and 2010);[14]

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

   a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
   b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
   c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
   d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
   e. Updated its written supervisory procedures relevant to items a through d.

   In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

   The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE Arca, NYSE American, BYX, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The firm has submitted a

[14] FINRA investigated this matter on behalf of NYSE and various self-regulatory organizations, including The NASDAQ Stock Market LLC ("Nasdaq"), The Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"), as well as on its own behalf. The balance of the sanction will be paid to the self-regulatory organizations listed above.

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 sanction(s) 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 Respondent 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 NYSE's Code of Procedure:

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 the NYSE; 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 employee; or any Regulatory Staff as defined in Rule 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 prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 Chief Regulatory Officer of the NYSE, pursuant to NYSE Rule 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, 25 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 Rule 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 NYSE, or any other regulator against the firm;
3. The NYSE shall publish a copy of the AWC on its website in accordance with NYSE Rule 8313;
4. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 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 NYSE, or to which the NYSE 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 NYSE 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. This Statement does not constitute factual or legal findings by the NYSE, nor does it reflect the views of NYSE Regulation 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By:
Name: Lara Leaf
Title: Director

Reviewed by:

11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by FINRA

11/19/19
Date

John P. Hewson
Principal Counsel
Department of Enforcement

Signed on behalf of the NYSE, by delegated authority from the Chief Regulatory Officer of the NYSE.

**NYSE AMERICAN LLC**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734 5-01**

**TO:** NYSE American LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of the NYSE American LLC[1] ("NYSE American" 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 American will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

## I.

## ACCEPTANCE AND CONSENT

A. The firm 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 American, or to which NYSE American 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 American:

### BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered with FINRA since 1936 and with NYSE American since February 25, 1998. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

### OVERVIEW

During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300

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[1] Effective July 24, 2017, NYSE MKT LLC was renamed to NYSE American LLC. Thus, while all of the conduct referred to herein occurred prior to July 24, 2017, and thus the violations were of NYSE MKT rules, for purposes of this document all the violations cited herein will be referred to as "NYSE American Rules – Equities."

billion shares on behalf of its DMA clients and generated over $300 million in revenue from its DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple exchanges for potential manipulative trading, including spoofing,[2] layering,[3] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[4] However, Credit Suisse did not meet its supervisory obligations pursuant to NYSE American Rule 320 – Equities despite the implementation of Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[5] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with

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[2] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[3] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[4] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on NYSE American or other exchanges.

[5] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities during the period of July 2010 through July 2014.

During the period of July 2011 through April 2015, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e), NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[6]

3. NYSE American Rule 2010 – Equities requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

4. NYSE American Rule 320 – Equities requires members, among other things, to establish, maintain, enforce and keep current a system of compliance and supervisory controls reasonably designed to achieve compliance with applicable securities laws and regulations and NYSE American rules.

### *Credit Suisse's DMA Business*

5. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

[6] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

6. LLDMA provided access to exchanges, including NYSE American, as well as other venues. LLDMA clients directed their orders to NYSE American and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[7] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-

[7] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

market hours until July 2014 when it implemented a proprietary supervisory tool.[8]

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[9] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[10]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[11]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify

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[8] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

[9] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[10] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[11] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

potentially manipulative trading such as wash sales, marking, spoofing and layering.[12]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades executed by Client A on behalf of its client, which eventually became Client B.[13] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Credit Suisse terminated Client A, effective May 30, 2014 and Clients B and C, effective July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011), NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities.

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[12] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

[13] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

**Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders**

20. Rule 15c3-5(c)(1)(ii) requires market access broker-dealers establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

21. From July 2011 through March 2016, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, a maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some other relevant risk management control. Additionally, the firm did not apply a reasonably designed price control in certain situations, including for principal orders routed by one of its former desks. As a result, Credit Suisse sent numerous erroneous orders to exchanges, seven of which led to market impact.

22. For example, on March 18, 2016, a Credit Suisse client ("Client D") entered a market order through the firm to buy 20,800 shares of EFGH[14] where the best offer was $2.41 at the time of entry. The firm bought on behalf of Client D 12,615 shares of EFGH from a low of $2.46 to a high of $2.70, before NYSE American cancelled the balance of the order when it triggered an exchange-imposed 10% price collar. The 20,800 share order constituted approximately 36% of EFGH's 30-day ADV, but was less than 20% of EFGH's daily volume at the time the order was entered. At the time of the EFGH order, Credit Suisse had set a 25% Max % of ADV control for Client D, a 20% Last Price Tolerance control, an SOQ of 1 million shares and an SOV of $50 million.[15] Although Client D's order did not exceed those parameters, the 20% last price tolerance control, which exceeded the Exchange's price tolerance control and was the equivalent to the Limit Up/Limit Down band, was not reasonably designed to prevent erroneous orders absent additional reasonably designed controls.

23. Additionally, the firm did not apply price, SOQ, SOV or Max % of ADV controls on outbound principal orders routed from one of its former desks, although it did subject inbound orders from its clients to volume, notional value and price controls.[16] For

[14] A generic modifier has been used in place of the name of referenced securities.

[15] The relevant ADV control for Client D was 25% of the current day's volume or 25% of the 30-day ADV, whichever was higher.

[16] The relevant desk imposed a soft block on inbound client orders that exceeded 5 million shares and a hard block on orders that exceeded 10 million shares; imposed a soft block on inbound client orders exceeding $250 million in

example, on September 5, 2013, a Credit Suisse client routed three market not held orders in ABC totaling 306,800 shares to the relevant desk to be executed on a riskless principal basis. The client placed the orders in ABC in error, as it had intended to place orders in symbol "EBC." On the day of the order, ABC had a 20-day ADV of 6,004 shares. Using a VWAP strategy and through the use of a smart order router, the desk routed orders ranging from 100 to 10,000 shares across multiple venues without the benefit of any controls in place to prevent the entry of erroneous orders. As a result of the orders, the price in ABC moved from $5.35 to $8.90, an increase of 69.5%.

24. The acts, practices and conduct described in paragraphs 21 through 23 constitute violations of Rule 15c3-5(b) and (c)(1)(ii), NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities.

**<u>Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable</u>**

25. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

26. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

27. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

28. The acts, practices and conduct described in paragraphs 26 and 27 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i), NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities.

**<u>Credit Suisse's Annual Review Was Not Reasonable</u>**

29. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

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notional value and a hard block on orders exceeding $500 million; and imposed a soft block on inbound client limit orders more than 20% away from the last sale. None of these controls applied to outbound principal orders. Moreover, the controls would be considered unreasonable as Rule 15c3-5 controls were they to be considered applicable.

30. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

31. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

32. The acts, practices and conduct described in paragraph 31 constitute a violation of Rule 15c3-5(b) and (e), NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities.

**Written Supervisory Procedures ("WSPs")**

33. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

34. The acts, practices and conduct described in paragraph 33 constitute a violation of Rule 15c3-5(b), NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities.

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

1. A censure;

2. A total fine of $6,500,000 (of which $591,500 shall be paid to NYSE American for the violations of Rule 15c3-5 and NYSE American Rule 320 – Equities and NYSE American Rule 2010 – Equities);[17]

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[17] FINRA investigated this matter on behalf of NYSE American and various self-regulatory organizations, including the NASDAQ Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), The NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"), as well as on its own behalf. The balance of the sanction will be paid to the self-regulatory organizations listed above.

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

   a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
   b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
   c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
   d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
   e. Updated its written supervisory procedures relevant to items a through d.

   In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

   The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE Arca, BYX, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) 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 sanction(s) 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 Respondent 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 American's Code of Procedure:

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 American; 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 American employee; or any Regulatory Staff as defined in Rule 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 prohibitions of Rule 9143 or the separation of functions prohibitions of 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

The firm 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 Chief Regulatory Officer of NYSE American, pursuant to NYSE American Rule 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, 25 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 American Rule 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 NYSE American, or any other regulator against the firm;

3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;

4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 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 NYSE American, or to which NYSE American 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 NYSE American 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. This Statement does not constitute factual or legal findings by NYSE American, nor does it reflect the views of NYSE Regulation 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By:
Name: Lara Leaf
Title: Director

Reviewed by:

11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by FINRA:

11/19/19
Date

John P. Hewson
Principal Counsel
Department of Enforcement

Signed on behalf of NYSE American LLC, by delegated authority from the Chief Regulatory Officer of NYSE American LLC.

**NYSE ARCA, INC.**
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**
**NO. 2012034734 5-08**

TO: NYSE Arca, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

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. The firm 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 RELEVANT DISCIPLINARY HISTORY

Credit Suisse is a U.S. broker-dealer and a subsidiary of Credit Suisse Group, a global financial services company with subsidiaries around the world. Credit Suisse has been registered as an Equities Trading Permit ("ETP") holder with NYSE Arca[1] since November 19, 2002, and with FINRA since October 10, 1936. The firm's registrations remain in effect. The firm's principal place of business is New York, New York, and it currently has over 2,500 registered persons and 34 branch offices. The firm does not have any relevant disciplinary history.

## OVERVIEW

During the period of July 2010 through July 2014 (the "review period"), Credit Suisse offered its clients, which included FINRA registered broker-dealers and other institutional entities, some of whom were foreign unregistered entities, direct market access ("DMA") to numerous exchanges and alternative trading systems ("ATSs"). During the review period, the firm executed over 300 billion shares on behalf of its DMA clients and generated over $300 million in revenue from its

[1] Prior to August 17, 2017, the rules involved in this matter were called NYSE Arca Equities Rules.

STAR No. 20120347345 (incl. 20140401645, 20140414311, 20140437253, 20140425628, 20150482629, 20160507055, 20170556243, 20170560054, 20170560916, 20160522839, 20170551246 and 20170531305 (JPH)

DMA business. Nevertheless, the firm did not implement reasonably designed surveillances and supervisory procedures to monitor for certain kinds of potentially manipulative activity by its DMA clients. During the period of February 2011 through July 2014, certain of the firm's DMA clients engaged in trading activity that generated over 50,000 alerts at FINRA and multiple exchanges for potential manipulative trading, including spoofing,[2] layering,[3] wash sales and pre-arranged trading. Among the firm's DMA clients were three that, at their peak in June 2014, accounted for about 20 percent of the firm's overall order flow and triggered a majority of the alerts for potentially manipulative trading. Credit Suisse, however, did not begin to implement a supervisory system or procedures reasonably designed to review for potential spoofing, layering, wash sales or pre-arranged trading by its DMA clients until Fall 2013 - years after it began expanding its DMA business. During this period, Credit Suisse grew its DMA activity from executing 0.7 billion shares for its DMA clients in 2010 to 104 billion shares in 2014.[4] However, Credit Suisse did not meet its supervisory obligations pursuant to NYSE Arca Equities Rule 6.18 despite the implementation of Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule 15c3-5") and accompanying regulatory guidance. In addition, in 2012 and 2013, Credit Suisse was put on notice of gaps in its surveillance system by red flags raised in correspondence with a DMA client and by an internal audit.

During the review period, the Securities and Exchange Commission adopted the Market Access Rule on November 3, 2010, which requires brokers or dealers with access to trading securities directly on an exchange, including those providing sponsored or direct market access to customers, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks associated with market access. Rule 15c3-5 became effective on July 14, 2011.[5] During the period between July 14, 2011 through July 2014, Credit Suisse did not implement effective post-trade controls to monitor for the particular types of potential manipulative activity by its DMA clients described above, and thereby the firm did not establish, document, and maintain risk management controls and supervisory procedures reasonably designed to ensure compliance with

[2] Spoofing is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

[3] Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce or trick other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[4] The firm's DMA desk, on behalf of its clients, executed approximately 0.7 billion shares in 2010, 74 billion shares in 2011, 95 billion shares in 2012, 106 billion shares in 2013 and 104 billion shares in 2014. Not all of these shares were executed on NYSE Arca or other exchanges.

[5] The July 14, 2011 compliance date was extended to November 30, 2011 for Rule 15c3-5(c)(1)(i) and all requirements of Rule 15c3-5 for fixed income securities.

all regulatory requirements as required by Rule 15c3-5(c)(2)(iv). Additionally, as a result of the above, the firm did not fully comply with its supervisory obligations pursuant to NYSE Arca Equities Rules 6.18 and 2010 during the period of July 2010 through July 2014.

During the period of July 2011 through April 2015, the firm also did not comply fully with several other provisions of the Market Access Rule, including those related to the prevention of erroneous orders, credit limits and annual review.

As a result of the conduct described above, Credit Suisse violated 15c3-5(b), (c)(1)(i), (c)(1)(ii), (c)(2)(iv), (e) and NYSE Arca Equities Rules 6.18 and 2010.

## Facts and Violative Conduct

### Credit Suisse Did Not Reasonably Monitor and Surveil for Potentially Manipulative Trading by DMA Clients

1. Rule 15c3-5(b) requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

2. Rule 15c3-5(c)(2)(iv) requires such broker-dealers to have regulatory risk management controls and supervisory procedures that are reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. In the Rule 15c3-5 Adopting Release dated November 3, 2010, the SEC stated that the "regulatory requirements" described in Rule 15c3-5(a)(2) and (c)(2) include "post-trade obligations to monitor for manipulation and other illegal activity."[6]

3. NYSE Arca Equities Rule 6.18 requires members, among other things, to establish, maintain, enforce and keep current a system of compliance and supervisory controls reasonably designed to achieve compliance with applicable securities laws and regulations and NYSE Arca rules.

4. NYSE Arca Equities Rule 2010 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

*Credit Suisse's DMA Business*

5. During the review period, Credit Suisse provided DMA to clients through what was then known as its Low Latency DMA ("LLDMA") desk.

6. LLDMA provided access to exchanges, including NYSE Arca, as well as other venues.

[6] SEC Rule 15c3-5 Adopting Release, 75 Fed. Reg. 69792, 69797-69798 (Nov. 15, 2010).

LLDMA clients directed their orders to NYSE Arca and other exchanges through the firm's Market Access Gateway ("MAGic"), which houses many of the firm's pre-trade market access controls.

7. LLDMA provided market access to an average of 90 DMA clients each year during the review period. During the review period, Credit Suisse executed over 300 billion shares on behalf of its LLDMA clients and realized over $300 million in revenue from its LLDMA business.

8. From 2010 through 2013, the firm onboarded three DMA clients ("Client A," "Client B" and "Client C"), which included two registered broker-dealers and one foreign non-registered entity. At the peak of their trading activity in June 2014, those three clients accounted for over 20% of the firm's total order flow and 3.6% of all U.S. order flow. Those three clients generated the majority of the over 50,000 alerts at FINRA and the exchanges for potentially manipulative trading during the review period.

*Credit Suisse Did Not Reasonably Supervise its Client's DMA Activity for Potentially Manipulative Trading*

9. From July 2010 through July 2014, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by its DMA clients. As a result, orders for billions of shares entered U.S. markets without being subjected to post-trade supervisory reviews for potential spoofing, layering, wash sales or pre-arranged trading.

10. Specifically, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering by DMA clients.[7] In October 2013, the firm implemented automated surveillance reviews to detect potential spoofing and layering by DMA clients during regular market hours only. From October 2013 through late April 2014, the firm's automated surveillance reviews generated over 1,500 alerts for potential spoofing and layering, but none of the alerts captured the activity of Clients A, B and C. In late April 2014, the firm made changes to the automated surveillance reviews, at which time they began to generate alerts concerning the activity of Clients A, B and C. In April 2014 and May 2014, the firm notified Clients A, B and C that their electronic trading agreements, which included the LLDMA business, were being terminated. The terminations were effective on May 30, 2014 for Client A, July 2, 2014 for Client B, and July 10, 2014 for Client C.

11. The firm did not implement a review to detect potential spoofing and layering in pre-market hours until July 2014 when it implemented a proprietary supervisory tool.[8]

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[7] Since 2009, the firm had a tool in place to detect potential spoofing by the firm's market making unit.

[8] Although the firm employed a pre-market surveillance tool to detect executions by DMA clients that marked the open, the tool did not monitor for unexecuted or cancelled orders potentially used to influence the price of the security in pre-market trading.

12. Additionally, the firm did not establish, document, and maintain a system of risk management controls and supervisory procedures to monitor for potential wash sales or pre-arranged trades by DMA clients until November 2013. In November 2013, the firm implemented automated reports to detect potential wash sales or pre-arranged trades by DMA clients.[9] These reports generated alerts if the same client unique identifier was on both sides of a transaction. Many of the firm's clients had multiple unique identifiers. These controls were not reasonably designed for these particular DMA clients because those clients presented a risk of executing wash sales or pre-arranged trades using different identifiers. The firm did not implement surveillance tools that were designed specifically to detect and prevent potential wash sales or pre-arranged trading across DMA identifiers, including for Clients B and C, until May 2014.

13. From July 2010 through March 2014, the firm's written supervisory procedures did not address potential layering, spoofing, wash sales or pre-arranged trading by DMA clients.[10]

*Credit Suisse was on Notice Regarding Gaps in its Manipulative Trading Surveillance and Supervisory System*

14. The firm continued to expand its DMA business before it had implemented a supervisory system reasonably designed to detect layering, spoofing, wash sales or pre-arranged trading by its DMA clients.[11]

15. Credit Suisse operated without reasonably designed controls and procedures notwithstanding concerns raised both externally and internally in 2012 and 2013 regarding a need for surveillance tools for certain potentially manipulative trading. For example, regulators had highlighted post-trade monitoring for manipulative conduct as necessary to a broker-dealer's compliance program. In both its 2012 and 2013 Priorities Letters, dated January 31, 2012 and January 11, 2013, respectively, FINRA specifically stated that market access providers must have post-trade surveillance in place to identify potentially manipulative trading such as wash sales, marking, spoofing and layering.[12]

16. Additionally, between September 2012 and February 2013, Client A personnel contacted Credit Suisse on numerous occasions regarding potential wash sales and layering trades

[9] The firm began testing these tools and the spoofing and layering tools in Europe in 2012.

[10] Although Compliance personnel received relevant training and began to review output from spoofing, layering, wash sales and pre-arranged trading surveillances when they were implemented in October and November 2013 (and amended through May 2014 as described *supra*), the firm did not update its U.S. Equities Surveillance Manual to describe those tools until March 2014.

[11] By at least 2011, Credit Suisse Group had begun a global project to enhance its trade surveillance tools worldwide, including its anti-manipulation controls. Testing and implementation of these surveillances began in Europe and Asia. In October 2013, the firm began implementing those tools in the U.S.

[12] FINRA's 2010 and 2011 Priorities Letters and the SEC's Office of Compliance Inspections and Examinations letter, dated September 29, 2011, also reminded firms of their obligations to monitor their DMA clients for potentially manipulative conduct more generally.

executed by Client A on behalf of its client, which eventually became Client B.[13] Credit Suisse did not adequately respond to Client A's concerns. Client A specifically asked whether Credit Suisse was monitoring for layering, pre-arranged trading and wash sales by DMA clients. Client A continued to route orders through Credit Suisse from Client B and continued to question whether Credit Suisse was monitoring the order flow when Client A detected potentially manipulative trading by Client B. While there were gaps in its anti-manipulation controls, later in 2013, Credit Suisse onboarded Client B as a DMA client.

17. In 2012 and 2013, Credit Suisse conducted an internal trade surveillance audit that found limitations in the firm's surveillance procedures. The final audit report recommended that the firm implement new surveillance tools to ensure that high risk businesses and locations were covered sufficiently. While the new tools were being developed, the report further stated that local compliance supervisors should be able to demonstrate that they have satisfactory trade surveillance management information.

18. In January 2014, FINRA expressed to Credit Suisse its concerns about the firm's supervision of its market access clients, its regulatory risk management controls, its ability to detect and prevent potentially violative activity, and its supervisory procedures in connection with the market access it provides. Additionally, FINRA identified Client A and Client B as being of particular concern. Credit Suisse terminated Client A, effective May 30, 2014, and Clients B and C, effective July 2014.

19. The acts, practices and conduct described in paragraphs 8 through 18 constitute a violation of Rule 15c3-5(b) and (c)(2)(iv) (for conduct on or after July 14, 2011) and NYSE Arca Equities Rules 6.18 and 2010.

**<u>Credit Suisse's Pre-Trade Controls Were Not Reasonably Designed to Prevent Erroneous Orders</u>**

20. Rule 15c3-5(c)(1)(ii) requires market access broker-dealers establish, document, and maintain a system of financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

21. From July 2011 through April 2015, the firm did not establish, document, and maintain risk management controls and supervisory procedures that were reasonably designed to prevent the entry of erroneous orders. During this period, Credit Suisse's Rule 15c3-5 erroneous order controls for its clients consisted primarily of a duplicative order check, a price tolerance control, a maximum single order share quantity ("SOQ") control, a maximum single order notional value ("SOV") control and a single order maximum percentage of average daily volume ("Max % of ADV") control, which were designed to

[13] At the time of the correspondence, Client B was not yet a Credit Suisse client, it was only a client of Client A. However, Client B was routing its DMA orders to Client A, which then routed the orders through Credit Suisse's LLDMA desk.

prevent orders that exceeded specific limits from entering the market. Although the firm applied varying thresholds for each client, certain thresholds set for some clients were set at such high levels that the controls were not reasonably designed to prevent erroneous orders from entering the market, absent some relevant other risk management control. Further, the firm did not establish controls or procedures reasonably designed to reject orders that exceeded appropriate size parameters submitted by a certain algorithmic client over a short period of time. As a result, Credit Suisse sent numerous erroneous orders to exchanges, seven of which led to market impact.

*Short Period of Time Size Controls*

22. The firm did not establish controls or procedures to prevent the entry of orders exceeding an appropriate size parameter over a short period of time for a particular client ("Client D").

23. On April 17, 2015, Client D, entered thousands of orders through the firm onto NYSE Arca and other exchanges in symbol XYZ.[14] At one point, the firm, on behalf of Client D, had 25,000 resting offers in XYZ on exchanges, ranging in size from 80 to 40,000 shares and totaling 46 million shares. Client D, as a result of its own faulty automated hedging strategy, had entered most of those offers through Credit Suisse over a 37-second period.

24. When Client D's orders reached the $1 billion maximum notional daily limit that had been previously set for Client D, a Credit Suisse control halted the further entry of orders.[15] At the time of the halt, Client D attempted to cancel all open orders, but its own trading platform had crashed. Client D then requested that Credit Suisse cancel all open orders, but Credit Suisse was unable to do so immediately because the number of Client D orders had led to a slowing of the relevant system. Subsequent to Client D's request to Credit Suisse, another one-and-a-half million shares of XYZ were executed before Credit Suisse was able to cancel the balance of Client D's open orders.

25. Client D incurred a several million dollar loss when it covered its short position. Credit Suisse also incurred an approximately $723,000 loss, after having accepted the sale of approximately 1 million shares of XYZ in its error account. Finally, the number of orders also caused one of Credit Suisse's trading systems to operate more slowly than typical, slowing the processing of messages from other Credit Suisse clients.

*Order-by-Order Size Controls*

26. Credit Suisse also set Client D's SOQ control at 2,000,000 shares and a Max % of ADV

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[14] A generic symbol has been used in place of the name of the referenced securities.

[15] The maximum notional daily limit, which is a credit limit for Rule 15c3-5 purposes, includes executed and unexecuted orders. At the time of the halt, Client D, through Credit Suisse, had executed about $140 million in notional value (about 7.3 million shares) and had $890 million in notional value of open orders (about 46.8 million shares) in XYZ.

control at 100%, which were too high to be effective for Client D.

27. The acts, practices and conduct described in paragraphs 21 through 26 constitute a violation of Rule 15c3-5(b), 15c3-5(c)(1)(i), 15c3-5(c)(1)(ii) and NYSE Arca Equities Rules 6.18 and 2010.

**Credit Suisse's Pre-Trade Controls and Procedures Regarding Credit Thresholds Were Not Reasonable**

28. Rule 15c3-5(c)(1)(i) requires market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.

29. From November 30, 2011 through April 2015, the firm's risk management controls were not reasonably designed with respect to certain pre-set credit thresholds.

30. Specifically, the firm set a default credit limit of $250 million for every DMA client during onboarding without considering the individual client's financial condition, business, trading patterns and other matters. Additionally, although the firm's written procedures required that due diligence be performed prior to making any changes to a default limit, the firm did not perform due diligence prior to making such amendments in certain circumstances.

31. The acts, practices and conduct described in paragraphs 29 and 30 constitute a violation of Rule 15c3-5(b) and 15c3-5(c)(1)(i) and NYSE Arca Equities Rules 6.18 and 2010.

**Credit Suisse's Annual Review Was Not Reasonable**

32. Rule 15c3-5(e)(1) requires a broker-dealer to review, at least annually, the business activity of the broker-dealer in connection with market access to assure the overall effectiveness of its risk management controls and supervisory procedures.

33. Rule 15c3-5(e)(2) further requires that the Chief Executive Officer (or equivalent officer) of the broker-dealer certify annually that the above review occurred and that the firm's risk management controls and supervisory procedures comply with Rule 15c3-5(b) and (c).

34. During the period of July 14, 2011 through July 2014, the firm's annual review of the effectiveness of its Rule 15c3-5 risk management controls and supervisory procedures was unreasonable because it did not incorporate a reasonable review of the effectiveness of its post-trade surveillance as required by Rule 15c3-5(c)(2)(iv).

35. The acts, practices and conduct described in paragraph 34 constitute a violation of Rule 15c3-5(b) and (e) and NYSE Arca Equities Rules 6.18 and 2010.

**Written Supervisory Procedures ("WSPs")**

36. Throughout the review period, the firm did not establish, maintain, and enforce reasonably designed WSPs to supervise its DMA activities and to achieve compliance with applicable securities laws. For example, the firm maintained a "Market Access Policy" that stated the firm would "conduct regular surveillance and systems reviews," but the Policy did not describe the reviews at all and is not supervisory in nature otherwise. Similarly, the firm's "U.S. Equity and Global Arbitrage Trading Supervisory Manual" included a Rule 15c3-5 section that also stated that the firm would "conduct regular surveillance and systems reviews," but the Manual did not provide any details about the reviews, such as who would conduct them, how often they would be conducted and in what manner.

37. The acts, practices and conduct described in paragraph 36 constitute a violation of Rule 15c3-5(b) and NYSE Arca Equities Rules 6.18 and 2010.

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

1. A censure;

2. A total fine of $6,500,000 (of which $591,500 shall be paid to NYSE Arca for the violations of Rule 15c3-5 and NYSE Arca Equities Rules 6.18 and 2010);[16]

3. Credit Suisse agrees to confirm in writing, within 180 days of the date of the issuance of the Notice of Acceptance of this AWC, that the firm has:

   a. Updated and/or implemented surveillances and procedures reasonably designed to monitor for potentially manipulative trading;
   b. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent erroneous orders for all firm desks and systems that provide direct market access ;
   c. Updated and/or implemented pre-trade controls and procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit thresholds for all firm desks and systems that provide direct market access;
   d. Incorporated into its annual market access certification process an evaluation of the effectiveness of its post-trade anti-manipulation surveillances; and
   e. Updated its written supervisory procedures relevant to items a through d.

   In conjunction with the above-described confirmation, Credit Suisse also agrees to provide a written description of, or documentation reflecting, as of December 31, 2019: the desks that provide market access services to clients; the status and

[16] FINRA investigated this matter on behalf of NYSE and various self-regulatory organizations, including the NASDAQ Stock Market LLC ("Nasdaq"), the Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), the NASDAQ Options Market LLC ("NOM"), the New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"), as well as on its own behalf. The balance of the sanction will be paid to the self-regulatory organizations listed above.

rationale for its existing pre-trade erroneous order and credit controls and post-trade anti-manipulation surveillances for potential spoofing, layering, wash sales, pre-arranged trading, and marking the open/close that are used by or for desks that provide market access services; procedures for setting, modifying, and enforcing credit limits applicable to market access customers; and which pre-trade controls and post-trade anti-manipulation surveillances apply to products other than equities.

The above materials shall be submitted to FINRA's Department of Enforcement, which may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

4. Acceptance of this AWC is conditioned upon acceptance of a similar agreement in related matters between the firm and Nasdaq, BX, PHLX, NYSE, NYSE American, BYX, BZX, EDGA, EDGX, NOM and FINRA. The aggregate settlement amount across all markets is $6,500,000.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) 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 sanction(s) 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 Respondent 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's Code of Procedure:

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 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 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, 25 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 the firm's permanent disciplinary record and may be considered in any future actions brought by NYSE Arca, or any other regulator against the 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 NYSE Arca, or to which NYSE Arca is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the the firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which NYSE Arca 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. This Statement does not constitute factual or legal findings by NYSE Arca, nor does it reflect the views of NYSE Regulation 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 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.

11/18/19
Date

Credit Suisse Securities (USA) LLC
Respondent

By: Lara Leaf

Name: Lara Leaf

Title: Director

Reviewed by:

11/18/19
Andrew J. Geist
O'Melveny & Myers LLP
Seven Times Square
New York, NY 10036
Counsel for Respondent

Accepted by FINRA

11/19/19
Date

John P. Hewson
Principal Counsel
Department of Enforcement

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