

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14594**

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<b>In the Matter of</b>	:	
<b>CREDIT SUISSE ALTERNATIVE</b>	:	
<b>CAPITAL, LLC (f/k/a CREDIT</b>	:	
<b>SUISSE ALTERNATIVE CAPITAL,</b>	:	<b>PLAN OF</b>
<b>INC.), CREDIT SUISSE ASSET</b>	:	<b>DISTRIBUTION</b>
<b>MANAGEMENT, LLC, and</b>	:	
<b>SAMIR H. BHATT,</b>	:	
	:	
<b>Respondents.</b>	:	

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**I. OVERVIEW**

The Division of Enforcement (“Division”) has prepared the following plan of distribution (“Distribution Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101, and Rule 1102(a) of the Rules, 17 C.F.R. § 201.1102(a). The Distribution Plan transfers the fair fund in *Credit Suisse Alternative Capital, LLC*, A.P. No. 3-14594, to the court registry account established in *SEC v. Citigroup Global Markets Inc.*, 11-cv-7387 (S.D.N.Y.) (“CGMI Action”), for distribution to harmed investors in accordance with a plan of distribution to be approved by the judge in the CGMI Action. As explained below, the Division has concluded that distributing funds collected in the Commission’s administrative proceeding through the Commission’s related district court CGMI

Action is a fair and reasonable way for the Commission to benefit investors injured as a result of the respondents' misconduct.<sup>1</sup> The Distribution Plan has been approved by the Commission.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

1. On October 19, 2011, the Commission issued a settled order instituting proceedings (“Order”)<sup>2</sup> against Credit Suisse Alternative Capital, LLC (f/k/a Credit Suisse Alternative Capital, Inc.) (“CSAC”), Credit Suisse Asset Management, LLC (“CSAM”), and Samir H. Bhatt (“Bhatt”) (collectively, “Respondents”) for violating various provisions of the federal securities laws in connection with the structuring and marketing during late 2006 and early 2007 of a largely synthetic collateralized debt obligation (“CDO”) known as Class V Funding III (“Class V III”).<sup>3</sup> According to the Order, approximately 15 different investors purchased notes in the Class V III offering from Citigroup Global Markets Inc. (“CGMI”), the principal U.S. broker-dealer subsidiary of Citigroup Inc.

2. The Commission’s Order held CSAC and CSAM jointly and severally liable for a total of \$2.5 million in disgorgement, prejudgment interest, and civil money penalty, and Bhatt liable for a \$50,000 civil money penalty. The Commission also ordered that a Fair Fund be created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the disgorgement, interest and penalties paid by the Respondents. The Order also stated that “[a]dditional monies paid by any defendant or respondent in a related proceeding arising from the

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<sup>1</sup> Consistent with the approach used by district courts when considering whether to approve a distribution plan, the Commission’s objective is to distribute Fair Funds in a fair and reasonable manner, taking into account relevant facts and circumstances. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006), citing *SEC v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991).

<sup>2</sup> Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders, Securities Act Rel. No. 9268 (Oct. 19, 2011).

<sup>3</sup> As a result of the negligent conduct described in the Order, CSAC and CSAM willfully violated Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 17(a)(2) of the Securities Act of 1933 (“Securities Act”) and Bhatt willfully violated Section 17(a)(2) of the Advisers Act, and caused CSAC’s violation of Section 206(2) of the Advisers Act. *See Order* at ¶¶ 57 and 58, respectively.

underlying conduct also may be added to this Fair Fund for distribution.”<sup>4</sup> The Respondents made the payments as required by the Order, totaling \$2.55 million (the “CSAC Fair Fund”).

3. Also on October 19, 2011, the Commission filed the CGMI Action, a settled civil action charging securities fraud in violation of Securities Act Sections 17(a)(2) and 17(a)(3) against CGMI based on its role in the structuring and marketing of Class V III from late 2006 through early 2007. On August, 5, 2014, the Court entered a final judgment (“Final Judgment”) against CGMI. Pursuant to the Final Judgment, CGMI paid \$160 million in disgorgement, \$30 million in prejudgment interest, and a civil penalty of \$95 million to the Clerk of the Court. According to the Final Judgment, funds collected in the CGMI Action would be deposited in an interest bearing account with the Court Registry Investment System (“CRIS”), and the funds, together with any interest and income earned thereon less taxes and the fees and costs of administration comprise the “Fund.” The Final Judgment also provided that the Commission may propose a plan of distribution and the plan may provide that the Fund be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

4. The violations in the Order arose out of the same or substantially similar conduct alleged in the CGMI Action. The securities fraud alleged and settled to in both cases is based on the Respondents’ and CGMI’s role in the structuring and marketing of Class V III. According to the Order’s findings, Bhatt was the portfolio manager at CSAC primarily responsible for the Class V III transaction. Order at ¶ 3. The marketing materials that CSAC and Bhatt helped draft to promote Class V III were misleading. *Id.* at ¶¶ 2-6. These materials represented that the investment portfolio was selected by CSAC, a registered investment adviser, which was promoted as having experience and expertise in analyzing credit risk in CDOs, using an

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<sup>4</sup> See Order at Section IV.F.

extensive asset selection process. *Id.* at ¶ 2. CSAC and Bhatt did not disclose to investors or to the directors of the special purpose vehicles that issued the securities to investors in Class V III that CSAC and Bhatt allowed CGMI to exercise significant influence over the composition of Class V III's investment portfolio. *Id.* at ¶ 3. The materials also represented that CSAC performed extensive credit analysis on all the assets selected for the Class V III portfolio, when in actuality; little to no analysis was performed on several of the portfolio's assets. *Id.* at ¶ 4. In addition, the Order found Bhatt and CSAC understood that CGMI was seeking to short assets into Class V III either for itself or for its customers, and thus that CGMI was representing economic incentives potentially adverse to those of Class V III and its investors. *Id.* at ¶ 2.

5. The securities violations alleged in both cases, the time period of the violations, and the investors harmed by both frauds are the same or substantially similar in both cases. Accordingly, the CGMI Action complaint alleges “violations arising from the same or substantially the same ... facts as those alleged in the Commission’s order instituting proceedings”, which is the criteria for transfer in Rule 1102(a).<sup>5</sup>

### **III. THE PLAN**

6. Since the administrative proceeding and the civil injunctive action in district court are both Commission-initiated enforcement actions arising from substantially the same set of facts, the Division concludes it would be more efficient to combine the funds collected in each action into a single fund for distribution to the same harmed investors. Under these

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<sup>5</sup> Rule 1102(a) states: Payment to Registry of the Court or Court-appointed Receiver. Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a *complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission’s order instituting proceedings.* (emphasis added)

circumstances, combining the funds collected is fair and reasonable because it will avoid the additional time inherent in implementing two distributions, reduce the duplication of distribution-related costs and expenses, and simplify the process for injured investors. Accordingly, Commission staff will transfer the CSAC Fair Fund of approximately \$2.55 million to the CGMI Action to be combined with the Fund of approximately \$285 million for distribution to harmed investors in accordance with a distribution plan to be established in the CGMI Action.