

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU**

**In the Matter of
CREDIT SUISSE SECURITIES (USA) LLC**

No. 15-183

SETTLEMENT AGREEMENT

The Office of the Attorney General of the State of New York, Eric T. Schneiderman ("NYAG") commenced an investigation pursuant to Section 352 et seq. of the General Business Law (the "Martin Act") and Executive Law § 63(12) regarding Credit Suisse Securities (USA) LLC's ("Credit Suisse") Advanced Execution Services ("AES") business. Parallel investigations were conducted by the United States Securities and Exchange Commission ("SEC").

This Settlement Agreement ("Agreement") sets forth the findings of the NYAG's investigation and the relief agreed to by the NYAG and Credit Suisse (together, the "parties").

I. OVERVIEW

Credit Suisse, a registered broker-dealer headquartered in New York, New York, offers clients various electronic trading services through its AES business. Among these services is Crossfinder, an alternative trading system ("ATS") that is commonly referred to as a "dark pool" because order information is not displayed to pool participants. Crossfinder has for years been the largest or second-largest ATS in the United States as measured by dollar volume of executions. Credit Suisse also owns and operates Light Pool, an ATS and electronic communications network ("ECN") where certain orders were, at times, "lit" or visible to other market participants.

Beginning in April 2008, Credit Suisse made material misrepresentations and omissions concerning certain operations of its AES business in violation of the Martin Act and Executive Law § 63(12). The material misrepresentations and omissions relate to Crossfinder,¹ Light Pool, and the manner in which Credit Suisse routes client orders and handles confidential client order information.

Credit Suisse sought to differentiate Crossfinder and Light Pool from competing ATSs by marketing a proprietary methodology called "alpha scoring" that placed pool participants into various categories according to the quality or toxicity of their order flow. Alpha scoring was in part intended to address institutional investors' desire for increased transparency and concerns about interacting with high frequency trading ("HFT") firms that pursued certain trading strategies.

Alpha scoring in Crossfinder was marketed as giving clients and potential clients (together, "clients") the ability to avoid trading with categories of pool participants that pursued

¹ "Crossfinder" as used herein refers to the Crossfinder venue operating in the United States.

certain trading strategies, such as those participants that Credit Suisse categorized as “High Alpha” or “Opportunistic.” Credit Suisse indicated to clients that alpha scoring in Crossfinder was objective and transparent, and that clients were categorized monthly. However, from its inception, alpha scoring in Crossfinder included significant subjective elements. Further, until March 2014, all Crossfinder clients were not categorized systematically every month.

Credit Suisse also misrepresented key aspects of alpha scoring in Light Pool. Credit Suisse marketed alpha scoring in Light Pool as a means of identifying Opportunistic traders and prohibiting them from directly accessing Light Pool to ensure a pool suitable for long-term investors. Credit Suisse represented to clients that alpha scoring would be employed when Light Pool became operational and that participants classified as Opportunistic would be “kicked out” or “lose access” to trading in Light Pool directly. In fact, Credit Suisse did not apply alpha scoring in Light Pool until June 2012, approximately one year after Light Pool was fully operational for trading. During this time, Credit Suisse did not correct its previous statements and did not tell most clients that it was not employing alpha scoring in the pool. Direct participants were also given the opportunity to adjust their trading to avoid being labeled Opportunistic. Further, although Credit Suisse suspended from Light Pool the few direct participants who were categorized as Opportunistic, those participants were not “kicked out” because Credit Suisse allowed them to resume direct trading in Light Pool if they represented that they would improve the quality of their order flow.

In addition, Credit Suisse made material misrepresentations and omissions regarding certain aspects of the manner in which it routes orders. *First*, Credit Suisse misrepresented to clients that AES’s smart order router (“SOR”), a technology that determines where to route orders for execution, did not preference any venue, when in fact the SOR systematically prioritized Crossfinder over other venues in certain stages of the dark-only routing process. *Second*, Credit Suisse represented to clients that it performed regular analyses of the venues to which it routed client orders when, prior to January 2013, venue analyses were performed on an ad hoc basis. *Third*, Credit Suisse created and operated a technology called Crosslink that enabled two HFT firms to trade directly with the “child orders,” or pieces of larger orders, that the SOR was handling for Credit Suisse’s other clients without disclosing the existence of Crosslink to those other clients. *Fourth*, Credit Suisse did not disclose to most of its clients that it was transmitting confidential Crossfinder order information outside of Crossfinder to the SOR. *Fifth*, Credit Suisse did not fully and completely disclose that it sent outbound indications of interest (“IOIs”) containing certain confidential Crossfinder order information to the outbound routers of two registered national securities exchanges.

These material misrepresentations and omissions took place during a period in which Credit Suisse’s AES business lacked adequate policies and procedures relating to alpha scoring, order routing, and client disclosures.

In view of the NYAG’s findings and conclusions set forth below, the NYAG deems it appropriate to enter into this Agreement with Credit Suisse, under which Credit Suisse has agreed, among other things, to cease and desist from engaging in any actions in violation of the Martin Act and Executive Law § 63(12), and to pay the State of New York a penalty of \$30 million.

Additionally, Credit Suisse has consented to the entry by the SEC of Orders Instituting Administrative and Cease-and-Desist Proceedings.

II. FINDINGS OF FACT

A. Background

1. Credit Suisse, a registered broker-dealer, is a Delaware limited liability company with headquarters in New York, New York. Credit Suisse is a wholly-owned subsidiary of Credit Suisse Group AG.
2. Credit Suisse's AES business provides clients with various electronic trading services, including algorithms and smart order routing services that attempt to access liquidity in a strategic manner. In addition, AES provides access to its Crossfinder and Light Pool trading venues.
3. Crossfinder and Light Pool are ATSS owned and operated by Credit Suisse. Both are private execution venues that match and execute orders to buy and sell equity securities. Credit Suisse clients access Crossfinder and Light Pool either directly or by sending orders with instructions to use Credit Suisse algorithms (i.e., indirectly). Orders processed by Credit Suisse algorithms are routed to various venues, including Crossfinder and Light Pool, by Credit Suisse's SOR.
4. From at least April 2008, Crossfinder has generally been the largest or second largest ATS in the United States as measured by dollar volume of executions.
5. Clients of Credit Suisse's AES business include institutional investors, hedge funds, and HFT firms, among others.
6. Due to their use of high-speed, sophisticated computer programs and algorithms, HFT firms can engage in aggressive strategies that are at times detrimental to counterparties such as institutional investors.
7. Dark pools such as Crossfinder were developed in part as a means of protecting the confidentiality of client orders. Unlike public exchanges, where pending orders are generally visible to participants and executions are posted immediately, dark pools generally do not display pending orders. The lack of visibility of pending orders – the “dark” aspect of such venues – is thought to help protect institutional investors from the aggressive strategies employed by some HFT and other trading firms.
8. Unlike in Crossfinder, certain pending orders in Light Pool were, at times, visible to other market participants. Light Pool was marketed as a response to concerns about HFT firms' exploitation of orders on public exchanges and was advertised as “the Market for the Long-Term Investors.”

B. Alpha Scoring in Crossfinder

9. In response to the concerns of institutional investors regarding transparency and potentially detrimental strategies employed by firms pursuing certain types of trading strategies, including HFT firms, Credit Suisse sought to differentiate Crossfinder from other ATSs by offering alpha scoring.
10. Alpha scoring is a proprietary methodology that Credit Suisse uses to categorize participants in Crossfinder based on the characteristics of their order flow. Part of the methodology involves assigning client flow a numerical "alpha score" which, according to Credit Suisse, is intended to "evaluate the appropriateness" of a party's interaction with institutional order flow by capturing effects such as short-term negative selection that are "to the detriment of institutional investors."
11. Pursuant to alpha scoring, Credit Suisse has used various scoring benchmarks to measure theoretical gains and losses that accrue to Crossfinder participants (i.e., alpha). For example, Credit Suisse has compared the price of execution to the price (or volume-weighted average price) at different times (e.g., 1, 15, 30 or 60 seconds) or different numbers of executions (e.g., 10, 25, 50, 100, 200 or 500 executions) before or after the execution in question.
12. Credit Suisse's categorization methodology has also taken into account additional factors other than alpha scores per se. These additional factors include client type, participant feedback, observations of Credit Suisse personnel, frequency of order cancellation and too-late-to-cancel messages, fill rates, and add/take ratios, among others.
13. Based on this methodology, Credit Suisse categorizes participants who connect directly to Crossfinder into one of three categories: "Plus" (previously referred to as "Contributors" and "Low Alpha"); "Max" (previously referred to as "Medium Alpha" and "Neutral"), and "Opportunistic" (previously referred to as "High Alpha"). Credit Suisse disclosed that other groups of pool participants, such as those entering Crossfinder indirectly via a Credit Suisse algorithm or the SOR, are not scored, and are placed in a category called "Natural." Credit Suisse considers interaction with Plus counterparties to be "beneficial to the institutional investor" and interaction with Opportunistic counterparties to be "to the detriment of the institutional investor."
14. These categorizations determine which clients may interact with each other in Crossfinder. Specifically, Plus and Natural clients can choose whether to interact with Max and Opportunistic clients; Max clients can choose whether to interact with Opportunistic clients, but can only interact with Plus and Natural clients that choose to interact with Max clients; and Opportunistic clients can interact only with Max, Plus, and Natural clients that choose to interact with them.
15. As detailed further below, between at least December 2010 and March 2014, Credit Suisse misrepresented to clients that alpha scoring in Crossfinder was objective and transparent, and that client categorizations were performed on a monthly basis.

Alpha Scoring in Crossfinder Was Not Objective or Transparent

16. In widely distributed marketing materials, large-group and client-specific presentations, and numerous one-on-one interactions with clients, Credit Suisse represented that alpha scoring in Crossfinder was both objective and transparent. For example, in December 2010, when a client asked why Credit Suisse's services were superior to the competition, Credit Suisse responded: "Crossfinder is the only market center (dark or light) that ropes off opportunistic clients based on a rigorous, objective methodology. To our knowledge no other dark pool uses objective [and] transparent criteria to define client flow interaction in their dark pool."
17. Likewise, at a conference it held for numerous clients in March 2011, Credit Suisse represented that alpha scoring "measures short term alpha for all trades based on a fully-transparent, objective methodology." Later in 2011, Credit Suisse represented to multiple clients in response to questionnaires that it did not use a subjective classification scheme based on general client type to drive which clients interact with each other, stating that it instead employed an "objective scoring methodology" to classify clients. Representations about Credit Suisse's "objective" methodology continued throughout the pre-March 2014 period. Credit Suisse also set out numerical thresholds that purportedly defined the alpha score ranges that corresponded to the various categories that it used to segment flow in Crossfinder.
18. Credit Suisse's alpha scoring methodology was not consistent with the objectivity that Credit Suisse represented. The alpha scoring methodology included multiple subjective factors that influenced how participants were scored and ultimately categorized, as follows:
 - a. Before Crossfinder participants were scored, Credit Suisse personnel used their judgment to classify them subjectively into various groups based on general participant type (e.g., brokers, buy-side, and retail). The participant's assigned group influenced (i) the particular benchmarks used to calculate the participant's alpha score, and (ii) the additional factors other than alpha scores that were used to ultimately categorize the participant.
 - b. Credit Suisse personnel had discretion to determine which scoring benchmarks and other factors to consider when scoring.
 - c. Participant feedback and the observations of Credit Suisse personnel were among the factors Credit Suisse considered when scoring and categorizing Crossfinder participants.
 - d. Credit Suisse did not always follow the established numerical thresholds between categories. For example, the Credit Suisse personnel applying the methodology decided in some instances that a particular score was "biased" because it did not, in their view, accurately reflect the quality of the order flow and should therefore not be followed. At other times, Credit Suisse personnel evaluated participants within a particular subjective group against each other, rather than against the established numerical thresholds. Participants with better scores in a particular group were

moved to a higher quality category, and those with worse scores were moved to a lower quality category, without regard to the established numerical thresholds.

19. The subjective elements of the alpha scoring methodology affected whether certain participants were categorized as Opportunistic. For example, on some occasions prior to March 2014, Credit Suisse did not categorize the flow of certain participants that were HFT firms as Opportunistic because Credit Suisse subjectively decided not to adhere to the results from alpha scoring showing that those firms were in the Opportunistic range based on the established numerical thresholds.
20. Credit Suisse's statements that alpha scoring was transparent were also misrepresentations. Prior to March 2014, Credit Suisse did not tell its clients about the subjective aspects of the alpha scoring methodology. As a result, Credit Suisse clients were not in a position to evaluate the ways in which that subjectivity affected the categorization of Crossfinder participants.

Client Categorizations Were Not Performed Monthly

21. Credit Suisse represented to clients that it performed alpha scoring and recategorized clients in Crossfinder on a monthly basis in order to assess the quality of the liquidity on those venues and avoid interaction with "toxic" flow when routing customer orders.
22. In fact, it was not until March 2014, when Credit Suisse implemented a new iteration of the alpha scoring methodology, that Credit Suisse began systematically performing recategorizations on a monthly basis. In the preceding years, all clients were not scored or categorized on a monthly basis. Rather, recategorizations were performed on an ad hoc, irregular basis, and client interactions therefore may have been based on stale data.

Clients Were Categorized Based on Client Identifiers

23. Credit Suisse misrepresented to clients that it scored and categorized "clients" – also referred to as "participants" and "counterparties" – into "one" of three categories.
24. These representations were inaccurate because Credit Suisse did not apply alpha scoring to a participant's trading as a whole, but instead applied it separately to particular client identifiers. A Crossfinder participant could have multiple client identifiers, each of which was associated with a particular stream of order flow that it submitted. If one of a direct participant's client identifiers was scored as Opportunistic, that participant could continue to trade through separate, non-Opportunistic client identifiers with participants that had chosen not to interact with Opportunistic counterparties.
25. In March 2014, Credit Suisse implemented a new iteration of the Crossfinder alpha scoring methodology. At that time, Credit Suisse made additional disclosures to Crossfinder participants and began to systematically score and categorize participants on a monthly basis.

C. Alpha Scoring in Light Pool

26. Credit Suisse announced Light Pool in a January 11, 2011 email sent to certain Credit Suisse clients. The email was entitled, "Credit Suisse announces Light Pool – the Market for the Long-term Investors." In the email, Credit Suisse represented that alpha scoring in Light Pool divided clients' order flow into three categories – Contributory, Neutral, and Opportunistic – based on short-term alpha, and that "Opportunistic clients cannot connect directly to Light Pool."
27. The email also attached a link to a news article that reported that "[t]he aim [of Light Pool] is to reduce what traders call negative selection, or the likelihood of getting executions when the market is moving against them, by banning certain users[.]" The article also quoted Credit Suisse as stating that Opportunistic firms will be kicked off the platform and prevented from providing orders or executing against bids and offers directly through Light Pool, and will instead have to access Light Pool's quotes using the order delivery functionality offered by National Stock Exchange ("NSX mechanism").²
28. Two months later, in March 2011, at a conference for numerous clients, Credit Suisse represented to conference attendees that ". . . the people who are classified as opportunistic just get kicked out. They can't come to Light Pool, that's it. Now, being that it's a displayed quote, they still have to be able to come in and take it. But they're going to have to do that [indirectly] by going through the National Stock Exchange's order delivery service." The PowerPoint that accompanied this presentation stated that "Light Pool will classify clients into 3 categories, and kick out the guys who 'pick off' other clients. . . . Opportunistic flow: kicked out of Light Pool."
29. Those statements concerning alpha scoring in Light Pool constituted misrepresentations.

Delayed Use of Alpha Scoring in Light Pool

30. Credit Suisse's representations led certain clients to believe that alpha scoring would be in use when Light Pool became operational. For example, Credit Suisse's January 11, 2011 email to clients stated: "Light Pool *identifies* and *discourages* short-term opportunistic traders. . . . Light Pool *classifies* traders based on their short-term alpha. Once clients have done a significant number of trades, their order flow *is* analyzed and clients *are* divided into three categories . . ." (emphasis added).
31. Although Light Pool was fully operational for trading by at least June 2011, Credit Suisse did not begin using alpha scoring to categorize Light Pool participants until June 2012. During this twelve month period, Credit Suisse did not correct its previous statements and did not inform most Light Pool participants that alpha scoring had not been finalized and was not being applied in Light Pool.

² Credit Suisse further represented that because the NSX mechanism was slower and more costly than directly accessing Light Pool, participants categorized as Opportunistic would be discouraged from using Light Pool.

Certain Opportunistic Traders Were Not Removed from Light Pool

32. Credit Suisse also represented to clients that HFT firms and other Light Pool participants who were classified as Opportunistic would be “kicked out” of or “lose access to” Light Pool other than through the NSX mechanism.
33. In fact, Credit Suisse gave direct participants – including some HFT firms – the opportunity to adjust their trading to avoid being labeled Opportunistic. Specifically, Credit Suisse made mid-monthly calls to direct participants in Light Pool whose flow was in danger of being characterized as Opportunistic, which gave those participants the opportunity to improve their flow to avoid an Opportunistic score at month-end.
34. Further, although Credit Suisse suspended from Light Pool the few direct participants who were categorized as Opportunistic, those participants were not “kicked out” because Credit Suisse allowed them to resume direct trading in Light Pool if they represented that they would improve the quality of their order flow.
35. By contrast, when indirect participants (who accessed Light Pool through Credit Suisse’s algorithms or SOR) had flow that was characterized as Opportunistic or was in danger of being categorized as such, Credit Suisse neither made mid-monthly calls to those participants nor gave them the opportunity to resume trading in Light Pool through their client identifiers that had previously been categorized as Opportunistic. As a result, from June 1, 2012 to the present, 45 client identifiers of such indirect participants, including firms that managed the assets of long-term investors, were labeled Opportunistic. These indirect participants were prevented from accessing Light Pool using those client identifiers other than through the NSX mechanism. Several of these indirect participants had only one client identifier, and were thus prevented from trading in Light Pool other than through the NSX mechanism.
36. In addition, as with Crossfinder, Credit Suisse misrepresented that “participants” or “clients” would be categorized in Light Pool. In fact, Credit Suisse applied alpha scoring in Light Pool to clients’ individual client identifiers rather than to clients’ trading in as a whole. If a participant’s client identifier was categorized as Opportunistic, that participant could continue to trade in Light Pool through another client identifier that was not categorized as Opportunistic.

D. Order Routing

37. When equities are traded electronically, computerized algorithms are often used to break up orders into smaller child orders, which are then routed over a period of time to different venues. The choice of venue may affect outcomes such as the likelihood of the order getting filled and the ultimate execution price. Further, depending on which venue is selected, child orders may impact the market in ways which then influence the cost of executing additional parts of the larger order.

38. A smart order router is an automated technology that connects to multiple execution venues and makes strategic decisions about where to send orders and child orders for execution.³ Credit Suisse's SOR generally handles client orders by sending immediate or cancel ("IOC") orders to remove liquidity from venues (i.e., "pinging" or "sweeping") and/or posting liquidity to venues.
39. Credit Suisse misrepresented to clients that (i) its routing logic did not preference venues based on criteria other than execution quality, and that (ii) it performed regular, periodic analysis of the venues to which the SOR routed client orders.

Venue Prioritization

40. From at least mid-2011, numerous clients asked Credit Suisse how it decided where to route their orders, and whether Credit Suisse preferred certain venues over others. In response, Credit Suisse represented that "AES does not utilize any matching or routing logic that preference certain clients or venues based on criteria other than execution quality for [the client's] order flow," or more simply, that "AES does not preference venues."
41. In fact, for years, certain of the SOR's default settings for routing client orders to dark venues automatically routed those orders to Crossfinder before any other dark venue. When those default settings were applied, the SOR routed orders using preset lists of available venues. The positions of venues on these lists determined the sequence in which the SOR routed orders. Crossfinder held the first position on these lists, which resulted in Crossfinder being prioritized over other dark venues during three distinct stages of the SOR's dark-only routing process. Two of these stages involved sending full-sized IOC orders (i.e., pings) to dark venues in sequential order pursuant to preset lists led by Crossfinder.⁴ In the third stage, the SOR used (and continues to use) such a list under certain circumstances when posting orders to dark venues.⁵

³ For purposes of the Order Routing and Crosslink sections of this Agreement, the term "orders" encompasses both orders and child orders.

⁴ Credit Suisse made certain disclosures to some clients concerning its pinging of Crossfinder before other venues in November 2014.

⁵ During the posting stage of the dark-only routing process, the SOR primarily uses information about where the SOR recently found liquidity in the relevant security ("Heat Map" data). In situations where no Heat Map data is available or a customer requests that Heat Map data not be used, the SOR starts at the top of a preset list of venues, led by Crossfinder, and allocates roughly an equal number of shares to as many venues as it can while avoiding odd lots. Additionally, the list is used as a tie-breaker between venues with the same Heat Map weight when, due to the number of shares in the order, it is not possible to post equal round lots to each venue.

42. This routing methodology resulted in a statistical bias in which more client orders were sent to Crossfinder (and other venues near the top of the lists) than would have been sent to those venues had an unbiased methodology been used. With respect to one of the ping stages, Credit Suisse recognized this statistical bias as early as October 2013. By October 2014, during the NYAG's and SEC's investigations into Credit Suisse's routing practices, Credit Suisse stopped using preset lists of venues to determine the sequential ordering for the two ping stages, but continues to use a preset list led by Crossfinder for certain aspects of the posting stage of the dark-only routing process.

Venue Analysis Was Not Performed Monthly

43. Credit Suisse represented to clients that it analyzed the various equities trading venues to which the SOR routed orders on a "monthly," "regular," "routine," or "continuous" basis in order to assess the quality of the liquidity on those venues and avoid interaction with toxic flow when routing client orders.
44. In practice, before January 2013, Credit Suisse analyzed venues on an ad hoc, irregular basis. This lack of periodic analysis may have allowed client orders to be routed pursuant to stale data and risked interaction with toxic flow.

E. Crosslink

45. In May 2009, Credit Suisse began operating Crosslink, a technology that executed certain Credit Suisse client order flow that the SOR was handling with orders submitted by other Credit Suisse clients that were HFT firms. Crosslink resided within Credit Suisse's AES business unit but was not part of Crossfinder. Credit Suisse discussed the Crosslink technology with seven HFT firms, although only two such firms executed trades using Crosslink in material volumes. As discussed below, Credit Suisse did not disclose the existence of Crosslink to other clients.
46. The SOR, when routing client orders, would determine whether to attempt to access liquidity from one of the two Crosslink-enabled HFT firms. In some cases, the SOR would respond to an IOI from one of the HFT firms by sending a "Notice of Match" ("NOM") to one of the HFT firms and an order into Crosslink ("Targeted IOC Process"). In other cases, which represent the majority of executions in Crosslink, the SOR initiated this message exchange by sending unprompted messages, or "Blind NOMs," to one of the HFT firms and an order into Crosslink ("Blind NOM Process"). The Blind NOM process, by default, was used only for orders from sell side clients. The Targeted IOC Process was used for orders from both buy side and sell side clients.⁶ In both processes, the messages reflected that an order from the SOR was available for execution at specific volume and specific price levels. Neither the SOR nor the HFT firms were obligated to send an order in response to an IOI or a Blind NOM.

⁶ Buy side firms generally tend to include hedge funds, mutual funds and pension funds. Sell side firms generally tend to include investment banks and broker-dealers.

47. The order from the SOR would rest within Crosslink for a very brief period of time, waiting for a potential matching order from the HFT firm. The two orders would include a specific tag – a match ID – that enabled them to execute only with each other. While multiple orders may have rested in Crosslink at any moment in time, only the two orders with the same match ID were capable of executing with each other.
48. Throughout the period Crosslink operated, order flow from all sell side clients that used the SOR was eligible to be routed in the Targeted IOC Process and the Blind NOM Process. Order flow from buy side clients, by default, was enabled only for the Targeted IOC Process, and only from late September 2010 through late October 2011. In late October 2011, Credit Suisse changed the SOR settings so that buy side client order flow, by default, was no longer eligible to be routed to Crosslink.
49. Credit Suisse did not disclose to its SOR clients that the SOR was initiating an exchange of messages with the HFT firms indicating the presence of liquidity in Crosslink for specific securities at specific volumes and specific price levels. Credit Suisse did not disclose the default settings or the changes to the default settings to its SOR clients, buy side or sell side. Nor did Credit Suisse disclose to its SOR clients that their orders were being routed to Crosslink to execute with flow directed from the HFT firms. Execution reports provided to SOR clients stated that Crosslink executions occurred with external broker dealers, not the HFT firms, and did not identify the counterparty by name or indicate that the executions occurred within Credit Suisse.
50. Between May 2009 and December 2012, Crosslink executed approximately 19.1 million trades between SOR clients and the HFT firms for approximately 8.2 billion shares. Executions in Crosslink ceased in December 2012.

F. Undisclosed Use of Crossfinder Order Information

51. Credit Suisse represented to its clients that because Crossfinder is a dark pool, orders sent to Crossfinder are not disseminated outside of AES (e.g., to other divisions of Credit Suisse or to the public). Credit Suisse further represented that it considers confidentiality and reducing information leakage to be a “cornerstone” of the trading strategies that its AES business offers clients.
52. In fact, Credit Suisse gave access to Crossfinder order information to the SOR and sent IOIs regarding certain Crossfinder orders to the outbound routers of two national securities exchanges.

SOR Access to Crossfinder Order Information

53. Credit Suisse’s SOR gathers market data, including orders from a variety of sources, to form a consolidated picture of liquidity available in the market, which it uses to route client orders for execution. This information comes predominantly from publicly-available market data sources. Prior to August 2013, another source of market data that Credit Suisse made available to its own SOR was order data from Crossfinder.

54. By at least 2008, Credit Suisse began to transmit order data from Crossfinder to the SOR. The SOR received information for each order resting in Crossfinder, aggregated by price level, including orders that had been submitted directly (i.e., orders that had not been submitted through the SOR). From this information, the SOR knew whether there was liquidity available in Crossfinder.
55. Over time, Credit Suisse limited the data transmitted to the SOR from Crossfinder. First, Credit Suisse ceased transmitting to the SOR order data from customers who sent the most direct order flow to Crossfinder. Later, Credit Suisse permitted certain clients to inform Credit Suisse if they wanted to disable the transmittal of their order data by Crossfinder to the SOR. This setting could only be changed by Credit Suisse personnel.
56. Credit Suisse did not disclose to most Crossfinder participants that Crossfinder order data was being sent to the SOR. Only a small percentage of Crossfinder participants were informed, either because they specifically asked Credit Suisse whether their order information was transmitted to the SOR, or because they were informed about the availability of the configuration setting that disabled order visibility to the SOR.
57. Credit Suisse ceased transmitting order data from Crossfinder to the SOR in August 2013.

Crossfinder Order Information Transmitted Via IOIs

58. Between April 2008 and July 2011, Credit Suisse transmitted confidential Crossfinder order data to a computer program ("IOI Server"), which transmitted IOIs based on the data received from Crossfinder. The IOI Server transmitted IOIs to the outbound router of one registered national securities exchange, and also for a short time to the outbound router of a second registered national securities exchange. The IOIs – containing symbol and side information, as well as a "dummy" size value (required by the exchanges) – were sent to attract liquidity from the exchanges to Crossfinder. Credit Suisse determined that buy side flow would be defaulted not to send IOIs but that sell side order flow would be defaulted to send IOIs.
59. Credit Suisse informed only a limited number of Crossfinder participants about the sending of IOIs, either because they specifically asked Credit Suisse, or because they were informed about the availability of a configuration setting that either enabled or disabled IOIs. Sell side clients were generally not informed of Credit Suisse's default setting to send IOIs related to their orders, or of their ability to change that setting. Although Credit Suisse stated in annual disclosure letters that client orders may be handled by issuing an IOI to another market participant, this disclosure was not specific to Crossfinder.

G. Inadequate Policies and Procedures

60. The material misrepresentations and omissions detailed above took place during a period when Credit Suisse's AES business lacked adequate policies and procedures relating to alpha scoring, order routing, and client disclosures.

61. Prior to December 2014 and June 2012 respectively, Credit Suisse had no written internal procedures governing the operation of the alpha scoring methodology in Crossfinder and Light Pool. Credit Suisse also has no written internal policy or procedure concerning routing orders to Crossfinder or Light Pool. Further, prior to July and September 2014 respectively, Credit Suisse's AES business had inadequate internal policies and procedures with respect to the review process associated with (i) written responses to client questionnaires, and (ii) presentations prepared for clients.
62. Effective policies and procedures may have prevented the material misrepresentations and omissions set out above.

III. CONCLUSIONS OF LAW

1. The NYAG has jurisdiction over this matter under the Martin Act and Executive Law § 63(12).
2. The foregoing conduct by Credit Suisse violated provisions of the Martin Act and Executive Law § 63(12).

IV. AGREEMENT

WHEREAS, Credit Suisse admits to the jurisdiction of the NYAG over this matter as set out in paragraph 1 of Section III;

WHEREAS, Credit Suisse neither admits nor denies the NYAG's Findings of Fact set out in paragraphs 1-62 of Section II, or the Conclusion of Law set out in paragraph 2 of Section III;

WHEREAS, Credit Suisse and its subsidiaries, representatives, employees, agents, assigns, and successors-in-interest will comply with, and cease and desist from engaging in any actions in violation of the Martin Act and Executive Law § 63(12);

WHEREAS, the NYAG is willing to accept the terms of this Agreement pursuant to Executive Law § 63(15) and to discontinue its current investigation of Credit Suisse's AES business;

WHEREAS, Credit Suisse has agreed to pay a penalty and has taken certain remedial measures as set forth below; and

WHEREAS, the parties each believe that the obligations imposed by this Agreement are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED by and between the parties that:

Penalty and Censure

1. In consideration of this Agreement, and within 14 business days thereafter, Credit Suisse will pay by wire transfer, certified check, or bank check payable to the State of New York a monetary penalty in the amount of \$30 million.
2. Credit Suisse agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax, directly or indirectly, for any portion of the payment that it shall make pursuant to this Agreement.
3. The foregoing payment and all correspondence related to this Agreement must reference Settlement Agreement # 15-183.
4. The NYAG censures Credit Suisse for the conduct set out in the Findings of Fact at paragraphs 1-62 of Section II above.

Cooperation

5. In connection with any investigation(s) underway or initiated by the NYAG into high frequency trading, electronic execution services, and/or dark pools, Credit Suisse shall (a) cooperate fully with the NYAG; (b) provide logistical and technical support for any meeting, interview, deposition, or any trial or other court proceeding; (c) use its best efforts to promptly secure the attendance and truthful statements or testimony of any officer, agent or employee at any meeting, interview, deposition or any trial or other proceeding; and (d) provide the NYAG, upon request, all non-privileged information, documents, records, or other tangible evidence about which the NYAG inquires.

Remedial Measures

6. In determining to accept this Agreement, the NYAG considered remedial measures taken by Credit Suisse, a number of which have been put in place since the commencement of the NYAG and SEC investigations. Specifically, Credit Suisse represents:
 - a. With respect to alpha scoring, Credit Suisse has (i) provided additional disclosures to clients regarding its alpha scoring methodology, including disclosing subjective elements in its alpha scoring methodology in Crossfinder and disclosing the differences in how alpha scoring is applied to direct and indirect participants in Light Pool; and (ii) scored and categorized all participants in Crossfinder monthly since March 2014.
 - b. With respect to order routing, Credit Suisse has disclosed the use of routing logic in which the SOR prioritizes Crossfinder or Light Pool over other execution venues to all clients whose orders are routed using such logic.
 - c. Credit Suisse has made publicly available on its website updated order handling disclosures and Forms ATS for Crossfinder and Light Pool. Those documents

contain certain disclosures regarding Crossfinder and Light Pool operations, order routing, and Credit Suisse's use of client identifiers, among other disclosures.

- d. Credit Suisse has put in place new policies and procedures concerning written and oral disclosures to clients. Specifically, Credit Suisse has introduced new policies and procedures relating to client presentations and questionnaires, and has made disclosures concerning mid-monthly calls to direct Light Pool participants.
- e. Crosslink was disabled in December 2012.
- f. Since July 2011, Credit Suisse has not sent IOIs related to Crossfinder order data, and since August 2013, Credit Suisse has not transmitted confidential Crossfinder order data to the SOR.

General Provisions

- 7. The NYAG retains the right under Executive Law § 63(15) to compel compliance with this Agreement, and may make such application as appropriate to enforce or interpret the provisions of this Agreement, or in the alternative, maintain any action, either civil or criminal, for such other and further relief as the NYAG may determine is proper and necessary for the enforcement of this Agreement.
- 8. The NYAG has agreed to the terms of this Agreement based on, among other things, the representations made to the NYAG by Credit Suisse and its counsel. To the extent that any material representations made by Credit Suisse or its counsel to the NYAG are later found to be inaccurate or misleading, this Agreement is voidable by the NYAG in its sole discretion.
- 9. If the Agreement is voided or breached, Credit Suisse agrees that any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto are tolled from and after the date of this Agreement. In the event the Agreement is voided or breached, Credit Suisse expressly agrees and acknowledges that this Agreement shall in no way bar or otherwise preclude the NYAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Agreement, against Credit Suisse, or from using in any way any statements, documents, or other materials produced or provided by Credit Suisse prior to or after the date of this Agreement.
- 10. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Credit Suisse in agreeing to this Agreement.
- 11. Credit Suisse represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized.

12. Credit Suisse shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this paragraph affects Credit Suisse's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party. This Agreement is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Credit Suisse. This Agreement is not a final order of any court or governmental authority, which in no way impairs the binding nature of this Agreement.
13. Payment pursuant to this Agreement shall in no way be construed as an admission of liability on the part of Credit Suisse, its directors, officers and/or employees, or an admission of any of the Findings of Fact set out in this Agreement or the Conclusion of Law set out in paragraph 2 of Section III of this Agreement, or as a declaration against interest.
14. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties to this Agreement.
15. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective successors and assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the NYAG.
16. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
17. To the extent not already provided under this Agreement, Credit Suisse shall, upon request by the NYAG, provide all documentation and information necessary for the NYAG to verify compliance with this Agreement.
18. All notices, reports, requests, and other communications to any party pursuant to this Agreement shall be in writing and shall be directed as follows:

If to the NYAG, to:

Rebecca Reilly
Assistant Attorney General
Investor Protection Bureau
Office of the New York State Attorney General
120 Broadway, 23rd Floor
New York, New York 10271

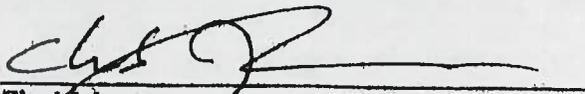
If to Credit Suisse, to:

Alan Reifenberg, Esq.
Credit Suisse Securities (USA) LLC
One Madison Avenue
New York, New York 10010

19. Acceptance of this Agreement by the NYAG shall not be deemed approval by the NYAG of any of the practices or procedures referenced herein, and Credit Suisse shall make no representation to the contrary.
20. Pursuant to Executive Law § 63(15), evidence of a violation of this Agreement shall constitute *prima facie* proof of violation of the Martin Act and Executive Law § 63(12) in any action or proceeding thereafter commenced by the NYAG.
21. If a court of competent jurisdiction determines that Credit Suisse has breached this Agreement, Credit Suisse shall pay to the NYAG the cost, if any, of such determination and of enforcing this Agreement, including without limitation legal fees, expenses, and court costs.
22. The NYAG finds the relief and agreements contained in this Agreement appropriate and in the public interest. The NYAG is willing to accept this Agreement pursuant to Executive Law § 63(15) in lieu of commencing a statutory proceeding with respect to Credit Suisse's AES business.
23. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
24. Nothing contained herein shall be construed as to deprive any person of any private right under the law, nor to deprive Credit Suisse of any defense, claim or counterclaim in any action involving the assertion of any private right by any person, where the NYAG is not a party to such action.
25. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Dated: 1/7/2016, 2015
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

By: 
Chad Johnson
Chief of the Investor Protection Bureau

Dated: 9/25/15, 2015
New York, New York

Credit Suisse Securities (USA) LLC

By: 
Alan Reifenberg
Managing Director

This Agreement has been reviewed by counsel, who certifies that the Credit Suisse signatory above, Alan Reifenberg, is duly authorized by Credit Suisse to execute the same, and that the signature above is true and authentic.



Andrew J. Geist
O'Melveny & Myers LLP

Dated: September 24, 2015