

NEW YORK STOCK EXCHANGE LLC

NYSE HEARING PANEL DECISION 06-54
CREDIT SUISSE SECURITIES (USA) LLC
(formerly named Credit Suisse First Boston LLC)
MEMBER ORGANIZATION

April 18, 2006

* * *

Violated NYSE Rule 451 by failing to transmit to customers who were beneficial owners of stock, via its service provider, accurate information in connection with proxy solicitations; violated NYSE Rule 452 by submitting votes for more shares than it was entitled to vote in proxy matters; violated NYSE Rule 476(a)(6) by failing to implement adequate policies and procedures to adjust its record of stock ownership so that votes of its customers who were beneficial owners of stock were accurately tallied by tabulator, submitting votes for more shares than it was entitled to vote in proxy matters, and failing to assure that its systems and procedures provided for accurate submission of proxy data to proxy tabulators; violated NYSE Rule 401 by failing to reconcile its record of stock ownership so that votes of beneficial owners were accurately tallied for proxy voting purposes, resulting in over-vote on one or more occasions; violated NYSE Rule 342 by failing to supervise proxy operations to prevent submission of votes for more shares than it was entitled to vote, provide for and implement written procedures for proxy operations and supervision of proxy function and proxy service provider – Consent to censure and \$250,000 fine.

Appearances:

For the Division of Enforcement
Simon Swidler, Esq.
Kevin T. McDonald, Esq.

For Respondent
Deborah S. Burstein, Esq.

* * *

A Hearing Panel on behalf of the New York Stock Exchange LLC (“NYSE” or “Exchange”) met to consider a Stipulation of Facts and Consent to Penalty entered into between the Division of Enforcement of NYSE Regulation, Inc. (“Enforcement”) and Credit Suisse Securities (USA) LLC (formerly named Credit Suisse First Boston LLC) (“Respondent Firm” or “CSSU” or the “Firm”), a member organization. Without admitting or denying guilt, Respondent Firm consented to a finding by the Hearing Panel that it:

- I. Violated NYSE Rule 451 in that Respondent Firm, on numerous occasions, failed to transmit to its customers who were beneficial owners of stock, via its service provider, accurate information in connection with proxy solicitations.
- II. Violated NYSE Rule 452, in that, on one or more occasions, Respondent Firm submitted votes for more shares than it was entitled to vote in proxy matters.
- III. Engaged in conduct inconsistent with just and equitable principles of trade in that Respondent Firm: (a) failed to implement adequate policies and procedures to adjust its record of stock ownership so that votes of its customers who were beneficial owners of stock were accurately tallied by the Tabulator for proxy voting purposes; (b) on numerous occasions, submitted votes for more shares than it was entitled to vote in proxy matters; and (c) failed to assure that its systems and procedures provided for the accurate submission of proxy data to the proxy tabulators.
- IV. Violated NYSE Rule 401 by failing to adhere to the principles of good business practice in that Respondent Firm failed to reconcile its record of stock ownership so that votes of beneficial owners were accurately tallied for proxy voting purposes, which resulted in an over-vote on one or more occasions.
- V. Violated NYSE Rule 342 in that Respondent Firm failed to: (a) supervise proxy operations to prevent submission of votes for more shares than it was entitled to vote; (b) provide for and implement written procedures for proxy operations and supervision of the proxy function; and (c) provide for and implement written procedures for supervision of its proxy service provider.

For the sole purpose of settling this disciplinary proceeding, Enforcement and Respondent Firm stipulate to certain facts, the substance of which follows:*

Background and Jurisdiction

1. Credit Suisse Securities (USA) LLC (“CSSU” or the “Firm”) (formerly named Credit Suisse First Boston LLC) is 100% owned by Credit Suisse (USA), Inc. (formerly named Credit Suisse First Boston (USA), Inc.), which is 100% owned by Credit Suisse Holdings (USA), Inc. (formerly named Credit Suisse First Boston, Inc.), which is owned 57% (voting) by Credit Suisse and 43% (voting) by Credit Suisse Group, whose shares are traded on the Swiss Stock Exchange. CSSU and/or a predecessor firm thereof, has been a longstanding member of the NYSE.
2. CSSU is headquartered in New York, and is part of the Investment Banking Division of Credit Suisse, a global investment bank, whose businesses include securities underwriting, sales and trading, investment banking, private equity, financial advisory services, investment research, and asset management.

* Hearing Panel Note: The facts, allegations, and conclusions contained in paragraphs 1 to 30 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent Firm. No changes have been made to the stipulated paragraphs by the Hearing Panel.

3. Beginning in October 2003, the NYSE's Member Firm Regulation Division ("MFR") conducted a special proxy examination ("Proxy Examination") of CSSU. In a report dated February 12, 2004, the MFR examiners noted certain deficiencies related to the operations and supervision of the proxy function at the Firm. On or about April 26, 2004, this matter was referred to Enforcement for investigation.
4. By letter dated May 20, 2004, Enforcement notified the Firm of its investigation.
5. In previous Hearing Panel Decisions ("HPD"), the Firm was sanctioned for various violations. In HPD 03-138, the Firm consented to a penalty of a censure and a \$100,000 fine, based on findings that it violated NYSE Rules 342 and 401 by failing to review and approve contents of sales literature prior to widespread dissemination within the Firm, which resulted in the dissemination of material, non-public information. In HPD 03-64, the Firm consented to a penalty of a censure, a total payment of \$200,000,000 and an undertaking, based on findings of conflicts of interest in connection with research and investment banking activities, undue and improper influence which resulted in the issuance of fraudulent research reports, and improper initial public offering "spinning" activities, and other related violations.

Overview

6. As set forth more particularly below, during the period from at least January 2003 through November 2003 (the "Relevant Time" or the "Relevant Period"), and for an indeterminate time prior, the Firm: (a) failed to timely reconcile stock records of beneficial ownership in connection with proxy voting; (b) failed to implement adequate policies and procedures to accurately adjust its record of stock ownership so that votes of its customers were accurately tallied for proxy voting purposes; (c) on one or more occasions submitted more votes than it was entitled to vote ("over-voting") in proxy matters¹; (d) failed to assure that its systems and procedures provided for accurate submission of proxy data to the proxy tabulator. The Firm also failed to reasonably supervise and control its business activity, and failed to establish a separate system of follow-up and review, to comply with the NYSE Rules and the Federal securities laws, in that the Firm: (a) failed to reasonably supervise its proxy operations to prevent the submission of more votes than it was entitled to; (b) failed to provide for and implement written operations and supervisory procedures for its Proxy Department; and (c) failed to provide for and implement written procedures for the oversight of its proxy service provider.

¹ As used herein, "over-voting" by a broker-dealer means that the broker-dealer's services provider submitted proxies for more shares than the broker-dealer was entitled to vote on a specific proxy matter and does not mean that the transfer agent tabulating the votes ("the Tabulator") necessarily counted these over-voted shares in determining the outcome of the proxy matter. See NYSE Information Memo 04-58, "Supervision of Proxy Activities and Overvoting" (Nov. 5, 2004).

Summary of Proxy Process

7. Pursuant to Exchange Rule 451, a member organization is required to transmit proxy materials to the beneficial owners of stocks that it holds in street name when a person soliciting proxies supplies such material and provides assurance for reimbursement of expenses.
8. Pursuant to NYSE Rule 452, a member organization is required to “give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner.”
9. To accomplish the obligations embodied in NYSE Rule 452, member organizations must collect and transmit to the issuer any voting instructions furnished by Shareholders of the security for which proxies are solicited. Member organizations typically contract with a proxy service provider to distribute the proxy materials, collect the voting instructions from Shareholders, and transmit those instructions to the transfer agent engaged by the issuer to tabulate the votes (the “Tabulator”).
10. Matters in which a firm may vote without customer instructions and matters which it may not are set forth in NYSE Rules 452.10 and 452.11. For certain routine matters included on corporate ballots, proxies may be voted by a member organization, on a discretionary basis, absent the receipt of votes cast by Shareholders.
11. For each proxy solicitation, the Tabulator compares the proxy votes submitted on behalf of the member organization and/or its customers with the number of shares reflected on the records of the Depository Trust Clearing Corporation (“DTCC”) for the member organization on the applicable record date. The number of shares showing on the records of DTCC for the member organization, with certain adjustments, is the maximum number of shares (votes) that will be tallied by the Tabulator in determining the outcome of the proxy vote. If a member organization submits to the Tabulator more shares than are shown for the member organization on the records of DTCC, and they are not held at another depository or in physical form at the Firm, then it has over-voted.
12. There are no standard industry procedures that govern the Tabulators’ approach to dealing with over-voting. Tabulators may respond to over-votes with a variety of vote-counting procedures, including counting votes on a “first in-first voted” or “last in-first voted” basis, or disregarding altogether a vote submitted by a broker-dealer. Depending upon the procedure implemented by the Tabulator, certain customers’ voting instructions may not be represented as originally given.
13. Failure to timely reconcile stock records on beneficial ownership may result in inaccurate instructions being given to the proxy service provider. If there is no reconciliation of stock records of beneficial ownership, customer votes may be allocated inaccurately. If stock in margin accounts has been used for stock loans, and both the margin account holder or holders and the recipient of the stock loan submit

voting instructions for the same stock, then the margin account holder may submit a proxy for shares of which he is at that time not the beneficial owner, and for which he is not thus entitled to submit a proxy. Failure to perform proper reconciliations may allocate more votes to customers than is proper.

History of CSSU's Operations and the Proxy Department

14. At all relevant times and continuing through the present, the Firm has used a proxy service provider (the "Agent"). The Agent receives notice of pending proxy actions on behalf of the Firm, accesses the Firm's stock record (maintained at the Agent) to identify CSSU's accounts that hold an issuer's securities on record date, and determines the number of shares that are eligible to vote in the proxy vote. It then arranges with the issuer or its agent, the Tabulator, to obtain the appropriate number of copies of the proxy-related material, which it then forwards to the beneficial owners of the issuer's security. Proxy instructions are generally returned directly to the Agent, which then reports the votes to the Tabulator.
15. At all relevant times, the Agent also offered a service relating to the monitoring of potential over-votes. This service compares a broker-dealer's DTCC position with the voting instructions submitted by that broker-dealer through the Agent and notifies the broker-dealer if instructions to vote shares exceed that position. This notification permits broker-dealers to examine their records and to adjust (when appropriate) their records with the position reflected on DTCC's records. Utilization of this service is an essential tool in a broker-dealer performing reconciliations of its proxy records with positions at DTCC. During the relevant period the Firm did not use the over-vote service.
16. The outsourcing of its proxy function to the Agent, as set forth above, did not relieve the Firm of the regulatory responsibility for compliance with the NYSE Rules relating to operation and supervision of the proxy function.²

Over-Voting By the Firm

17. As set forth below, over-voting at the Firm was caused by the Firm's failure to reconcile its records of beneficial ownership.
18. During the Relevant Period, the Firm failed to reconcile its records of beneficial ownership so that beneficial owners' votes would be accurately tallied by the Tabulator

² NYSE Information Memo 04-58, "Supervision of Proxy Activities and Over-voting" (Nov. 5, 2004), issued after the matters addressed in this Stipulation, provides that, with regard to member organizations' use of service providers in the proxy process, although member organizations may outsource the gathering and voting of proxies, this "does not relieve the member organization of the regulatory responsibility for complying with the relevant regulations, supervising this process, maintaining adequate and accurate books and records, and ensuring that the rights of beneficial shareholders are protected. This responsibility would entail initial and continuing due diligence to assure that the service provider is capable of collecting and reporting the customer votes, and that the source of share information is accurate." *Id.*, pp. 1-2.

for proxy voting purposes. The Firm lacked written procedures relating to proxy reconciliations and customarily voted shares as per its unadjusted DTCC level.

19. During the Relevant Period, the Firm did not subscribe to an over-vote service offered by the Agent.
20. At all relevant times, the Firm's internal systems were designed to block customer positions that should not have been included on CSSU's record date file made available to ADP, and remove them from the shares eligible to vote. Customer stock that the Firm had loaned out was to be blocked by the Firm's system by having an "x" placed in front of the first digit of the account number, and as a result, the Firm's systems were expected to block inclusion of those securities automatically. However, during an approximately ten day to two-week period in early March 2003, the Firm was migrating systems, and, due to a technical problem, this block was not in effect. This problem was immediately rectified, and the Firm disclosed this technical problem to the Examiners during the Proxy examination.
21. For 2003, the Proxy Examination and subsequent Enforcement investigation identified four instances in which the Firm over-voted, that is, the Firm submitted more proxy votes than it was entitled to cast, in connection with proxy matters. For instance, in March 2003, the Firm submitted voting instructions for a total of 2,594,280 shares in a proxy matter involving XYZ (record date March 4, 2003). As of the record date, according to the information maintained at DTCC, the Firm in fact was eligible to submit voting instructions for only 969,280 shares. Thus, the Firm submitted voting instructions for 1,625,000 shares more than it was entitled to vote. The over-vote instructions submitted by the Firm in the other three instances ranged from 23,233 shares to 259,366 shares.
22. Each of the instances of over-voting detected occurred during, or very shortly after, the ten day to two-week period, in March 2003.
23. The Firm's failure to reconcile its stock record in connection with proxy voting instructions was a central cause of the over-votes set forth above. In these uncontested matters, CSSU voted shares up to its unreconciled unadjusted long position, which was generally greater than its DTCC position.
24. Enforcement's investigation has not disclosed any instance in which an over-vote improperly affected the outcome of a proxy vote or any instance in which a shareholder who attempted to vote his or her shares was disenfranchised and lost his or her vote.
25. Harm to the securities industry results from the perception of careless handling of customer votes and from the risks, among others, set forth below. By submitting an over-vote, the Firm subjected its customers to the risk that their proxy votes would not be accepted. Tabulators have no standard approach for dealing with over-voting. The lack of any uniform procedure raises the possibility that Tabulators may employ procedures that cause votes to be lost. In counting the voting instructions received in a proxy solicitation, the Tabulator compares the proxy instructions submitted by a broker-dealer on behalf of

the Shareholders with the number of shares reflected on the records of DTCC for the applicable record date. Where a broker-dealer has over-voted, the Tabulator is faced with the problem of which shares to count (in reaching the DTCC level) and which to disregard (as exceeding the DTCC level). In the lack of an established procedure for resolving such situations, if faced by an unduly large number of proxy votes (because the total has been inflated by an over-vote), a Tabulator may count votes on a first-in, first voted (FIFO) or last- in first voted (LIFO) basis, or disregard altogether a vote submitted from a street-name nominee holder on the basis that inaccuracies give it no confidence in the validity of the submission. If FIFO is adopted, late arriving customer votes are discarded.

Failure to Supervise

26. Pursuant to NYSE Rule 342(a), each office, department, or business activity of a member organization “shall be under the supervision and control of the...member organization establishing it and of the personnel delegated such authority and responsibility.”
27. During the Relevant Period, the Firm did not provide for or implement adequate written operational or supervisory procedures relating to its Proxy activities, in that the Firm lacked adequate written operational and supervisory procedures.
28. During the Relevant Period, the Firm failed to perform reconciliations of its records of beneficial ownership, or to subscribe to a service that would provide them with sufficient information to do the reconciliation at the Firm.
29. During the Relevant Period, the Firm did not provide for and did not implement written procedures for the supervision of the Agent responsible for handling certain proxy functions.
30. During the relevant period, the Firm did not reasonably supervise its proxy operations to prevent over-voting. Specifically, the Firm (a) failed to implement adequate procedures to reconcile and adjust its records of beneficial ownership; (b) did not transmit to the Agent accurate information in connection with proxy matters; (c) did not assure that its systems and procedures provided for the accurate submission of proxy data to proxy tabulators; and (d) submitted voting instructions for more shares than it was entitled to vote in proxy matters.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent Firm guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Respondent Firm of a censure and a \$250,000 fine.

For the Hearing Panel

Peggy Kuo - Chief Hearing Officer
Panelists:
John Cirrito
John P. O'Brien