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VIA FEDERAL EXPRESS AND E-MAIL

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: United States v. Credit Suisse AG (1:14-cr-00188-RBS)

Dear Mr. Scheidt:

We are submitting this letter on behalf of Credit Suisse AG ("CSAG"), a corporation organized under the laws of Switzerland, the defendant in the above-captioned criminal information. CSAG seeks the assurance of the staff of the Division of Investment Management (the "Staff") that it would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") and/or Rule 206(4)-3 under the Advisers Act (the "Rule"), if an investment adviser that is required to be registered under the Advisers Act (an "RIA") pays CSAG or any of its associated persons, as defined in Section 202(a)(17) of the Advisers Act, a cash payment for the solicitation of advisory clients, notwithstanding the existence of the plea described below. The plea agreement pursuant to which the plea will be entered does not operate to prohibit or suspend CSAG or any of its associated persons from being associated with or acting as an investment adviser and does not relate to solicitation activities on behalf of RIAs, but the plea does by operation of the Rule affect the ability of CSAG and its associated persons to receive such payments.

We note for the Staff's information that, under Section 9(a) of the Investment Company Act of 1940 ("Investment Company Act"), CSAG and its affiliated persons will, as a result of the plea, be prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any open-end

investment company or unit investment trust registered under the Investment Company Act. CSAG and affiliated persons of CSAG that act in capacities set out in Section 9(a) filed an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, and existing and future affiliated persons of CSAG should any of them serve or act in any of the capacities set out in Section 9(a), from the restrictions of Section 9(a). On May 19, 2014, the Commission issued a temporary order pursuant to Section 9(c) of the Investment Company Act, granting a temporary exemption from the prohibitions of Section 9(a) resulting from the Plea.[1] The applicants believe that they meet the standards for exemptive relief under Section 9(c), and they expect that the Commission will issue a permanent order in due course.

Background

CSAG agreed to resolve an investigation by the U.S. Department of Justice through a plea agreement dated May 19, 2014 (the "Plea Agreement"). Under the Plea Agreement, CSAG pleaded guilty to one count of conspiracy to commit tax fraud related to accounts CSAG established for cross-border clients (the "Plea"). CSAG expects that the court presiding over the matter will enter a judgment of conviction against CSAG that will require remedies that are materially the same as set out in the Plea Agreement.

According to the statement of facts that served as the basis for the Plea Agreement (the "Statement of Facts"), CSAG assisted in the preparation and presentation of false income tax returns and other documents to the U.S. Internal Revenue Service ("IRS"). CSAG, including through its subsidiary Clariden Leu, operated a cross-border banking business that aided U.S. clients in opening and maintaining undeclared accounts and concealing foreign assets and income from the IRS. Private bankers based in Switzerland solicited U.S. clients to open undeclared financial accounts based on the protection offered by Swiss bank secrecy laws, which allowed U.S. clients to avoid disclosure of their ownership of the accounts and avoid obligations to pay U.S. taxes.

CSAG relationship managers traveled from Switzerland to the United States to meet with U.S. clients with undeclared financial accounts and to offer investment advice, even though they were not registered with the Commission to provide such services in the U.S. CSAG relationship managers based in Switzerland also communicated with U.S. clients by phone and e-mail. Switzerland-based bank relationship managers advised U.S. clients not to keep records in the U.S. related to their undeclared accounts.

CSAG assisted some U.S. clients in ensuring that their ownership of undeclared financial accounts would not be apparent. CSAG relationship managers in Switzerland assisted U.S. clients with undeclared financial accounts in establishing sham entities that disguised U.S. clients' interest in accounts, but allowed the U.S. clients or their relationship managers to

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[1] Credit Suisse Asset Management, LLC, et al., Investment Company Act Rel. No. IC-31051 (May 19, 2014).

maintain control over the account assets. Due in part to the assistance of CSAG and its relationship managers, numerous U.S. clients—with knowledge that Swiss bank secrecy laws would prevent CSAG from disclosing their identities to the IRS—filed false tax returns with the IRS that failed to disclose their interests in undeclared accounts and related income.

Although CSAG made attempts to consolidate U.S. clients' accounts in entities that complied with U.S. law, those attempts were ineffective. CSAG initiatives and directives designed to promote compliance with U.S. tax law did not stop Switzerland-based relationship managers from maintaining undeclared accounts for U.S. clients. When CSAG determined in 2009 to exit the cross-border banking business, the process of resolving all accounts with connections to U.S. clients took a matter of years to complete. Had CSAG implemented its exit project earlier and dedicated itself to investigating potential violations of U.S. law sooner, more information about the improper conduct may have been available to CSAG and U.S. investigators.

The Plea Agreement followed a settlement dated February 21, 2014 (the "Commission Settlement") between the Commission and Credit Suisse Group AG ("Group"), the parent company of CSAG, resolving an investigation regarding solicitation and provision of broker-dealer and investment advisory services to certain U.S. cross-border clients by Group while not registered with the Commission as a broker-dealer or investment adviser.[2] The Commission Settlement involved conduct related to the conduct described in the Plea Agreement.

By its terms, the Rule prohibits an RIA from paying a cash fee to any solicitor that has been convicted within the previous ten years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A)-(D) of the Advisers Act. Section 202(a)(6) of the Advisers Act defines "convicted" to include, among other things, a "plea of guilty." As a result, entry of the Plea will cause CSAG to be disqualified under the Rule, and for that reason, absent no-action relief, CSAG would be unable to receive cash payments for the solicitation of advisory clients.

Discussion

When adopting the Rule in 1979, the Commission made clear that it "would entertain, and be prepared to grant in appropriate circumstances requests for permission to engage as a solicitor a person subject to a statutory bar."[3] Over the course of time, the Staff, consistent with the Commission's position, has provided no-action assurance to a significant number of entities that otherwise would have been subject to a statutory bar.[4] We respectfully submit that the

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2 Credit Suisse Group AG, Admin Proc. File No. 3-15763 (Feb. 21, 2014).

3 Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Advisers Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

4 *See, e.g.*, RBS Securities, Inc., SEC No-Action Letter (Nov. 26, 2013), Goldman, Sachs & Company, SEC No-Action Letter (Oct. 31, 2003); Ramius Capital Management, LLC, SEC No-Action Letter (Apr. 5, 1996); RNC Capital Management Co., SEC No-Action Letter (Feb. 7, 1989).

circumstances present in this case are of the sort that likewise warrant the Staff's taking a no-action position.

In proposing and adopting the Rule, the Commission outlined the purpose underlying the disqualification provisions in the Rule. According to the Commission, that purpose was to prevent an RIA from hiring as a solicitor a person whom the RIA was not permitted to hire as an employee, thus doing indirectly what the RIA could not do directly.[5] As the Commission said when proposing the Rule:

> Because it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[6]

The Plea Agreement does not by its terms bar, suspend, or limit CSAG or any person associated with CSAG from acting in any capacity under the U.S. federal securities laws.[7] In addition, CSAG and its associated persons have not been sanctioned for conduct in connection with the solicitation of advisory clients for investment advisers.[8] In short, the underlying goals of the Rule would not be served by precluding an RIA from paying CSAG or its associated persons for engaging in solicitation activities under the Rule.

As noted above, the Staff has previously taken no-action positions with respect to numerous individuals and entities either found by the Commission to have violated a wide range of U.S. federal securities laws or rules or permanently enjoined by courts or competent jurisdiction from engaging in or continuing certain conduct or practices under the federal securities laws.[9] We submit that the reasoning underlying those letters equally applies when, as

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5 Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Advisers Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

6 *Id.*

7 As reflected, however, in the discussion above regarding Section 9(a) of the Investment Company Act and in this letter with respect to the Rule, the Plea does trigger certain disqualification provisions under the U.S. federal securities laws.

8 CSAG also notes that neither the Plea Agreement nor the Commission Settlement alleges that CSAG has violated, or aided and abetted another person in violation of, the Rule.

9 *See* the letters cited at *supra* note 4; *see also* Wells Fargo Bank, N.A., SEC No-Action Letter (July 15, 2013); J.P. Morgan Securities LLC, SEC No-Action Letter (Jan. 9, 2013); GE Funding Capital Market Services, Inc., SEC No-Acton Letter (Jan. 25, 2012); UBS Financial Services Inc., SEC No-Action Letter (May 9, 2011).

here, a party has pled guilty to a felony or misdemeanor arising out of its conduct of the business of a broker or investment adviser. We acknowledge that the facts outlined above do not line up with those set out in the Staff's 2003 letter to Dougherty & Company LLC[10], as the Plea is not a "Disqualifying Order," as that term is used in the letter.[11] We note, however, that the facts that are the subject of the Plea Agreement are related to those in the underlying Commission Settlement and thus known to the Commission, which to our minds, supports the no-action position we are requesting.

Undertakings

In connection with its request for no-action assurance, CSAG undertakes:

1. to conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of the Rule as if CSAG was not a disqualified person for purposes of the Rule by virtue of the Plea;

2. to comply with the terms of the Plea Agreement;

3. that, for ten years from the date of entry of the Plea, CSAG and any person associated with it or any investment adviser with which CSAG or any person associated with it has a solicitation arrangement subject to the Rule, will disclose the Plea and Plea Agreement in a written document that is delivered to each person whom CSAG or its associated persons solicits (a) not less that 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate the contract without penalty within five business days after entering into the contract.

Conclusion

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an RIA pays CSAG or any of its associated persons a cash payment for the solicitation of advisory clients, notwithstanding the Plea.

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10 Dougherty & Company LLC, SEC No-Action Letter (July 3, 2003).

11 *See id.* at n.3 ("a Disqualifying Order is an order issued by the Commission under section 203(f) of the Advisers Act, or an order issued by the Commission in which the Commission has found that the solicitor: (a) has been convicted of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A) through (D) of the Advisers Act; (b) has engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of Section 203(e) of the Advisers Act; or (c) was subject to an order, judgment or decree described in Section 203(e)(4) of the Advisers Act").

Should you have any questions or comments regarding this letter, please call me at (202) 303-1201 or (212) 728-8293.

Very truly yours,

Barry P. Barbash