UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Credit Suisse International and Credit Suisse Securities (USA) LLC,

Respondents.

CFTC Docket No. 16-10

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

I.

The Commodity Futures Trading Commission ("Commission" or "CFTC") has reason to believe that on several days in April and June 2009, Credit Suisse International ("CSI") violated Section 4a(b)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6a(b)(2) (2009), and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2009). The Commission also has reason to believe that in March 2013, Credit Suisse Securities (USA), LLC ("CSS-USA") violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). Collectively, CSI and CSS-USA are referred to herein as "Respondents." 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.

II.

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 Sections 6(c) and 6(d) (2012) of the Act, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledge service of this Order.[1]

[1] Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On several days in April and June 2009, CSI exceeded the CFTC all-months speculative position limit for Chicago Board of Trade ("CBOT") wheat futures contracts despite having been granted an increased hedge exemption by the Commission.

Additionally, in March 2013 CSS-USA submitted to the CFTC's Division of Enforcement ("DOE") materially false or misleading information reflecting certain inflated swap positions and thus inflated hedge exemptions for CBOT wheat futures contracts for CSS-USA, CSI and other affiliates for several days in April and June 2009.

B. RESPONDENTS

Credit Suisse International is a British company based in London, UK. Credit Suisse International is provisionally registered with the Commission as a Swap Dealer.

Credit Suisse Securities (USA) LLC is a Delaware corporation with its principal place of business in New York City. CSS-USA is registered with the Commission as a Futures Commission Merchant ("FCM"), Commodity Trading Advisor ("CTA"), Commodity Pool Operator ("CPO") and Swap Dealer.

C. FACTS

1. Position Limits

In 2009, pursuant to CFTC Regulation 150.2, the all-months speculative position limit for CBOT wheat futures was 6,500 contracts. In September 2008, CSS-USA, on behalf of CSI and other affiliates (collectively "Credit Suisse"), requested that the Commission grant them an increase in the hedge exemption for agricultural commodities which were subject to position limits set forth in Regulation 150.2. CSS-USA requested the increase in order to accommodate counterparties seeking to unwind over-the-counter ("OTC") commodity swap positions that they had opposite certain credit-impaired firms and seeking to reestablish those OTC swap positions opposite Credit Suisse ("credit migratory swap positions"). The Division of Market Oversight promptly granted the requested increased exemption from position limits.

On the relevant days, CSI had a hedge exemption which increased its all-months position limit in CBOT wheat futures contracts. Despite having received this increased hedge exemption, on several days in April and June 2009 CSI exceeded its increased all-months speculative position limits for CBOT wheat futures contracts. For example, on April 1, 2009, CSI had an all-months CBOT wheat futures net long position of 9,831 contracts, which exceeded its increased position limit by 2,023 contracts.

2. <u>False or Misleading Statements</u>

In March 2013, CSS-USA submitted to the DOE, through counsel, documents purporting to reflect, among other information, Credit Suisse's "futures position related to credit migratory exemption" for the relevant days in April and June 2009. That information in the March 2013 submission differed from the information in contemporaneous submissions made in 2009. According to the March 2013 submission, CSI's hedge exemption would have been higher in April and June 2009 than was warranted by information submitted to the Commission in 2009. Based on the March 2013 information, CSI would not have exceeded its position limits in April and June 2009.

However, the information in the March 2013 submission concerning Credit Suisse's "futures position related to credit migratory exemption" was materially false or misleading. While the March 2013 submission purportedly reflected that Credit Suisse had larger credit migratory swap positions and thus larger hedge exemptions in April and June 2009 than had previously been reported to the Commission, the submission in fact reflected inflated credit migratory swap positions and thus inflated hedge exemptions, making them materially false or misleading.

IV.

LEGAL DISCUSSION

A. <u>Violation of Section 4a(b)(2) of the Act and Regulation 150.2</u>

Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2009), made it unlawful for any person to "directly or indirectly hold or control a net long or net short position in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility or electronic trading facility in excess of any position limit fixed by the Commission for or with respect to such commodity... ."

CFTC Regulation 150.2, 17 C.F.R. § 150.2 (2009), established speculative position limits in certain futures contracts, including CBOT wheat futures contracts, and stated, in relevant part "[n]o person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:" 6,500 all-months position limit for CBOT wheat futures contracts.

The Commission does not need to establish scienter – i.e., proof of intent to exceed the applicable speculative position limit – in order to prove a violation of the Commission's position limit provisions. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act "unambiguously imposes liability" for violations of speculative position limits. *Saberi*, 488 F.3d at 1212 (rejected trader's contention that DOE was required to prove that he intended to violate speculative position limits in frozen pork-bellies futures) (*citing Hunt*, 591 F.2d at 1218).

On several days in April and June 2009, Respondent CSI held or controlled positions in excess of the all-months speculative position limit for CBOT wheat futures contracts in violation of Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2009), and Regulation 150.2, 17 C.F.R. § 150.2 (2009).

B. Violation of Section 6(c)(2) of the Act

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), provides:

> It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this chapter, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

In March 2013, CSS-USA submitted to the DOE materially false or misleading information reflecting inflated credit migratory swap positions and thus inflated hedge exemptions for CBOT wheat futures contracts for the relevant days in April and June 2009. CSS-USA knew or reasonably should have known that this information was false or misleading. Therefore, Respondent CSS-USA violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, on several days in April and June 2009, Respondent CSI violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2009), and Regulation 150.2, 17 C.F.R. § 150.2 (2009), and that in March 2013, Respondent CSS-USA violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2).

V.

OFFER OF SETTLEMENT

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

A. Acknowledge receipt of 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 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), 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, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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.

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;

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 CSI violated Section 4a(b)(2) of the Act and Regulation 150.2 (2009), and that Respondent CSS-USA violated Section 6(c)(2) of the Act;

2. Orders Respondent CSI to cease and desist from violating Section 4a(b)(2) of the Act and Regulation 150.2 (2009), and that Respondent CSS-USA cease and desist from violating Section 6(c)(2) of the Act;

3. Orders Respondent CSI to pay a civil monetary penalty in the amount of five hundred twenty-five thousand dollars ($525,000) plus post-judgment interest;

4. Orders Respondent CSS-USA to pay a civil monetary penalty in the amount of one hundred forty thousand dollars ($140,000) plus post-judgment interest; and

5. Orders Respondents, and their successors and assigns, to comply with the conditions and undertakings consented to in the Offer.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent CSI, and its successors and assigns, shall cease and desist from violating Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2, 17 C.F.R. § 150.2;

B. Respondent CSS-USA, and its successors and assigns, shall cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2);

C. Respondent CSI shall pay a civil monetary penalty in the amount of five hundred twenty-five thousand dollars ($525,000), plus post-judgment interest, and Respondent CSS-USA shall pay a civil monetary penalty in the amount of one hundred forty thousand dollars ($140,000) plus post-judgment interest (collectively the "CMP Obligations"). Post-judgment interest shall accrue on the CMP Obligations 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 (2012).

Respondents shall pay their CMP Obligations 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson 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 Obligations with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent 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 success 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 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. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligations shall not be deemed a waiver of their obligations 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; and

3. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligations as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

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

By the Commission.

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

Dated: March 22, 2016