

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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8:57 am, Jun 25, 2021

In the Matter of:

**Credit Suisse International, Credit Suisse
Securities Europe Limited, and Credit Suisse
Capital LLC,**

Respondents.

CFTC Docket No. 21-11

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that since becoming provisionally registered as swap dealers, Credit Suisse International, Credit Suisse Securities Europe Limited, and Credit Suisse Capital LLC (collectively “Credit Suisse” or “Respondents”), violated Section 2(a)(13)(F) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 2(a)(13)(F) (2018), and Commission Regulation (“Regulation”) 45.4(d)(2), 17 C.F.R. § 45.4(d)(2) (2020). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondents consent to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Reporting is at the heart of the Commission's market and financial surveillance programs, which are critical to the Commission's mission to protect market participants and promote market integrity, and helps it to fulfill its Congressional mandate of monitoring for systemic risk. Accurate swap data is essential to effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs.

As provisionally-registered swap dealers ("SDs"), Respondents were required to comply with certain reporting requirements related to their swap transactions. Since becoming provisionally registered SDs, Respondents failed to accurately report certain data to a swap data repository ("SDR") under Part 45 of the Regulations, 17 C.F.R. pt. 45 (2020). Specifically, from at least January 10, 2013² to December 2018 (the "Relevant Period"), one or more Respondents submitted inaccurate daily valuation data for the majority of their equity swap transactions.

B. RESPONDENTS

Credit Suisse International is a provisionally-registered SD since December 31, 2012, based in London, United Kingdom. It is an exempt foreign firm pursuant to Regulation 30.10, 17 C.F.R. § 30.10 (2020).

Credit Suisse Securities Europe Limited is a provisionally-registered SD since July 1, 2013, based in London, United Kingdom. It is an exempt foreign firm pursuant to Regulation 30.10.

Credit Suisse Capital LLC is a provisionally-registered SD since August 15, 2017, based in New York City.

C. FACTS

As provisionally-registered SDs, Respondents are reporting counterparties pursuant to the Act and Regulations, and thus are required to report certain data relating to swap transactions, including the accurate daily value of the swap, to an SDR. However, during the Relevant Period, one or more Respondents inaccurately reported particular swap data under Part 45 of the

² The Regulation at issue, Regulation 45.4(d)(2), discussed in greater detail in Section III *infra* of this Order, became effective on March 13, 2012. With respect to the reporting of equity swaps, all SDs, including Respondent Credit Suisse International, were required to comply with the Rule as of January 10, 2013. See Q&A: On Start of Swap Data Reporting (October 12, 2012), at http://www.cftc.gov/LawRegulation/DoddFrankAct/startreporting_qa_final. As noted in Section II.B *infra*, Respondents Credit Suisse Securities Europe Limited and Credit Suisse Capital LLC subsequently registered as SDs after January 10, 2013, and were required to comply with Regulation 45.4(d)(2) as of their registration date.

Regulations. Specifically, when reporting certain equity swap transactions to the SDR, Respondents failed to comply with the requirement that they report the “daily mark” of these swap transactions. Instead, Respondents reported the mark-to-market notional value of the underlying equity. This valuation reporting error impacted approximately 91 percent of Respondents’ reportable equity swap positions, and 14 percent of their overall reportable swaps, during the Relevant Period. This reporting error, which was caused by a single issue in the reporting engine used by Respondents, also impacted approximately 22 million messages to the SDR.

Respondents discovered the reporting error in October 2018. Respondents have represented that they remediated the reporting error by mid-December 2018, and that their reporting of the daily valuation field for equity swaps was accurate from that date onward. Respondents have further represented that they corrected the historical record of all inaccurate reports by August 18, 2020.

III. LEGAL DISCUSSION

The Act states that, with regard to real-time data, “[p]arties to a swap . . . shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.” Section 2(a)(13)(F) of the Act, 7 U.S.C. § 2(a)(13)(F) (2018). Regulation 45.4(d)(2) requires that “valuation data for a swap must be reported by” an SD to an SDR on a “daily” basis. 17 C.F.R. § 45.4(d)(2) (2020).³ Regulation 45.1 defines “[v]aluation data” as “all of the data elements necessary to fully describe the daily mark of the transaction . . .” 17 C.F.R. § 45.1 (2020).⁴ In this case, Respondents failed to report the “daily mark” for certain identified equity swaps transactions.

“The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *U.S. Commodity Futures Trading Comm’n v. Deutsche Bank AG*, No. 1:16-cv-6544 (WHP), 2020 WL 4611985, at *8 (S.D.N.Y. June 17, 2020) (consent order) (citing *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2019 WL 4915485, at *6 (Sept. 30, 2019) (consent order) (collecting cases). The Commission requires complete and accurate reporting data to engage in meaningful oversight of the swaps market. *Id.*

As set forth above, Respondents failed to accurately report certain swap data. As a result, Respondents violated Section 2(a)(13)(F) of the Act and Regulation 45.4(d)(2).

³ The conduct at issue took place before recent amendments to Part 45 of Commission Regulations. See Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75,503, 75,561-62, 75559 (Nov. 25, 2020) (to be codified at 17 C.F.R. pt. 45, 46, 49) also amended at Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601, 75,654 (Nov. 25, 2020) (to be codified at 17 C.F.R. pt. 43, 45, 49). However, those amendments do not change substantively the reporting requirements for valuation data.

⁴ Valuation data is a “primary economic term” that is included in the Commission’s list “of minimum primary terms for swaps in each swap asset class.” Regulation 45.1 (defining “primary economic term”); Appendix 1 to Part 45 (identifying valuation data as a primary economic term).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Section 2(a)(13)(F) of the Act, 7 U.S.C. § 2(a)(13)(F) (2018), and Regulation 45.4(d)(2), 17 C.F.R. § 45.4 (2020).

V. OFFER OF SETTLEMENT

Respondents have submitted an Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;
 - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Section 2(a)(13)(F) of the Act, 7 U.S.C. §§ 2(a)(13)(F) (2018), and Regulation 45.4(d)(2), 17 C.F.R. § 45.4(d)(2) (2020).
 - 2. Orders Respondents to cease and desist from violating Section 2(a)(13)(F) of the Act and Regulation 45.4(d)(2).
 - 3. Orders Respondents to pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000), plus any post-judgment interest; and
 - 4. Orders Respondents and their successors and assigns to comply with the conditions consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Section 2(a)(13)(F) of the Act, 7 U.S.C. §§ 2(a)(13)(F) (2018), and Regulation 45.4(d)(2), 17 C.F.R. § 45.4(d)(2) (2020).
- B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000) ("CMP Obligation") within ten days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

Respondents shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169

(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

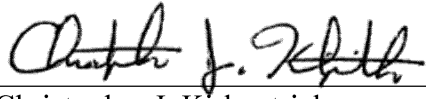
If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents, or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Cooperation with the Commission: Respondents understand and agree that they shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement in this action, and any current or future Commission investigations or actions related thereto. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action
 3. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 4. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written

notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick", is written over a horizontal line.

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: June 25, 2021