

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10230 / October 5, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 79045 / October 5, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17618

In the Matter of

ROLF BÖGLI

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (the “Commission”) deems it appropriate that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (the “Exchange Act”) against Rolf Bögli (“Bögli” or the “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, the Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (the “Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds:¹

¹ The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

A. Summary

1. From at least the fourth quarter of 2011 through the fourth quarter of 2012, Credit Suisse in certain instances improperly applied its process for recognizing net new assets (“NNA”) for the wealth management business within its private bank division (“Private Bank”) in a way that was inconsistent with its disclosures. As a result, Credit Suisse’s NNA disclosures were materially misleading.

2. NNA for the Private Bank was reported in Credit Suisse’s quarterly and annual reports, which were furnished to the Commission as exhibits to Form 6-K and filed with the Commission on Form 20-F, respectively, as the change in assets under management (“AUM”) from one quarter to another. NNA reflects the total net inflow of AUM from new and existing clients in a given period and measures Credit Suisse’s success in attracting new business. NNA is a key metric in assessing the wealth management business and therefore is an important disclosure for investors in financial institutions like Credit Suisse.

3. Credit Suisse’s public filings disclosed that “[t]he classification of assets under management is individually assessed on the basis of each client’s intentions and objectives and the banking services provided to the client.” Credit Suisse’s NNA/AUM process during the relevant period, in which Bögli played a significant role, was inconsistent with these disclosures.

4. Rather than evaluating each client and determining what was appropriately recognized as NNA in a principled way, Bögli, at times, encouraged a results-driven approach that allowed targets to drive the timing and amount of NNA recognition. In certain instances, Bögli pressured other Credit Suisse employees to classify certain client assets as AUM despite concerns raised by others.

5. Based on the foregoing, and by the acts and omissions described below, Bögli was a cause of Credit Suisse’s violations of certain antifraud and reporting provisions of the federal securities laws.

B. Respondent

6. Rolf Bögli, age 52, joined Credit Suisse in 2009. At all times relevant to this Order, Bögli was Chief Operating Officer of Credit Suisse’s Private Banking division, reporting to the division’s Chief Executive Officer. This was an administrative position in the Private Bank, and did not involve client interaction. Bögli was involved in overseeing the asset reclassification process and had authority to approve asset reclassifications of up to CHF 500 million.

C. Related Party

7. **Credit Suisse AG (“Credit Suisse”)** is a corporation organized under the laws of Switzerland. Directly and through its subsidiaries and affiliates, it operates a global financial services business in more than 50 countries with over 45,000 employees, including 9,000 U.S. employees. The Private Bank includes Credit Suisse’s wealth management business, which serves ultra-high net worth and high net worth individuals around the globe and private clients in

Switzerland. Credit Suisse furnishes quarterly reports to the Commission as exhibits to Form 6-K and files annual reports with the Commission on Form 20-F.

D. Net New Assets and Assets Under Management

8. Credit Suisse's primary regulator in Switzerland, the Swiss Financial Market Supervisory Authority ("FINMA"), promulgated a rule regarding the recognition and disclosure of AUM and NNA. The FINMA rule provides banks with significant latitude regarding when NNA can be recognized and requires Swiss banks to further establish their own criteria to implement it. During the relevant period, Credit Suisse's policies and procedures for recognizing AUM and NNA were overly broad and provided limited guidance regarding the proper application of the policy. As a consequence, Bögli and other employees took advantage of the flexibility and latitude they afforded in order to meet targets.

9. Credit Suisse divided client assets into two categories: AUM and Assets Under Custody ("AUC"). AUM were assets for which the Private Bank actively provided investment advice or discretionary asset management services. By contrast, AUC were assets held solely for transaction-related or safekeeping/custody purposes, where the Private Bank did not provide specific advice regarding asset allocation or investment decisions. Assets classified as AUM typically generated higher profit margins for Credit Suisse than AUC due to the fees earned through the provision of financial advice and asset management services.

10. Credit Suisse tracked and reported quarterly as NNA the total net inflow of AUM from new and existing clients.

11. NNA could be increased in two ways: either by bringing new business into the Bank, or reclassifying AUC to AUM when clients indicated a change in intent and sought advice or management on assets previously classified as AUC. Reclassifications over CHF 500 million could only be approved by a designated committee in Group Finance ("Group AUM Committee"). The conduct at issue in this Order relates to Credit Suisse's reclassifications of AUC to AUM.

12. NNA was one of several key performance indicators tracked by Credit Suisse and used in external presentations. Credit Suisse senior management established targets for NNA. Certain members of senior management, tracked progress towards target numbers, and discussed current NNA on a regular basis. Bögli communicated with the heads of various business areas within the Private Bank to press them to meet NNA targets. In its public statements and presentations, Credit Suisse and its management promoted positive NNA results to investors and analysts. Equity analyst reports often included discussions of NNA results in their coverage of Credit Suisse.

E. Written NNA Disclosures During the Relevant Period

13. Credit Suisse disclosed the Private Bank's NNA in its quarterly and annual reports. These disclosures were required by FINMA. Pursuant to this requirement, Credit Suisse adopted internal guidelines that established criteria for realizing NNA in various circumstances, including the reclassifications of AUC to AUM. The specified criteria generally revolved around a determination regarding the client's intent and the banking services provided with respect to the

assets. If there was sufficient evidence suggesting that the client intended to place the assets with Credit Suisse for investment purposes, and Credit Suisse provided investment advice to the client, the assets could be recognized as AUM, thereby generating an inflow of NNA. Consistent with these internal criteria, Credit Suisse informed investors in its written disclosures that “[t]he classification of assets under management is individually assessed on the basis of each client’s intentions and objectives and the banking services provided to the client.”

14. In addition to disclosing global NNA, Credit Suisse also included in its disclosures a table that provided investors with a breakdown of NNA by business area and by region.

15. Credit Suisse’s written disclosures reflected that Credit Suisse had in place and followed established rules and policies regarding decisions to reclassify AUC as AUM. Contrary to this disclosure, as described below, as the result of negligent conduct, Bögli at times caused NNA decisions to be driven by a desire to meet NNA targets.

F. Fourth Quarter of 2011

16. In the fourth quarter of 2011, Credit Suisse reclassified assets belonging to an ultra-high net worth client, Client A. Client A was a long-standing client of Credit Suisse who received investment advice from the bank. The bank earned revenue from investment activity serving Client A in this quarter. Over the course of 2011, there were inflows of new assets for Client A, which were classified as AUC.

17. The reclassification of a portion of the new AUC assets was influenced by the desire to reach targets: as a Credit Suisse Relationship Manager (“RM”) with knowledge of Client A’s account summarized in an email, “the aim is to reclass an amount in the range of [over CHF 1 billion] before year end. Exact timing and amount has not been decided since it depends on the final NNA requirement . . .” The RM proposed a smaller reclassification to protect against the risk that the client would move assets from Credit Suisse. Other Credit Suisse employees also favored smaller reclassifications. Bögli wrote to other employees involved in the asset reclassification process, invoking the name of his supervisor, a Senior Executive of Private Banking, stating the Senior Executive “definitely wants to have” reclassified Client A assets “included in the next NNA forecast.” Over CHF 1 billion of Client A assets were reclassified from AUC to AUM in the fourth quarter of 2011.

G. First Quarter of 2012

18. In the early 2000s, Client B, a Private Bank client who owned a company, deposited a significant portion of the outstanding shares of that company with Credit Suisse’s U.S. operation, Credit Suisse Securities (USA) LLC.

19. In an email dated February 27, 2012, Bögli informed his direct reports that “our NNA results . . . have been very disappointing up until now. As our capability to attract clients and new assets is of utmost importance – also externally – we need to take all possible measures in order to change this into a positive story within the next few weeks.”

20. In late February, Credit Suisse evaluated whether a portion of Client B's assets should be reclassified from AUC to AUM, thereby generating NNA. On February 27, 2012, one Credit Suisse employee summarized the status of Client B's assets: "Currently these assets are still classified as custody assets until the mandate changes and we start to actively manage the portfolio . . ."

21. On March 7, 2012, a Credit Suisse employee responsible for reviewing NNA ("NNA Reviewing Employee") in the U.S., reached the conclusion that circumstances did not merit a reclassification of the majority of Client B's assets: "For the remaining custody assets . . . based on information from [the RM], the contractual situation is not robust enough to allow us to initiate classification as NNA at the current point in time."

22. Meanwhile, Bögli continued to press his subordinates to identify sources of NNA, including from Client B. In mid-March, despite being informed by his subordinate that a reclassification of Client B's assets was "not expected to happen in March, more likely [a] Q2 event," Bögli wrote: "Any option to speed this up? We need this inflow in March!"

23. Credit Suisse employees began preparing a justification for reclassifying a significant portion of the assets as AUM, which would generate NNA. Certain Credit Suisse Executives who reviewed the draft justification expressed concerns that it did not identify evidence of a change in the client's intent. In response to these questions, Bögli and Credit Suisse employees reporting to Bögli agreed to prepare a revised draft justification. Bögli was not directly involved in drafting the final justification. The final justification contained the following language: "The key event for a Q1 asset reclassification occurred on February 22, when the client made his final decision to abandon his plans to move his residency [to another country], i.e., continuing to reside in the USA and to remain a US tax person. [Client B] communicated to [Credit Suisse] that Credit Suisse will be his wealth manager of choice . . ."

24. Client B's choice of tax residency, identified as the "key event," was irrelevant to the question of whether Client B assets were properly classified as AUM. Further, there is no evidence that Client B told his PB USA advisors on the February 22 call that the Private Bank was his "wealth manager of choice."

25. Although the Private Bank did not typically require or receive signed investment mandates from its wealth management clients, a member of the Audit Committee inquired of a Credit Suisse Senior Executive in advance of the Audit Committee discussion of the quarterly report: "[H]ave we actually received a signed mandate to manage [Client B's] funds?" He also asked, "Was the mandate signed in Q1?" The Credit Suisse Senior Executive passed these inquiries to Bögli, who responded that "[a]s far as the document is concerned: the clients family office has signed off the services agreement including terms already." While Client B's family office had agreed to the terms of a Services Agreement, Client B had not signed an investment mandate.

26. Over CHF 4 billion in Client B assets were reclassified from AUC to AUM in the first quarter of 2012. That amount constituted more than 75% of the NNA reported by Credit Suisse's wealth management business for the first quarter of 2012.

H. Second Quarter of 2012

27. During Credit Suisse's second quarter of 2012, Credit Suisse made another large asset reclassification that contributed over half of the Private Bank's NNA for the quarter. This reclassification was again influenced by the desire to reach targets. Bögli pressured other Credit Suisse employees to reclassify the assets.

28. Client C was an ultra-high net worth client with several accounts at Credit Suisse, including a single, concentrated stock position in a company ("Company"). Credit Suisse provided investment advice to Client C and received revenue from servicing Client C in the second quarter of 2012.

29. At the end of the second quarter of 2012, an NNA Reviewing Employee reviewed all of the large client relationships with large AUC positions within his geographic region, as was the employee's practice at the end of each quarter. It was the employee's responsibility to determine which, if any, of these client assets could be appropriately reclassified from AUC to AUM.

30. Among the accounts that the NNA Reviewing Employee reviewed were the accounts of Client C. The employee determined that it would be prudent to wait another three to six months before considering reclassifying Client C's assets from AUC to AUM, to see whether the client actually implemented Credit Suisse's investment advice and invested additional assets through Credit Suisse.

31. In July 2012, while Credit Suisse was preparing its NNA-related disclosures for the second quarter of 2012 and after the NNA Reviewing Employee had completed his review and determined not to propose reclassifying Client C's assets, Bögli asked the NNA Reviewing Employee to identify additional NNA. Expressing his disappointment with Credit Suisse's NNA prospects at the time, Bögli communicated the need for a large reclassification, stating: "We need to do something pretty big. Need your flexibility and will ensure compensation of potential negative future impacts." In this message, Bögli promised what was called "outflow protection." While an RM's compensation normally would be negatively impacted if assets that were recognized as AUM left the bank, Bögli promised that the outflows in this case would not impact the compensation of Client C's RM.

32. In response to the requests of Bögli, the Credit Suisse employee identified a Client C account with the single concentrated stock position. He wrote to the Credit Suisse senior manager to inform him about the prospect, but cautioned, "it's a stretch." He later suggested that perhaps 40% of the position be reclassified. Bögli responded: "[C]an we take 50%?" The employee said he would try to make the case to reclassify 50%, but "the case will not be easy to make" In response, Bögli wrote: "We need the case!!"

33. Credit Suisse employees drafted a justification for the reclassification of Client C assets in the second quarter of 2012. The draft justification relied on the fact that there had been a recent listing of stock underlying the Client C assets on a major exchange, and characterized the listing as the "trigger event." It stated: "In Q2 2012, the listing of the [Company shares on the

major exchange] was successfully executed, which is essential to enhance the advisory services to the client . . . This [] listing serves as the basis for an active investment advice of this position as access to capital/liquidity is now given.” However, this purported “trigger” did not take place in the second quarter of 2012, but rather in the final quarter of 2011. The minutes of Credit Suisse’s Group AUM Committee, which was charged with the final reclassification determination, focused on and discussed this justification. The minutes also refer to another document that identifies the one-time receipt by the Private Bank of revenue in the form of Single Global Currency (“SGC”) as a justification for the reclassification.²

34. During the process, a Credit Suisse Senior NNA Executive posed questions about the proposed reclassification, asking what constituted the “trigger” for the reclassification: “Am I correct in thinking that what you have concluded is that the event which occurred with respect to the additional assets being reclassified in Q2 from Custody to AUM is the listing that occurred during Q2 2012? Other than that it seems all the same facts were in place before Q2.” A Credit Suisse employee responded to the questions from the Senior NNA Executive using language that suggested that the purported trigger—the listing—took place in the second quarter of 2012. He went on to reference a one-time receipt of SGC.

35. In the second quarter of 2012, nearly CHF 2 billion in Client C assets were reclassified from AUC to AUM. The resulting NNA constituted approximately 33% of the CHF 5.5 billion total NNA reported by Credit Suisse’s wealth management business in the quarter.

I. Third Quarter of 2012

i. Client D

36. In the third quarter of 2012, NNA forecasts were falling short of targets. As Bögli wrote on October 2, 2012, “The NNA [for the Private Bank’s Swiss business] turned out to be much lower than assumed in the forecast. For this reason we urgently need to examine reclassification options.”

37. Bögli and other Credit Suisse employees began to discuss whether to reclassify certain assets of Client D, an ultra-high net worth client whose assets were concentrated across a handful of stock positions, from AUC to AUM. Certain emails reflecting the reclassification discussion did not address the client’s investment intentions. Rather, they focused on whether the reclassification was needed to meet the target for the quarter. One Credit Suisse employee wrote to Bögli about two other potential sources of NNA for the third quarter, and added: “We will of course have to bring [Client D] into play if one of these factors fails to [materialize].” Bögli replied with news of another negative NNA development, and concluded, “[so] we will need the [Client D assets].”

² SGC is compensation paid to the Private Bank from another division within the bank for services rendered to a client. Under current Credit Suisse policy, which was not in force at the time of this reclassification, SGC revenues that are ongoing are viewed as a strong indicator of the Private Bank’s contribution in serving a client.

38. Client D's RM did not agree with the contemplated reclassification because he believed it was premature.

39. Bögli sought to avoid submitting any decision to reclassify Client D assets to Credit Suisse's finance group, as would have been required if the proposed reclassification exceeded \$500 million. One Credit Suisse employee noted that Bögli "agrees that we won't take [reclassify] the [Client D assets] if this would mean going through the [finance] group," but rather "we should be able to show something [a reclassification to AUM] that is more or less in the same range."³

40. Ultimately, Credit Suisse opted not to reclassify Client D's assets in the third quarter of 2012.

ii. Client B

41. No Client B assets were reclassified in the third quarter. However, Credit Suisse reallocated to the Swiss region half of the NNA related to Client B that had been attributed solely to the "Americas" region in previous periods. The reallocation caused the NNA number for the Swiss region to be positive for the quarter, suggesting that the Swiss business had generated a positive amount of NNA in the third quarter, when in fact it had not.

42. The first quarter reclassification of Client B assets described above was split evenly between Credit Suisse's Americas and Swiss regions in the Private Bank's quarterly disclosures. Credit Suisse managers justified the split as, among other things, recognizing the contribution of certain Swiss region bankers in winning the 2011 "beauty contest." There were over 3 billion Swiss francs in additional assets related to Client B that were recognized in the first and second quarters but were attributed solely to the Americas region because American and Swiss managers were not able to agree on how to allocate the assets between the regions. The decision whether to implement a regional split for these assets was deferred until the third quarter.

43. Bögli and other Credit Suisse employees pressed a Credit Suisse senior manager in the Americas region ("Americas Senior Manager") to agree to a 50/50 regional split of NNA credit between the Swiss region and Americas region, which would have the impact of moving third quarter Swiss NNA from a negative number to positive number. Bögli was concerned regarding asset outflows for the Swiss Private Bank business. Some of these outflows stemmed from efforts to integrate Clariden Leu, a smaller private bank that Credit Suisse had purchased. Bögli was concerned at the time because, as a result of the outflows, the Swiss Private Bank had negative NNA for the quarter. In or about October 2012, Bögli proposed to the Americas Senior Manager that Credit Suisse allocate to the Swiss business in the third quarter one half of the Client B assets that had been recognized as NNA solely in the Americas in previous periods.

44. As a result, Credit Suisse added approximately CHF 1.5 billion to the Swiss NNA figures for the quarter. To offset this amount, Credit Suisse subtracted the same amount from the Americas NNA figure for the quarter. The Americas reflected approximately CHF 1.5 billion less

³ Per Credit Suisse's policy, reclassifications of over \$500 million were to be decided by a committee independent of the Private Bank business.

NNA than it had for the quarter, and the Swiss reflected positive net inflows, even though it otherwise would have reported negative outflows for the quarter. The overall NNA number for the Private Bank was unaffected.

J. Fourth Quarter of 2012

45. At the end of the fourth quarter of 2012, Credit Suisse was again faced with NNA that fell short of targets. On January 8, 2013, Bögli again pressured other Credit Suisse employees to identify NNA. As he had done in previous quarters, the senior manager invoked certain senior executives of the Private Bank. He wrote to subordinates that the senior executives at Credit Suisse “want[ed] to get as close as possible to 5 billion” in NNA. Bögli noted, “we need another billion,” and then asked, “can we move [Client A] in that direction?”

46. As described above, Client A was an ultra-high net worth client, some of whose assets had already been reclassified from AUC to AUM in the fourth quarter of 2011. The NNA Reviewing Employee had already reviewed Client A’s accounts in connection with his quarterly review, and had determined not to propose reclassifying any assets from AUC to AUM.

47. On January 8, 2013, a Credit Suisse employee wrote to Bögli: “I can’t see a possibility for [Client A] because we have no trigger.” Bögli responded: “We must try to ‘derive’ a trigger for [Client A].”

48. A Credit Suisse manager then wrote to a Credit Suisse employee and asked him to have “another review of the [Client A] position.” In response to this request, the employee identified another account holding approximately CHF 550 million of Client A’s assets. This separate account was set up and funded for this client in the fourth quarter to hold investments in U.S. equities. The assets were classified as AUM in the fourth quarter.

49. Separately, in the fourth quarter, Credit Suisse again considered reclassification of Client D assets, which had been considered but did not take place in the previous quarter. In this quarter, Credit Suisse had executed a bridge loan to this client, earned revenues on the loan, and executed a sale of stock worth several million Swiss francs.

50. Client D’s RM again argued against reclassifying Client D assets in the fourth quarter of 2012. The RM posed substantive concerns about the reclassification of Client D assets: “We are 100% certain that there will be an outflow of at least CHF 100 million in . . . 2013.” The RM went on to describe the amounts and purposes of specific outflows that were expected. In addition, there had recently been significant outflows in 2012. “Outflow protection” was again promised so that the expected outflows of Client D assets would not impact the compensation of the RM.

51. Despite the concerns of Client D’s RM, Bögli replied, “[Client D] is no longer negotiable,” and Credit Suisse reclassified approximately CHF 500 million in Client D assets from AUC to AUM in the fourth quarter of 2012. That amount represented approximately 17% of the CHF 2.9 billion total NNA reported by Credit Suisse’s wealth management business in the quarter.

52. Based on the conduct described above, Credit Suisse's practices relating to the process for recognizing NNA through reclassification were inconsistent with Credit Suisse's disclosures. Credit Suisse's NNA disclosures were misleading. Bögli was a cause of the resulting violations.

K. Violations

53. As a result of the negligent conduct described above, Bögli was a cause of Credit Suisse's violations of the following provisions:

a. Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

b. Section 17(a)(3) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser; and

c. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-16, and 12b-20 thereunder, which require foreign private issuers with securities registered pursuant to Section 12 of the Exchange Act to file or furnish with the Commission annual and other reports as the Commission may require, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease-and-desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 13(a) of the Exchange Act, and Rules 13a-1, 13a-16, and 12b-20 thereunder; and

B. Respondent shall, within ninety (90) days of the entry of this Order, pay a civil money penalty in the amount of \$80,000 to the Securities and Exchange Commission for remission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rolf Bögli as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5010.

By the Commission.

Brent J. Fields
Secretary