

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17899

In the Matter of

CREDIT SUISSE SECURITIES (USA)
LLC

Respondent.

ADMINISTRATIVE PROCEEDING
File No. 3-17900

In the Matter of

SANFORD MICHAEL KATZ

Respondent.

PROPOSED PLAN OF DISTRIBUTION

1. *Purpose and Background.* The Division of Enforcement (“Division”) submits this Proposed Plan of Distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for the distribution of the disgorgement and civil penalties paid by Credit Suisse Securities (USA) LLC (“Credit Suisse”) and Sanford Michael Katz (“Katz”) in settlement of the above-captioned administrative proceedings.

On April 4, 2017, the Commission instituted and simultaneously settled administrative and cease-and-desist proceedings against Credit Suisse, a dually registered broker-dealer and investment adviser, for breaches of its fiduciary duty, inadequate disclosures, and deficiencies in compliance policies and procedures.¹ Contemporaneously therewith, in a related action, the

¹ See Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 80373 (Apr. 4, 2017) (the “Credit Suisse Order”).

Commission instituted and settled administrative and cease-and-desist proceedings against Katz, a registered representative and investment adviser of Credit Suisse.²

The Commission found that, from January 1, 2009 and January 21, 2014, Katz purchased or held Class A mutual fund shares for advisory clients who were eligible to purchase or hold less expensive institutional share classes of the same mutual funds. A significant difference between Class A shares and institutional share classes is the existence of marketing and distribution fees imposed on Class A shareholders pursuant to Section 12(b) of the Investment Company Act of 1940 and Rule 12b-1 thereunder (“12b-1 fees”), typically 25 basis points per year for Class A shares. The 12b-1 fees are paid out of the assets of the fund as a portion of its expense ratio. In this case, the 12b-1 fees were passed through to Credit Suisse, which in turn paid a portion of that amount to its investment adviser representatives, also referred to as Relationship Managers (“RMs”), including Katz. Thus, 12b-1 fees decreased the value of advisory clients’ investments in mutual funds and increased the compensation paid to Credit Suisse and its RMs. During the relevant period, Katz’s practice of putting advisory clients in Class A shares when those clients were eligible for less expensive institutional share classes resulted in Credit Suisse collecting approximately \$3.2 million in 12b-1 fees, approximately \$1.1 million of which was paid to Katz. This practice was inconsistent with Katz’s fiduciary duty, his representations to clients, and his obligation to obtain best execution for his advisory clients. Credit Suisse’s disclosures did not adequately inform its advisory clients of the conflict of interest presented by its RMs’ share class selection practices or update or enhance its policies or procedures to address this issue.

In their respective orders, the Commission ordered Credit Suisse to pay disgorgement of \$2,099,624.12, prejudgment interest of \$380,090.37, and a civil money penalty of \$3,275,000.00; and ordered Katz to pay disgorgement of \$1,124,858.89, prejudgment interest of \$197,587.38, and a civil money penalty of \$850,000.00.

The Credit Suisse Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds received pursuant to it, as well as all funds collected from Katz, pursuant to the Katz Order (the “Fair Fund”). Credit Suisse and Katz have paid as ordered, a total of \$7,927,160.76 into the Fair Fund.

The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit in a Commission designated interest-bearing account at the United States Department of Treasury (“U.S. Treasury”). Other than potential interest income from the investment, the Commission does not anticipate that the Fair Fund will receive additional funds. If any additional funds are received, those funds will be sent to the U.S.

² See Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Advisers Act Rel. No. 4679 (Apr. 4, 2017) (individually, the “Katz Order” and collectively, with the Credit Suisse Order, the “Orders”).

Treasury. This Plan is subject to the approval of the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

Under this Plan, the Fair Fund, plus accumulated interest and earnings thereon, less prejudgment interest, and any reserve for taxes, fees or other expenses of administering the Plan (the “Net Fair Fund”), will be distributed to Eligible Investors, as defined in paragraph 4 below.

2. *Fund Administrator.* The Commission has appointed DST Asset Manager Solutions, Inc. (“DST”, which was formerly known as Boston Financial Data Services, Inc.) as the fund plan administrator (“Fund Administrator”) and set DST’s bond amount equal to the amount of the Fair Fund, \$7,927,160.76, in accordance with Rules 1105(a) and 1105(c) of the Rules, 17 C.F.R. §§ 201.1105(a) and 201.1105(c).³ DST will administer the Fair Fund and all reasonable administrative costs and expenses, including the administrator’s bond premium, will be paid from the Fair Fund.

3. *Tax Administrator.* The Commission has appointed Miller Kaplan Arase LLP as the tax administrator (“Tax Administrator”) of the Fair Fund.⁴ The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance and any other work ordered to the Tax Administrator by the Commission. Further, the Fund Administrator will cooperate with the Tax Administrator for purposes of timely and accurately fulfilling the information reporting and withholding obligations of the Fair Fund in compliance with IRS regulations, including but not limited to the Foreign Account Tax Compliance Act (“FATCA”). The Tax Administrator shall prepare a description of the tax information reporting and other related tax matters, which shall be provided to the Fund Administrator for dissemination to Eligible Investors before or contemporaneously with their distribution payments. The Tax Administrator shall be compensated for all reasonable costs and expenses from the Fair Fund according to the terms of Tax Administrator’s Revised 2017-2018 Letter Agreement with the Commission, and tax obligations will be paid out of the Fair Fund.

4. *Specification of Eligible Investor.* The Fund Administrator shall distribute the Net Fair Fund to those harmed investors identified by Commission staff during its investigation of the underlying securities violation (individually, each an “Eligible Investor,” and collectively, the “Eligible Investors”). An investor is deemed harmed only if that investor paid 12b-1 fees as a result of the conduct described in the Orders. The Commission staff identified for the Fund Administrator 938 Eligible Investors to receive distribution payments.

5. *No claims-made process.* This Fair Fund is not being distributed according to a claims-made process, so the procedures for making and approving claims are not applicable.

³ Order Appointing Fund Plan Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 82595 (Jan. 29, 2018).

⁴ Order Appointing Tax Administrator, Exchange Act Rel. No. 82722 (Feb. 15, 2018).

6. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

7. *Escrow Bank.* The Fund Administrator shall establish with the escrow bank (“Bank”) an escrow account pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff, in the name of and bearing the Employer Identification Number of the QSF (the “Escrow Account”). The Fund Administrator shall also establish with the Bank a separate deposit account (the “Deposit Account”) (e.g. controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding distribution payments to be distributed to Eligible Investors by the Fund Administrator pursuant to the Plan. The name of each account shall be in the following form: Credit Suisse/Katz Fair Fund.

During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors, tax obligations, and/or fees of the Tax Administrator and/or Fund Administrator, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government. The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

The Fund Administrator shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and the Deposit Accounts.

All Fair Fund checks presented for payment or electronic transfer will be subject to “positive pay” controls before being honored by the Bank, and all such checks issued to Eligible Investors by the Fund Administrator shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this ninety (90) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Investor’s claim is extinguished as of the stale date and the funds will remain in the Fair Fund. If a check reissue has been requested before the stale date, such request will be honored and the check reissue will bear a stale date of thirty (30) days. Accordingly, checks that are not negotiated within this thirty (30) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Investor’s claim is extinguished as of the stale date and the funds will remain in the Fair Fund. A check reissue request should be made within ninety (90) days from the original check issuance date. For any electronic payment, the exact amount necessary to make a payment shall be transferred from the Escrow Account

directly to the payee bank account in accordance with written instruction provided to the Escrow Bank by the Fund Administrator.

8. *Methodology for Determining Distribution Amounts.* Commission staff and the Fund Administrator determined the amount to be distributed to each Eligible Investor in the following manner:

Commission staff, in the course of its investigation, calculated the excess fees paid by each investor account that had been placed in a higher-fee share class when a lower-fee share class was available. The calculation considered the year-end holdings of each account in each fund, the fees paid in the share class in that year, the alternate share classes available in that year, and the fees that would have been paid in the available share class with the lowest fees.⁵

Excess fees were calculated in each year from 2009 through 2014 as the difference between the fees paid and the fees that would have been paid in the lowest-fee share class. Eligible Investors will receive a distribution payment for the sum of the excess fees paid over these years, plus reasonable interest on the excess fee amounts.⁶

Distributions to Eligible Investors will be made from the disgorgement and penalties paid by Credit Suisse and Katz, but not from the prejudgment interest, totaling \$577,677.75, which shall be sent to the U.S. Treasury.

Under the Commission staff's direction, in light of the cost associated with implementing and distributing a distribution check, a de minimis distribution amount will be set at \$25.00. In order to implement this de minimis distribution amount, the Fund Administrator will apply a Gross-up calculation for distributions less than \$25.00. The gross-up calculation will cause Eligible Investors (80) with distributions of less than \$25.00 to receive a distribution payment that has been grossed-up in order to equal the de minimis distribution amount. Eligible Investors with calculated distributions of \$25.00 or more will receive distribution payments in accordance with the Commission staff calculations.

In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund. Based on this methodology, it is anticipated that there will be one (1) distribution to the Eligible Investors, which will take place as outlined in paragraph 10.

Based on this methodology, there are 938 Eligible Investors identified to receive distribution payments. Before computing the gross-up calculation, the distribution will total

⁵ The calculation considers only the total expense ratio of the share class and ignores other charges the investor might have paid.

⁶ "Reasonable interest" is calculated using the short-term Applicable Federal Rate, compounded quarterly from the end of each calendar year in which excess fees were paid through the approximate date of the disbursement of the Fair Fund (October 31, 2018).

approximately \$3,530,665.51, and the distribution payments are intended to fully compensate each investor's harm.

9. *Procedures for Locating and Notifying Eligible Investors.* From information obtained by the Commission staff based on the review and analysis of applicable records from its investigation, the Fund Administrator has identified the Eligible Investors as defined in paragraph 4. Within thirty (30) days of the publication of the Plan for notice and comment, the Fund Administrator will send certain Eligible Investors, whose tax information is uncertain, a Notification Re: Distribution Plan ("Notification").

The Notification will provide sufficient information for the Eligible Investor to contact the Fund Administrator to update their address information, supply IRS Forms W-8 or W-9 tax information, and provide other such information, as necessary, to ensure an efficient and accurate delivery of the full distribution payment without withholding.

If an Eligible Investor fails to respond within thirty (30) days from the mailing of the Notification, the Fund Administrator shall then make no fewer than two (2) additional attempts to contact the Eligible Investor telephonically or by email. The second attempt shall in no event take place more than forty-five (45) days from the initial mailing of the Notification. If an Eligible Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator will issue a check payment to the Eligible Investor utilizing the registration and mailing address information provided by Commission staff.

The Fund Administrator will coordinate with the Tax Administrator to request information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

10. *Distribution Timing.* The Fund Administrator will use its best efforts to start the distribution within ninety (90) days of the Plan's approval.

11. *Payment to Eligible Investors.* The Fund Administrator will compile the payee information and prepare a payment file in a Commission-approved format along with a reasonable assurance letter for submission to Commission staff. Pursuant to Rule 1101(b)(6) of the Rules, Commission staff will seek to obtain an order from the Commission to disburse the Fair Fund. All disbursements will be made pursuant to a Commission order.

All distribution payments shall be accompanied by the OIP for both Credit Suisse Securities (USA) LLC ("Credit Suisse") and Sanford Michael Katz ("Katz") as well as a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a link to the informational website, which will provide a description of tax information reporting and other related tax matters.

The Fund Administrator will maintain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when

possible. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed payments will continue to be held in the Fair Fund.

12. *Accountings.* Pursuant to Rule 1105(f) of the Rules, the Fund Administrator will file an accounting with the Commission during the first ten (10) days of each calendar quarter on a standardized form provided by the Commission staff. The Fund Administrator will file an accounting of all monies earned or received and all monies spent in connection with the administration of this Plan. Once all payments are disbursed to Eligible Investors pursuant to the procedures described above, and all taxes, fees, and expenses have been paid, the Fund Administrator will submit a final accounting for approval by the Commission, on a standardized form provided by the Commission staff, prior to the discharge of the Fund Administrator and cancellation of the Fund Administrator's bond.

13. *Amendments and Procedural Deadline Extensions.* The Fund Administrator shall take reasonable and appropriate steps to distribute the Net Fair Fund in accordance with the general purposes of this Plan. The Fund Administrator will inform Commission staff of any changes needed to the Plan. If upon consultation with Commission staff, a change is determined to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of the Fund Administrator, or upon the Commission's own motion. Immaterial changes may be made by the Fund Administrator with approval of the Commission staff. For good cause shown, and in consultation with the Fund Administrator, Commission staff may extend any of the procedural deadlines set forth in this Plan.

14. *Procedures to Request Plan Notice.* Any person who does not receive a Notification, as described in paragraph 9, but who is aware of this Plan (*e.g.*, through other Eligible Investors or on www.sec.gov) and believes they should be included as an Eligible Investor should contact the Fund Administrator within sixty (60) days of the publication of the Plan for notice and comment to establish that they are in fact eligible to receive a distribution payment. The Fund Administrator may send the person a Notification within twenty-one (21) days of receiving the person's documentation, if the Fund Administrator determines that the person should have received a Notification, as provided in paragraph 9.

15. *Procedures for Disputing Amounts Received.* Disputes will be limited to calculations of disbursement amounts to Eligible Investors. Within thirty (30) days of the date on the distribution check, the Fund Administrator must receive a written communication detailing the dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation. Within thirty (30) days of receipt of the written dispute, the Fund Administrator will notify the Eligible Investor of its resolution of the dispute, which shall be final.

16. *Residual and Disposition of Undistributed Funds.* A residual within the Fair Fund refers to any amounts remaining after distribution of the Net Fair Fund to Eligible Investors has occurred. The residual may include, but is not limited to, funds reserved for future taxes and related expenses, annual bond fee premiums, administrative expenses, distributions from checks

that have not been cashed, from checks that were not delivered or from funds returned to the Commission, and tax refunds for overpayment or for waiver of IRS penalties. All residual funds remaining after all expenses of administration and taxes have been satisfied will be transferred to the Commission for transmittal to the U.S. Treasury after the final accounting is approved by the Commission.

17. *Termination of the Fair Fund.* The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred: a) a final accounting, in a standard accounting format provided by Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; b) all taxes, fees and expenses of the Fund Administrator and Tax Administrator, and U.S. Treasury fees have been paid by the Fair Fund; and c) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the Commission staff shall seek an order from the Commission to approve the termination of the Fair Fund, the discharge of the Fund Administrator, the cancellation of the bond, and the transfer of any amount remaining in the Fair Fund to the U.S. Treasury.

18. *Notice of Proposed Plan and Opportunity for Comment.* The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the "Notice") shall be published on the Commission's website <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the date of the Notice (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (b) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File Nos. 3-17899 and 3-17900" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.