

# ALBERTA SECURITIES COMMISSION

## ORDER

**Citation: Re CREDIT SUISSE SECURITIES (USA) LLC, 2022 ABASC 30 Date: 20220404**

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

#### **Background**

1. Credit Suisse Securities (USA) LLC (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 144(1) of the *Securities Act* (Alberta) (the **Act**) exempting the Filer from the dealer registration requirement of section 75(1)(a) of the Act (the **Exemption Sought**) in respect of trades in exchange contracts to clients in Alberta who are "qualified parties" as defined in Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives (Qualified Parties)*.

#### **Interpretation**

2. Terms defined in National Instrument 14-101 *Definitions* or in the Act have the same meaning if used in this order unless otherwise defined herein.

#### **Representations**

3. This order is based on the following representations made by the Filer to the Commission:
  - (a) The Filer is:
    - (i) a limited liability company incorporated under the laws of the State of Delaware with its head office located in New York, New York;
    - (ii) a wholly-owned indirect subsidiary of Credit Suisse Group AG;
    - (iii) registered as a broker-dealer with the United States (**US**) Securities and Exchange Commission (**SEC**);
    - (iv) registered as a futures commission merchant (**FCM**) with the US Commodity Futures Trading Commission (**CFTC**);
    - (v) a member of the US National Futures Association (NFA);
    - (vi) a member of the Financial Industry Regulatory Authority (FINRA);
    - (vii) a member of the following exchanges: BATS Options Market, BOX Options Exchange, C2 Options Exchange, Chicago Board Options Exchange Incorporated, EDGX Options Exchange, Nasdaq International Securities Exchange, Nasdaq GEMX, Nasdaq MRX, MIAX Options Exchange, MIAX Pearl Exchange, MIAX Emerald Exchange, NASDAQ OMX BX, NASDAQ OMX PHLX, NASDAQ Options Market, NYSE Amex Options, NYSE Arca Options, Chicago Board of Trade, CBOE

Futures Exchange, CME/GLOBEX, COMEX, Curve Global, ICE Futures US (Financial Instruments Exchange, New York Cotton Exchange, New York Futures Exchange), ICE Futures Europe (International Petroleum Exchange), Kansas City Board of Trade, Montreal Exchange, NASDAQ Options Market, New York Mercantile Exchange (including NYMEX Green), and ICE Futures Canada; and

- (viii) relying on the international dealer exemption under section 8.18 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations in each province of Canada, which exemption does not apply to trades in exchange contracts in Alberta.
- (b) The Filer is not registered under the securities legislation of any jurisdiction of Canada.
- (c) The Filer admits that absent the Exemption Sought, it has engaged in registrable activities in Alberta, including trading in, or holding itself out as being in the business of trading in, exchange contracts, without registration or an exemptive relief order, and in this way is non-compliant with section 75(1)(a) of the Act (the **Filer's Non-Compliance**).
- (d) The Filer has paid to the Commission the amount of \$1500.00 as a monetary settlement for the Filer's Non-Compliance.
- (e) The Filer proposes to trade in exchange contracts only on behalf of Qualified Parties.
- (f) The Filer will not advertise its services by television, radio, newspaper, internet or other media of general circulation originating in Canada, other than financial industry publications.
- (g) The Filer will not maintain an office, sales force, or place of business in Canada.
- (h) The Filer shall file with the Executive Director of the Commission any information the Executive Director may require in a form that is acceptable to the Executive Director.
- (i) Exchange contracts will be traded by the Filer on behalf of Qualified Parties only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
- (j) For exchange contracts cleared at a clearing house under the jurisdiction of the SEC, the Filer holds customer assets in accordance with Rule 15c3-3 (**SEC Rule 15c3-3**) of the Securities Exchange Act of 1934, as amended. SEC Rule 15c3-3 requires CSS to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula

set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of the Filer at separate banks and/or custodians. The combination of segregated securities and cash reserves are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements to which dealer members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in compliance with the possession and control requirements of SEC Rule 15c3-3. Similarly, for exchange contracts under the jurisdiction of the CFTC, the Filer is required to adhere to regulations relating to a CFTC-registered FCM and an NFA-registered member, as applicable, which require, among other things, the segregation and separate accounting of customer positions and money from CSS' proprietary assets to protect customers in the event of the insolvency or financial instability of an FCM. The protections under the relevant regulatory regime will extend to all Alberta clients of the Filer in respect of trades in exchange contracts.

- (k) The Filer will adhere to the regulations relating to an SEC-registered broker dealer, a CFTC-registered FCM and an NFA-registered member in respect of trades in exchange contracts.

#### **Order**

4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 144(1) of the Act that the Exemption Sought is granted provided that and for so long as:
  - (a) any trade in exchange contracts by the Filer is conducted only on behalf of a Qualified Party;
  - (b) such exchange contracts are traded only on a Non-Canadian Exchange;
  - (c) the Filer maintains in good standing its registration as a broker dealer with the SEC, its registration as an FCM with the CFTC, and its memberships with FINRA and the NFA;
  - (d) when opening an account for a Qualified Party, the Filer provides to the Qualified Party:
    - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees or agents because they are resident outside Alberta, and all or substantially all of their assets are situated outside Alberta;
    - (ii) a statement that the Filer is not a registrant and, accordingly, the protection available to clients of a dealer registered under the Act will not be available to the Qualified Party;

- (iii) the name and address of the Filer's agent for service in Alberta; and
- (iv) a statement providing risk disclosure substantially similar to that required under the Act for registered dealers trading in exchange contracts;
- (e) the Filer notifies the Commission promptly of:
  - (i) any restrictions or conditions placed on its registration with the SEC or the CFTC; or
  - (ii) any sanctions imposed on the Filer in connection with its activities as a broker-dealer or an FCM;

under a settlement agreement entered into with the SEC or the CFTC, pursuant to an order issued by the SEC or the CFTC, or as otherwise required by the SEC or the CFTC; and
- (f) the Filer has provided to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as an Appendix to this order.

5. This order will expire on the earlier of:

- (a) five years from the date of this order; and
- (b) 180 days after the coming into force of any change to Alberta securities laws regarding over-the-counter derivatives transactions that affects registration of derivatives dealers.

**For the Commission:**

*"original signed by"*

Tom Cotter  
Vice-Chair

*"original signed by"*

Kari Horn  
Vice-Chair

**APPENDIX**  
**Submission to Jurisdiction and Appointment of Agent for Service**

Name of person or company ("International Firm"):
If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number for the firm:
Jurisdiction of Incorporation for the International Firm:
Head office address of the International Firm:

The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:
E-mail address:
Phone:
Fax:

The International Firm is relying on an exemption order under section 144 of the Securities Act (Alberta) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the Relief):

\_\_\_\_\_ Section 8.18 [international dealer]  
\_\_\_\_\_ Section 8.26 [international adviser]  
\_\_\_\_\_ Other [specify]:

Name of agent for service of process (the "Agent for Service"):
Address for service of process on the Agent for Service:

The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

Until 6 years after the International Firm ceases to rely on the Relief, the International Firm must submit to the regulator

- a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
- an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated:
(Signature of the International Firm or authorized signatory)
(Name of Signatory)
(Title of Signatory)

The undersigned accepts the appointment as Agent for Service of [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:
(Signature of the Agent for Service or authorized signatory)
(Name of Signatory)
(Title of Signatory)