NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

In the Matter of

CREDIT SUISSE AG,
CREDIT SUISSE AG, NEW YORK BRANCH

CONSENT ORDER UNDER
<u>NEW YORK BANKING LAW §§ 39, 44, and 44-a</u>

The New York State Department of Financial Services ("DFS" or the "Department"), Credit Suisse AG, and Credit Suisse AG, New York Branch (together, "Credit Suisse" or the "Bank"), are willing to resolve the matters described herein without further proceedings.

WHEREAS, Credit Suisse AG is a global financial institution headquartered in Zurich, Switzerland, that employs more than 46,000 people worldwide, holds assets of approximately $792 billion, and that is licensed by the Department to operate a foreign bank branch in New York State;

WHEREAS, the Department has been investigating Credit Suisse's foreign exchange business.

WHEREAS, Credit Suisse has expressed to the Department its commitment to New York and to fully address the Department's investigation findings;

The Department and Credit Suisse are willing to resolve the matters described herein without further proceedings, as follows:

<u>THE DEPARTMENT'S FINDINGS AFTER INVESTIGATION</u>

<u>Introduction</u>

1. The Department has been investigating Credit Suisse's foreign exchange ("FX") trading business (the "DFS or Department Investigation"), including obtaining thousands of

documents from Credit Suisse, taking testimony from Credit Suisse employees, and obtaining additional information from third-party sources.

2. The DFS Investigation has determined that, from at least 2008 to 2015, Credit Suisse consistently engaged in improper, unsafe, and unsound conduct, in violation of New York laws and regulations, by failing to implement effective controls over its FX business.

3. The Bank engaged in the inappropriate sharing of information with other global banks which may have led to coordinated trading, manipulation of exchange rates, and increased bid/ask spreads offered to customers in Credit Suisse's foreign exchange business. These efforts were directed at maximizing profits or minimizing losses in Credit Suisse's trading book, to the detriment of customers and a competitive marketplace.

4. The DFS Investigation also determined that, from approximately April 2010 to June 2013, Credit Suisse sought to engage in front-running customers' limit and stop-loss orders through application of an algorithm that appears to have been designed to trade ahead of customer's orders and increase profits .

5. The DFS Investigation further determined that, from at least approximately January 2012 to December 2015, Credit Suisse engaged in improper practices involving the use of its electronic trading platform known as "eFX." Specifically, the DFS Investigation determined that Credit Suisse: (1) improperly employed a delay function when determining whether to fill customer orders, known as "Last Look," on all clients' orders, to increase the Bank's profits at the expense of a transparent, competitive model; (2) failed to adequately disclose to its clients that certain trades were rejected on the basis of a "Last Look" functionality, and instead stated that such rejections were due to an "error," thereby potentially misleading Credit Suisse clients into believing there was a technical error, as opposed to an intentional rejection of an order so the Bank

could avoid losses; and (3) failed to implement adequate controls to ensure its FX trading business and sales practices complied with law.

The Foreign Exchange ("FX") Market and Credit Suisse's FX Business

6. **The FX Market**: The foreign exchange ("FX") market is one of the largest and most liquid markets in the world. The FX market is centered on "spot" transactions, the exchange of national currencies between two counterparties typically settled within two business days. A spot dealer quotes its customer a "bid" (the price at which it will buy a currency) and an "ask" (the price at which it will sell). Dealers profit on the difference between bid and ask prices, known as the "spread."

7. The spread quoted plays a central role in a customer's decision whether to place an order with a particular dealer. Dealers want a wider spread, *i.e.*, buy low and sell high, while customers want a narrower spread. The narrower the spread, the more competitive the price; if a spread is too wide, a customer may choose to go to a different bank offering tighter spreads.

8. Large banks such as Credit Suisse serve as dealers or "market-makers," quoting prices to and trading with customers. Dealers also profit by trading for their own account.

9. **Credit Suisse's FX Business**: Credit Suisse does business in the United States through a foreign bank branch in New York State that is licensed and regulated by the Department, as well as through other affiliates. The New York Branch holds assets of approximately $42 billion. Credit Suisse is committed to its New York Branch and to cooperating fully with the Department in its continued supervision of the New York Branch.

10. Credit Suisse conducts FX trading operations in New York, London, and other global FX hubs. During the period 2008 through 2013, Credit Suisse's average share in the global

FX market was approximately two percent (and sometimes reached as much as three percent) – on par with a number of other large global banks.

Credit Suisse's Unsafe, Unsound and Improper Conduct

11. For many years, Credit Suisse FX traders participated in multi-party electronic chat rooms, where traders shared information to support coordinated trading activity, and attempts to manipulate currency prices or benchmark rates. By improperly sharing information, some of the traders involved sought to diminish competition among banks, allowing these banks and traders to reap higher profits from the execution of FX trades at customers' expense. Certain Credit Suisse traders also engaged in improper activity by sharing of confidential customer information, again with the aim of enhancing their own profits to the detriment of customers.

12. Credit Suisse traders engaged in this activity despite the fact that both outside guidance and internal Credit Suisse policies counseled against manipulate and abusive practices such as sharing confidential customer information, front-running ahead of customer orders, and trading based on inside or proprietary information.

13. Specific information about customer identity, and the type and size of customer orders, is considered confidential and proprietary to a bank, and is not permitted to be shared outside of the financial institution. As early as 2008, guidance existed from the Federal Reserve emphasizing the need for FX dealers to protect client confidentiality and avoid situations involving (or even appearing to involve) trading on non-public information.[1] Likewise, Credit Suisse policies from 2010 that addressed fixed income trading stated, "***Confidential or Proprietary Information: Employees should assume that all information about customer orders and transactions is confidential and or proprietary.***"

[1] *See, e.g.,* Federal Reserve Bank of New York, *Guidelines for Foreign Exchange Trading Activities* (Foreign Exchange Committee, May 2008).

14. Similarly, Credit Suisse policies (again from 2010 pertaining to fixed income trading) stated, "Front-Running of Customer or Firm Transactions":

> ***Employees are prohibited from front-running (trading ahead of customer or Firm transactions)***. Specifically, employees may not buy or sell, or recommend or solicit the purchase or sale of, a security or a derivative thereof (such as options or futures) or another traded product for any account, whether a Firm or personal account, in order to take advantage of non-public information regarding an imminent material transaction by any customer . . . ."

15. Similarly, Credit Suisse policies (again from the 2010 fixed income manual) prohibited trading based on "inside information," which was broadly defined and included, among other things, "merger and acquisition activity."

Attempts at Front-running Customer Orders

16. One improper use of confidential customer information by Credit Suisse traders may have led to front-running of customer orders. Front running involves using customer order information improperly by trading ahead of the order, with the understanding that the order will have a likely impact on the price of the currency pair in issue.

17. In one instance in February 2013, a Credit Suisse trader, Trader 1, disclosed potentially confidential information obtained from the Credit Suisse sales desk about FX trading associated with a pending merger and acquisition: "I think there's some lhs[2] action today at the fix on the back of tht massive m+a . . . massive caveat, info is from sales desk . . . but 4 o clock. . . . 16 yrds . . . something to do with the equity leg is going thru today . . . that's the reason they saying the spot will be done."

18. In another instance occurring March 1, 2013, Trader 1, referring to a corporate transaction involving a merger or acquisition, stated,"m+a, bmo BOUGHT 5 yards usdcad for it this week." In another instance, on March 4, 2008, Trader 1 told a trader at another large bank,

[2] "lhs" generally refers to "left hand side" or an order to sell the first currency listed in a currency pair.

Trader 2: "***gve u something to front run . . . I mean strategialcally [sic] position agst***," to which [Trader 2] replied, "***hahahah***."

19. The desire of Credit Suisse and other traders to front-run corporate transactions based on confidential information was acute. On September 21, 2011, Credit Suisse and other traders in a chat room discussed SABMiller's just-announced intention to acquire Foster's brewery for just over $10 billion.[3] Because the transaction involved a U.K. corporation acquiring an Australian corporation, it was very likely that one or more large currency trades would be necessary to facilitate the acquisition. Understanding the timing of those large trades could provide traders an enormous opportunity to trade ahead of execution, based on a unique understanding about the likelihood the market would move in a particular direction once the orders were placed into the market.

20. That same date, Trader 1, Trader 2, and two other traders from global banks, Trader 3 and Trader 4, discussed which of their banks might be handling the acquisition's closing -- with the hope the traders would learn ahead of time of the closing, and then trade ahead of it. [4] Trader 1 stated, "if the m+a bird walks thru the dealing room doors im gonna get quite excited." Trader 2 implored the group to share: "***Can whoever does get it make sure they post it immediately on here [this secretive chat room].***"[5]

---

[3] *See* https://dealbook.nytimes.com/2011/09/21/sabmiller-to-buy-fosters-for-10-15-billion/?_r=0.

[4] On or about January 10, 2017, Trader 4, an alleged member of the chat room known as "The Cartel," was charged by indictment in the Southern District of New York with participating in a conspiracy to suppress and eliminate competition for the purchase and sale of euro/U.S. dollar in the United States and elsewhere. The charges are currently pending. *See U.S. v. Richard Usher et al.*, 17-CR-019 (S.D.N.Y.) (https://www.justice.gov/opa/press-release/file/924206/download).

[5] Indeed, even before he joined Credit Suisse and traded for another bank, Trader 1 demonstrated a serious appetite for frontrunning, shamelessly inquiring of his chat room colleagues in October 2008: "***whos got a massive fix I can front run***"; and again in December 2008, "***anyone got a big fix I can front run plse***."

Improper Sharing of Confidential Customer Information

21. Credit Suisse and other banks also improperly shared confidential customer information. Credit Suisse traders potentially harmed FX customers on repeated occasions by exchanging information in chat rooms with traders from other banks to trade advantageously against Credit Suisse customers -- adjusting prices in light of additional information gleaned from putative competitors about the prices they offered such customers, and similarly assisting other traders by providing confidential information.

22. When participating in certain multi-bank chat rooms, for example, Credit Suisse traders sometimes used code names to discreetly share confidential customer information. For example, Credit Suisse traders disclosed confidential customer information by using code names such as "Tanktop" and "Shoefone" to identify specific customers that traded frequently.

23. Another example of improper sharing of confidential information involved a customer apparently located at another large bank. Credit Suisse and other traders repeatedly referred to this customer as "Satan," and a particular Credit Suisse trader, Trader 5, would sometimes provide specific information about the customer's orders or positions. In August 2008, for example, Trader 5 broadcasted that "***satan bgt 10 aud***" (indicating the identified customer bought 10 million of Australian dollars against the U.S. dollar). Trader 1 remarked, "n000000000," and after confirmation from Trader 5, Trader 1 replied, "they r still selling[,] a little birdie tells me." In a subsequent chat, Trader 3 told Trader 5, "I remember the old days, ***your satan info was legendary***."

24. In another chat in August 2008 regarding "Satan," Credit Suisse traders goaded Trader 3 into providing current information about Satan, since "[Satan] does all his spot with u [Trader 3] on yr toy now." Trader 3 replied by providing confidential information concerning a

recent specific trade of Satan: "***satan sells 8 euros at 17***," indicating the identified customer sold $8 million worth of the Euro/US dollar, at an identified price. One trader from another large financial institution, Trader 6, replied, "good shout," while Trader 5 responded, "[Trader 3] finally adds value."

25. In another example in April 2011, another Credit Suisse trader, Trader 7, agreed to disclose confidential pricing information to a trader at another global bank, Trader 8. The reason for this breach was not to act as a counterparty to a trade, but to take advantage of a customer. Trader 8 asked help of Trader 7: "***Need a quick favour pls . . . . Where do u have 18m and 2y chfjpy*** [Swiss franc/Japanese yen futures]?" Trader 8 sought the information because a customer that expressly identified in the chat was "***looking to pick [Trader 8] off***."

26. Shortly after Trader 7 shared Credit Suisse's current prices for those futures, Trader 8 boasted about the successful misuse of confidential client information: "***So after I asked u the chfjpy, I shifted my price by like .4 higher . . [and the customer] still paid me . . . oh maaaaaaaan.***" Trader 7 replied, "***haha.***"

Improper Efforts to Affect FX Prices

27. **Building "Ammo"**: One practice, known as "building ammo," involved traders at different banks permitting a single, designated trader to take on multiple orders from the other participants. This ensured multiple traders minimized their risks by staying out of each other's way, especially during the potentially chaotic trading around a fixing window. Allowing a designated trader to build and deploy "ammo" provided the designated trader enhanced market power, so as to push the price of a currency pair in a direction benefitting the traders involved.

28. Relatedly, a "fix order" is a customer order for the bank to deliver the requested currency at the designated "fix" rate, which is determined at a later time based on trading in the

interdealer market. By taking these orders to transact at an exchange rate that will be determined at a future point in time, banks may accumulate risk by exposing themselves to intervening rate movements.[6]

29. In one example from September 2011, Trader 12 , working with traders at other global banks, made apparent efforts to push down the value of a particular currency pair prior to the fix. Trader 9 (at another global bank) informed Trader 12 that he "can't walk it down with u in the way." Trader 12 responded that "once I get enough in I will push it up to make the fill look good then you can walk it down all you like." In this way, these traders improperly sought to stay out of each other's way around the fix, to avoid executing contrary orders while at least one trader sought to push prices in a particular direction.

30. And again in August 2012, Trader 1 discussed with Trader 4 an effort to "unload" ammunition. Trader 1 stated "***get ready unload on nzd,***" to which Trader 4 replied, "I am. Nearly hit it last time." As the fix drew near, Trader 1, referring to an unidentified co-conspirator, remarked "***if he can't get it lower we may be in trouble.***" After apparent success, Trader 1 remarked "***come to poppa***," while Trader 4 retorted, "phew."

31. Another instance occurred in March 2011, when Trader 11[7] stated to a Credit Suisse trader, Trader 12, "im going to try and drive it up on the fix and than keep some to be short."

---

[6] One type of fix is calculated each day based on a sampling of actual trading activity completed during a predetermined and usually short window of time. For spot trading, the most widely used benchmarks are the WM/Reuters fix ("WM/R" fix, occurring every business day at 4:00 p.m. London time) and the European Central Bank fix ("ECB" fix, occurring every business day at 1:15 p.m. London time). FX traders may buy or sell currency close to the "fix window" in order to manage their exposure to this risk and obtain a currency position large enough to complete the client's order.

[7] Trader 11 pled guilty on January 4, 2017, in the U.S. District Court for the Southern District of New York, to a one-count information charging him with conspiracy to restrain trade, in violation of the Sherman Act, 15 U.S.C. § 1, for engaging in illegal conduct including (a) coordinating on the price, size, and timing of their bids and offers on an electronic FX trading platform in order to manipulate prices on that and other electronic FX trading platforms; (b) agreeing to refrain from trading where one or more of the co-conspirators had a stronger need to buy or sell than the others, in order to prevent the co-conspirators from bidding up the price or offering down the price against each

Trader 12 replied, "***u need more ammo to drive it up?***" Trader 11 answered that he would "watch" Trader 12's trade, "no problomo."

32. Further, in May 2012, another Credit Suisse trader, Trader 13, discussed with Trader 14 (a trader at another global bank), how they might affect the price in the Euro/Yen currency pair. Trader 14 sought to drive the price of the currency pair as low as 98.74, and Trader 13 offered to assist by placing in some offers below that price, to try and move it down: "***go for it I"ll stick in a few bids sub 74***." When the price apparently drifted down far enough, Trader 13 told Trader 14, "ok pulling my bids," no doubt because she did not want them to be hit at that price. Trader 14 quickly pleaded with her not to withdraw them, concerned that it ***"smlls unethical haha***" and "***if custy ever found out we both dead***." Another chat room participant, noting the explicit nature of the discussion, stated (with evident sarcasm): "***what the hell are u two planning . . . this chat is a compliance dream.***"

33. Credit Suisse traders also coordinated their trading internally through the use of building "ammo." In September 2010, two Credit Suisse traders, Traders 15 and 16, discussed the deployment of "ammo" to push certain currency prices lower, with Trader 15 stating, "***think like yesterday gonna need ammo to push lower***." Trader 15, reviewing the firepower available to be accumulated, observed, "***we are not going to be able to push it down much with only 100.***"

34. Similarly, in May 2010, another Credit Suisse, Trader 17, told Trader 15, "***u need the ammo . . . go to it . . . lay people out if you can***." Trader 15 agreed, and Trader 17 instructed:

> "I will be giving u 100 at the fix . . . I would . . . get short smalls here then clamor it a few mins b4 for at least 150 . . . ***tell all my [friends] 2 min before that u just got the mothere***

other and (c) coordinating trading prior to and during fixes in a manner intended to manipulate final fix prices. *See U.S. v. Jason Katz,* 17-CR-003 (S.D.N.Y.) (https://www.justice.gov/atr/case-document/file/946726/download).

> ***of all lhs fixes . . .*** and ring it thru the fix window with the balance…what is your wall street account? When rate comes out I book it to your account quickly."

35. After Trader 15 confirmed his short position, Trader 17 encouraged Trader 15 at two minutes before the fix, "cmon [Trader 15] . . . get them." Two minutes after the fixing window closed, Trader 15 reported back, "hope that went ok."

36. **<u>Spread Collusion</u>**: Another improper strategy employed by Credit Suisse traders involved the inappropriate sharing of information regarding spreads for trading in certain currency pairs. As noted previously, competition between banks helps keep spreads tight and prices competitive. Coordinated efforts to agree on prices may result in wider spreads, which limits competition, boosting the banks' profitability at customer expense.

37. On one occasion, for example, Trader 1 explicitly asked colleagues in a chat room: "***lets sign a pact . . . on spreads***." Trader 3 quickly responded, "***agree.***" Trader 1 then sought to recruit Trader 2 to this illicit "pact," saying ***"[Trader 2] . . . u in [?]."***

38. **<u>Coordination With Sophisticated Customers</u>**: Another example of an improper effort to affect FX prices include a Credit Suisse trader apparently assisting a customer in attempting to improperly affect prices. On September 7, 2012, a Credit Suisse customer ("Customer 1") enlisted the assistance of a Credit Suisse trader, Trader 18, in seeking to push down the price of the U.S. dollar/Turkish lira pairing. Customer 1 asked Trader 18, "can you walk down usdtry for me pls." Trader 18 replied, "Yeah, no problem." Customer 1 then stated, "just offer 1 at like 72 . . . just walk it brotha," to which Trader 18 replied, "No sweat." Customer 1 cheered on Trader 18, saying "come on . . . just walk it," to which Trader 18 replied, "Collapsado." Apparently upon achieving success, Customer 1 stated, "***thks [Trader 18] for walking it down . . . great job . . . you really shellacked it***." Trader 18 quickly replied, "pleasure."

Elements of Credit Suisse's Electronic FX Trading Systems
<u>Served to Disadvantage Customers</u>

Credit Suisse's electronic trading platform also was deficient because elements of the platform operated in a manner that disadvantaged customers, without sufficiently disclosing how the Bank conducted its trading.

39. Credit Suisse operates an electronic foreign exchange trading system called "eFX." It is a dealing system that provides liquidity to market participants via trades where Credit Suisse and eFX users transact as counterparties. As with Credit Suisse's "voice" FX trading, eFX acts as a market-maker, establishing a "bid-ask" spread at high speeds on currency pairs to profit on the difference.

40. Counterparties may access eFX through Credit Suisse's single-bank platform, known as "PrimeTrade"; through multi-dealer platforms and third-party networks such as ECN; through direct counterparty connections like FIX; or through an application program interface ("API") on a computer.

41. A suite of computer algorithms, called "FORE," stream currency prices for viewing by prospective counterparties. FORE generates prices based on a moving analysis of external market pricing data, forecast models and eFX's own positions.

42. Another system, known as "***Kiddo***," automatically manages Credit Suisse's net positions in various currencies. When accumulated positions meet certain characteristics, Kiddo generates offsetting orders in the market. Credit Suisse first implemented Kiddo and FORE in 2008.

Apparent Efforts to Front-Run Customer Limit and Stop-Loss Orders:

43. From at least April 2010 to June 2013, Credit Suisse employed an algorithm designed to trade ahead of clients' limit and stop-loss orders.[8] Credit Suisse programmers designed the algorithm to predict the probability that a client's limit or stop-loss order would be triggered. Credit Suisse programmers and traders had ongoing and significant discussions about how the algorithm could be used to "front run" customer orders. Credit Suisse predicted that this particular algorithm would generate approximately $2 million in profits for the calendar year 2013.[9]

44. For example, in May 2012, an eFX trader unabashedly bragged to the Head of eFX: "***it is the name of the game if we front-run orders. Sometimes you win sometimes you lose. It's up to us to define the front run rules.***"

45. In July 2012, this eFX trader wrote to another eFX colleague, "[***I***] ***think with a smart frontrun we can make money***. We will lose most of the LO [limit order] clients if we start executing on bucket rates. The algo should be smart enough to optimize this."

46. On another occasion, the same eFX trader discussed front-running of stop loss orders carried out by Kiddo, saying, "[T]hat is always very tricky as you don't want kiddo to start frontrunning sl [stop loss] orders to [sic] early."

Improving the effectiveness of this algorithm was an important business objective of eFX senior management in 2012. In one e-mail from February 2012, for example, the Head of eFX identified as a priority: "***Improve order front running*** (e.g., limit front running in % of order amount)." In another e-mail chain involving a Vice President of eFX management, the participants discussed

[8] A "limit order" is an order to buy or sell at a specific price or better. A "stop-loss" order is an order to buy or sell if the currency reaches a certain price in order to minimize a customer's losses. While it may be proper for a bank's market making electronic trading system to engage in the hedging of customer orders to limit risk and provide liquidity, sometimes called "pre-hedging," it would not be proper for the electronic system to engage in the front-running of customer orders.

[9] May 2013 e-mail from the Head of eFX trading.

the probability that a type of customer limit order would be hit. The Vice President indicated that, once this was detected by the algorithm, the mechanism that could front run orders would activate. Likewise, in January 2012, the Chief Operating Officer of the eFX group sent an e-mail to other eFX executives discussing his 2012 deliverables for the group, including "***Improve front running.***"

47. Apparently to encourage traders to employ the front running strategy, the Head of eFX wrote, in a January 2012 e-mail, that Credit Suisse should improve its "***PnL tracking on the front running order[s].***" The lead algorithmic researcher in eFX management echoed that imperative, noting that the Quantitative group sought to "***Attribute P&L to front running of limit orders.***"

48. In an internal chat in May 2012, an eFX trader wrote to the Head of eFX: ***"[w]e made some money by frontrunning the orders at 25 in euro but probably will show as a loss on the client side . . . we =kiddo made money with the frontrun***." In a later chat in July 2012, this eFX trader discussed the enduring difficulty in assigning credit to individual traders for frontrunning: ***"[W]e assign P+L only when they get triggered[.] if we frontrun an order and it never gets triggered the profit sits in our book but nobody knows where it came from . . . very difficult to track."***

49. In the eFX business line's 2012 Planning Document, the important business objectives included "***Predict market trends from client trades***" and "***Choose and monitor a client list to monitize [sic] client information***."

50. From April 2010 through June 2013, Credit Suisse executed approximately 31,000 limit orders and 41,000 stop-loss orders that may have been a source of profit through front running. Additionally, because front-running can occur on orders that ultimately remain unfilled,

Credit Suisse may have profited as well from front running many tens of thousands of additional client orders.

<u>Latency Arbitrage and the "Last Look" Function</u>

51. Even when conducted via high-speed internet connections, electronic FX trading is subject to latencies in the process of (a) offer, (b) acceptance or rejection and (c) subsequent communication of the result to a customer. Tiny delays are occasioned by the time it takes for data to travel from a customer's server to the Bank's server; the time for the Bank to confirm the customer is creditworthy; and the time it takes the Bank to ensure adequate liquidity exists in the market. The latency period might be as short as several milliseconds, or as long as several hundred milliseconds (or even longer).

52. Certain of Credit Suisse's sophisticated customers might seek to take advantage of this delay by using advanced systems to detect market movement milliseconds before Credit Suisse's systems adjusted prices. This is known as a type of "toxic flow."

53. Another example of "toxic flow" may occur where a customer seeks to obtain a better price from Credit Suisse by breaking up and spreading fractions of its total order volume across a number of market makers (known as "spraying the market"). A market maker like Credit Suisse might execute an apparently low volume trade at a lower price than it would have, had it been aware of the total size of the customer's order, because lower volume orders require market makers to assume less risk.

54. To protect against toxic flow, Credit Suisse incorporated a "last look" functionality ("Last Look") into its eFX system. Last Look imposes a hold period between receipt of a customer order, its acceptance, and execution. This additional delay, sometimes hundreds milliseconds, is

added to the time between receipt of a customer order and eFX's communication to the customer of acceptance or rejection.

55. During the delay, eFX compared the customer's desired price for its order against the market price available at the end of the latency period. If the market moved in the client's favor more than a certain amount during the "Last Look" interval, eFX rejected the trade.

56. Credit Suisse has employed Last Look on the eFX trading system since in or about February 2012. Starting first with a few clients, Credit Suisse eventually expanded its application to a group of customers that it legitimately believed justified use of the function to defend against toxic flow.

Credit Suisse's Overbroad Use of Last Look

57. However, after introducing Last Look, eFX senior executives began exploring whether this function could serve as a profit center – and not just a defense against toxic flow from high-speed trading customers. Thus, the scope of the use of Last Look changed in early 2013 when – under pressure to increase profits – senior executives in Credit Suisse's electronic trading business determined to expand Last Look to all eFX customers. They acted to increase profits, without regard to whether application of Last Look was reasonably based on minimizing losses associated with latency arbitrage/toxic flow.

58. In January 2013, for example, Credit Suisse's Head of Strategy wrote to the Head of eFX Trading and others:

> We should think about whether we might want a small amount of deal acceptance (last look) for *all* FIX clients by default. . . . Right now we typically only use deal acceptance when there's a problem but I think it would be worth doing it as standard and having it turned on from day one. We should . . . ***instead use our rejects to improve P&L***. I'm not suggesting going last look crazy I just think there's no need to have a 100% fill rate for API clients. With most there's an 'acceptable' reject rate and by not making use of that – or wasting it by rejecting trades for non-P&L-impacting reasons ***– we're leaving money on the table (or at least giving up a free option.)***

59. Several employees at Credit Suisse disagreed with expanding Last Look purely to grow profit and encouraged disclosure to the extent it is used. For example, Credit Suisse's then-Head of eFX (and current Head of eCommerce) responded:

> ***[T]he term "deal acceptance" to mean "last look rejection" sounds like marketing/dishonesty to my ear***. . . . [L]ast look rejections have a slipperiness to them that understandably engenders distrust in some clients . . . . [Being explicit with the client] is the best way to diminish the sense that we're engaging in sharp/shady practice ***and I'd encourage a policy of continuing openness and honesty***, to the extent that this is deployed.

60. Shortly thereafter, in a February 2013 e-mail, the Head of eFX Trading wrote to both the former Head of eCommerce and a leader of the eFX Development Team:

> [G]iven the upcoming separation of [the] IB [Investment Bank] and PB [Private Bank] businesses ***things are going to get a lot tougher PNL-wise for the eFX business. I'd like to push forward with the default last look in order to increase PNL.***[10]

61. The former Head of eCommerce strongly objected, and cautioned that further discussions on this topic should be conducted verbally, so that they could talk more freely about this questionable practice: "***[T]ightening P&L pressure should never be a cause for reversing matters of principle. If you disagree with this we should talk rather than exchange further emails.***"

62. Similarly, a leader on the eFX Development Team replied:

> ***Last look was introduced for a very specific purpose – to stop latency arb by introducing a short delay in acceptance that covers the difference between our market data latency and that of HFT [high-frequency traders]. . . . Changing the purpose of the last look to increase profitability will also require a change in parameterization.*** . . . What would be our policy in communicating this to clients? ***If you're at all uncomfortable with a full and frank disclosure of this policy, I'd recommend you do not proceed with it.***

---

[10] Similarly, in an e-mail from March 2013 with a subject heading of "pricing items," the Head of eFX listed "Last Look" as one of the "***items as most likely to help increase PNL***." In another e-mail sent the same day, he wrote: "I've made a first estimate on prioritization where I've marked the 5 items ***with the biggest expected payoff," identifying Last Look as one such item***."

63. Despite these concerns, Credit Suisse expanded the application of Last Look by applying a default setting to almost all eFX customers, without regard to whether the customer posed a trading risk to the Bank. This remained the case until approximately mid-2015.

64. Credit Suisse's deployment of Last Look thus grew to be overbroad. As a result, the Bank failed to tailor this mechanism to ensure it was used to defend against toxic flow, and not unfairly profit at customer expense. Moreover, prior to 2015, Credit Suisse never conducted systematic reviews of its application of Last Look, or the extent of its use, with respect to particular customers or categories of customers. As a result, Credit Suisse utilized Last Look to unfairly disadvantage the Bank's customers.

<u>Credit Suisse's Inadequate Disclosure to Customers About Last Look</u>

65. Perhaps even more troubling was Credit Suisse's inadequate and potentially misleading disclosures to customers about the existence and extent of Last Look. While the use of last look in electronic trading may serve as a legitimate tool to defend against toxic flow, it is best employed when adequately disclosed to customers.

66. Here, rather than adopting the "full and frank disclosure policy" counseled by the leader on the eFX Development Team, the Bank did not adequately disclose to customers using the electronic trading platform that they were subject to last look functionality. Instead of indicating that the trade had been rejected by Last Look, Last Look rejection messages stated: **"An Error Occurred – Please Contact Credit Suisse,"** thereby leaving customers in the dark.

67. For example, in an e-mail from April 2013 with a subject heading of "Trade Rejections with Credit Suisse," a customer explicitly complained about the misleading nature of the "error" messages:

> Our FIX Interface received the error "An Error Occurred – Please Contact Credit Suisse", ***so there is Zero indication that these rejections are due to last look***, based on the text it

> could be anything. Please investigate on your side, is there a delay in your price feed? ***Why is there not a more suitable rejection text if it really is due to Last Look?***

68. Similarly, an eFX support staffer in New York wrote in an April 2013 e-mail:

> [The customer] happened to call again regarding these type of rejections . . . . I know this has been an issue since they last brought it to our attention. . . . I know the client receives a general error message "An Error Occurred – Please Contact Credit Suisse" and ***when they do contact us, we are unable to answer straightaway.***

69. Despite repeated customer complaints, certain Credit Suisse employees in the eFX business favored retaining the existing message. For example, one eFX salesperson counseled against including language like the word "tolerance" that might suggest the Bank was applying Last Look: ***"[s]ome client's [sic] will ask what tolerance means and that could lead to a conversation about last look. I still think, for some KAM [key accounts], <u>we need to avoid that conversation</u>.***"

70. Similarly, two eFX salespersons discussed how to respond to a customer inquiry concerning a dramatic increase in rejections shortly after Last Look was applied wholesale to eFX. On April 8, 2013, one salesperson asked if the client was aware that the Bank was now applying Last Look and, if not, could the salesperson tell the client, ***"[o]r do I need to be more subtle?***" His colleague replied: "***I wouldn't use the word LL [Last Look] explicitly*** but explain that we have enhanced the parameters on our side."

71. Evidently to protect against discovery by customers, and others outside of the business of Last Look's application, rejections on this basis were intentionally omitted from internal trading logs. This helped ensure that eFX salespersons and support staff remained unaware of the true reason for a rejection. Indeed, at one point, the Head of eFX instructed an eFX trader to "***<u>definitely kill the Last Look text</u>***" in the trading logs.

72. Credit Suisse continued to receive complaints regarding the misleading and confusing nature of the error messages well into 2014. In August 2014, for example, the Head of Strategy wrote:

> Anyone object if we change the wording for LL rejects from "An error occurred - please contact Credit Suisse" to "Trade Rejected"? The 'error occurred' has caused confusion with [a customer] as they thought it might not be a genuine reject. ***Don't think we do ourselves any favours by referring to this as an 'error'.***

73. In October 2014, the Head of Strategy again asked her executive colleagues in the business line whether they could update her on the possibility of providing a transparent rejection message: "***We are getting queries about our rejects on an almost daily basis now due to the unclear message so would be great to know when it will get changed.***"

74. The effort to resist transparent disclosures concerning Last Look – even from customers who complained about it – was embraced at senior levels of Credit Suisse's eFX business. In response to an internal email, the Head of eFX wrote in April 2013, that he would "***rather not discuss our exact settings just like we don't discuss our exact metrics nor pricing algorithms***."

<u>Following Scrutiny in the Press, Credit Suisse Modifies Last Look</u>

75. In Summer 2014, press reports began to appear concerning customer and regulatory scrutiny of last look functionality.[11] *See, e.g.,* "Last Look Orders Come Under Scrutiny," *FX Week* (Jul. 10, 2014) (the "FX Week Article"). Due to this press attention, eFX executives began discussing modifications to Last Look. For example, in a July 24, 2014 e-mail – titled "Last Look coming under fire" – an eFX salesperson wrote to the Head of eFX: "***this topic was discussed in***

[11] *See, e.g.*, Michael Watt, *Last Look Orders Come Under Scrutiny*, FX Week, July 11, 2014 (http://www.fxweek.com/fx-week/news/2354579/last-look-orders-come-under-scrutiny).

a client meeting yesterday. Looks like this may be the new focus for regulators in the electronic FX space." The salesperson then copied into the e-mail a section from the FX Week Article.

76. Increased press scrutiny and an expected regulatory response led Credit Suisse to begin applying "symmetric" Last Look in approximately July 2014. Under symmetric "Last Look," rather than rejecting only those orders that became sufficiently unprofitable to Credit Suisse during the delay period, Last Look also rejects trade requests that become sufficiently unprofitable to customers (but profitable to Credit Suisse) during the delay. Symmetric Last Look was not formally introduced to all eFX customers until approximately November 2014.

77. Additionally, in approximately September 2014, Credit Suisse began a transparency initiative – but only after learning of additional revelatory press articles about Last Look functionality, and heightened concern about regulatory investigations. On September 17, 2014, for example, the Head of eFX wrote to an eFX salesperson:

> [T]he idea is that we tell clients that we last look them . . . in order to provide better prices . . . . [T]his is all part of the whole transparency initiative . . . . ***[D]id you see the bbg article on FX? Biggest banks said to overhaul fx trading after scandals . . . . [T]hat's the driver.***

78. Not until December 2014 did executives in the eFX business begin to discuss fully implementing Last Look transparency for all clients. This appears to be solely the result of the anticipated regulatory scrutiny.

<u>Control Failures in Credit Suisse's FX Business</u>

79. During the relevant period, Credit Suisse lacked policies designed to adequately supervise its FX trading business and ensure compliance with applicable laws, rules and regulations. Nor did it provide for sufficient corporate governance over the FX business.

80. The guidance Credit Suisse did provide to employees focused on regulations that were irrelevant to the FX market. Again, this was despite the fact that, even by 2008, guidance

existed that emphasized the need for dealers to protect client confidentiality and avoid situations involving trading on non-public information.[12]

81. For example, a Credit Suisse eFX salesperson testified that he did not know if internal controls existed at Credit Suisse to protect against Last Look abuses. This salesperson also testified that he was unaware of any compliance policies specific to eFX or AES. Similarly, an eFX trader testified that he was unaware of any compliance policies concerning eFX, and was also unaware of any New York compliance staffer who was dedicated to the eFX systems.

82. **NOW THEREFORE**, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39, 44, and 44-a of the Banking Law, the Department and Credit Suisse stipulate and agree as follows:

VIOLATIONS OF LAW AND REGULATIONS

83. Credit Suisse has conducted business in an unsafe and unsound manner, in violation of Banking Law §§ 10 and 44.

84. Credit Suisse failed to maintain and make available true and accurate books, accounts, and records reflecting all transactions and actions, in violation of New York Banking Law § 200-c.

85. Credit Suisse failed to make reports required by the Superintendent and failed to include within such reports certain prescribed matters, in violation of New York Banking Law § 44-a.

86. Credit Suisse failed to submit a report to the Superintendent immediately upon discovering fraud, dishonesty, making of false entries or omission of true entries, or other misconduct, whether or not a criminal offense, in violation of 3 NYCRR § 300.1.

---

[12] *See* Federal Reserve Bank of New York, *Guidelines for Foreign Exchange Trading Activities* (Foreign Exchange Committee, May 2008).

SETTLEMENT PROVISIONS

Monetary Penalty

87. Credit Suisse shall pay a civil monetary penalty pursuant to Banking Law §§ 44 and 44-a in the amount of $135,000,000. Credit Suisse shall pay the entire amount to the Department within ten days of executing this Consent Order. Credit Suisse agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

Employee Discipline

88. Certain individuals involved in the misconduct described above resigned from Credit Suisse or were otherwise terminated due to unrelated reasons prior to the time any disciplinary action might have been taken against them, namely: Traders 1, 5, 13, 15, 16, 17 and 18.

89. Credit Suisse shall not in the future, directly or indirectly, rehire or retain any of the individuals referenced in Paragraph 88 as either an officer, employee, agent, consultant, or contractor of Credit Suisse or any affiliate of Credit Suisse, or in any other capacity..

Remediation

90. Within 60 days of this Order, the Bank shall:

   a. submit a written plan acceptable to the Department to improve senior management's oversight of the Bank's compliance with applicable New York State and federal laws and regulations, and applicable internal policies, in connection with the Bank's FX Trading Business as it affects or pertains to the New York Branch or New York customers;

   b. submit an enhanced written internal controls and compliance program acceptable to the Department to comply with applicable New York State and federal laws and regulations with respect to the Bank's FX Business as it affects or pertains to the New York Branch or New York customers;

c. submit a written plan acceptable to the Department to improve the Bank's compliance risk management program with regard to compliance by the Bank with applicable New York and federal laws and regulations with respect to its FX Business as it affects or pertains to the New York Branch or New York customers; and

d. submit an enhanced written internal audit program acceptable to the Department with respect to the Bank's compliance with applicable New York and federal laws and regulations, as well as the Bank's internal policies and procedures, in its FX Trading Business as it affects or pertains to the New York Branch or New York customers.

91. The Bank shall submit the written plans and programs that are acceptable to the Department as set forth in Paragraph 90 of this Order. Each plan or program shall contain a timeline for full implementation of the plan or program with specific deadlines for the completion of each component of the plan or program. Within 10 days of approval by the Department, the Bank shall adopt the approved plans and programs. Upon adoption, the Bank shall promptly implement the approved plans and programs and thereafter fully comply with them. The approved plans and programs shall not be amended or rescinded without the prior written approval of the Department.

92. Within 60 days of executing this Order, Credit Suisse shall engage an outside consultant that the Bank shall choose, subject to the Department's approval in its sole regulatory discretion, to review and report to the Department about the Bank's remedial efforts with regards to its FX business as it affects or pertains to the New York Branch or New York customers (the "Consultant"). The Consultant shall report on a periodic basis prior to the issuance of the report required under Paragraph 93 below, as determined by the Department.

93. Twelve months after execution of this Consent Order, the Consultant shall provide a report to the Department concerning at least the following:

a. The Bank's compliance with applicable New York State and federal laws and regulations as regards its FX business as it affects or pertains to the New York Branch or New York customers;

b. The Bank's compliance with recognized FX industry best practices as it affects or pertains to the New York Branch or New York customers;

c. The Bank's creation of enhanced policies and procedures governing the FX business, and its compliance with those policies and procedures as it affects or pertains to the New York Branch or New York customers;

d. The Bank's maintenance of an honest, ethical, and fair FX business as it affects or pertains to the New York Branch or New York customers.

94. Eighteen months and twenty-four months after execution of this Consent Order, the Bank shall submit to the Department a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof.

Full and Complete Cooperation of Credit Suisse

95. Credit Suisse commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Breach of Consent Order

96. In the event that the Department believes Credit Suisse to be in material breach of the Consent Order, or any provision hereof, the Department will provide written notice to Credit Suisse and Credit Suisse shall, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach has been cured.

97. The parties understand and agree that Credit Suisse's failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that Credit Suisse has breached the Consent Order, Credit Suisse agrees that the Department shall have all remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders. Credit Suisse submits to the jurisdiction of the Department for any such future proceedings.

Waiver of Rights

98. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal or agency outside the Department.

Parties Bound by the Consent Order

99. This Consent Order is binding on the Department and Credit Suisse, as well as any successors and assigns, for the entire term of the Consent Order unless it is lifted by the Department by written order. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

100. No further action will be taken by the Department against Credit Suisse for the specific conduct set forth in this Consent Order, provided that the Bank fully complies with the terms of this Consent Order.

Notices

101. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

James Caputo
Senior Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Chris Mulvihill
Senior Counsel to the Superintendent
New York State Department of Financial Services
One State Street
New York, NY 10004

Gabriel Turner
New York State Department of Financial Services
One State Street
New York, NY 10004

Connor Mealey
Excelsior Fellow
New York State Department of Financial Services
One State Street
New York, NY 10004

For Credit Suisse:

Alan Reifenberg
Managing Director
Global Head of Litigation and Investigations
Credit Suisse
1 Madison Avenue
New York, NY 10010

Miscellaneous

102. Each provision of this Consent Order shall remain effective and enforceable against Credit Suisse, its successors and assigns until stayed, modified, suspended, or terminated by the Department.

103. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

104. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 13 day of November, 2017.

CREDIT SUISSE AG

By: ______________________
ERIC VARVEL
President & CEO
Credit Suisse Holdings (USA), Inc.

By: ______________________
ALAN REIFENBERG
Global Head of Litigation
and Investigations

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: ______________________
MARIA T. VULLO
Superintendent of Financial Services

By: ______________________
MATTHEW L. LEVINE
Executive Deputy Superintendent for Enforcement

CREDIT SUISSE AG, NEW YORK BRANCH

By: ______________________
LEWIS WIRSHBA
New York Branch Manager

By: ______________________
J.J. McDONALD
New York Branch Deputy Manager