

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99541 / February 14, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-17899

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER TO
	:	THE U.S. TREASURY OF THE REMAINING
	:	FUNDS AND ANY FUNDS RETURNED TO THE
Credit Suisse Securities (USA) LLC	:	FAIR FUND IN THE FUTURE, DISCHARGING
	:	THE FUND ADMINISTRATOR, CANCELING
Respondent.	:	THE ADMINISTRATOR’S BOND, AND
	:	TERMINATING THE FAIR FUND

ADMINISTRATIVE PROCEEDING
File No. 3-17900

In the Matter of	:
	:
	:
Sanford Michael Katz,	:
	:
Respondent.	:
	:

On April 4, 2017, the Commission instituted settled administrative and cease-and-desist proceedings and simultaneously issued an 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 Cease-and-Desist Order (the “Credit Suisse Order”)¹ against Credit Suisse Securities (USA) LLC (“Credit Suisse”), a dually registered broker-dealer and investment adviser. In a related action, the Commission instituted settled administrative and cease-and-desist proceedings and simultaneously issued an 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 Cease-and-Desist Order (the “Katz Order”)² against Sanford Michael Katz (“Katz”), a registered representative and investment adviser of Credit Suisse (collectively, the “Orders”).

¹ Exchange Act Rel. No. 80373 (Apr. 4, 2017).

² Advisers Act Rel. No. 4679 (Apr. 4, 2017).

In the Orders, the Commission found that from January 1, 2009 to 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 and did not update or enhance its policies or procedures to address this issue.

In the Credit Suisse Order, the Commission ordered Credit Suisse to pay \$2,099,624.12 in disgorgement, \$380,090.37 in prejudgment interest, and a \$3,275,000.00 civil money penalty, for a total of \$5,754,714.49, to the Commission. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid, along with the disgorgement and interest paid, could be distributed to harmed investors (the “Fair Fund”). In the Katz Order, the Commission ordered Katz to pay \$1,124,858.89 in disgorgement, \$197,587.38 in prejudgment interest, and a \$850,000.00 civil money penalty, for a total of \$2,172,446.27, to the Commission. The Commission ordered these funds be added to the Fair Fund created by the Credit Suisse Order.

The Respondents paid a collective total of \$7,927,160.76 pursuant to the Orders, comprising the Fair Fund.

On January 29, 2018, the Division of Enforcement, pursuant to delegated authority, issued an order appointing Boston Financial Data Services, Inc. n/k/a SS&C GIDS, Inc. as the fund administrator of the Fair Fund and set the administrator’s bond amount.³

On July 12, 2018, the Secretary, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),⁴ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);⁵ and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice

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

⁴ Exchange Act Rel. No. 83621 (July 12, 2018).

⁵ 17 C.F.R. § 201.1103.

advised interested persons that they could obtain a copy of the Proposed Plan from the Commission's public website or by submitting a written request to Nancy Chase Burton, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period. On August 30, 2018, the Secretary pursuant to delegated authority, issued an order approving the Proposed Plan,⁶ and posted the approved Plan of Distribution (the "Plan").

The Plan set forth a methodology for allocating the Net Fair Fund comprised of the \$7,927,160.76, plus accrued interest, less Administrative Costs to investors that were previously identified by Commission staff in accordance with paragraph 8 of the Plan. Any remaining funds that are infeasible to return to investors is to be transferred to the U.S. Treasury and the Fair Fund terminated, subject to the Commission's approval of the final accounting.

On February 1, 2019, the Commission issued a Corrected Order Directing Disbursement of Fair Fund, directing the Commission staff to disburse \$3,531,714.92 from the Fair Fund to an escrow account for distribution by the Fund Administrator to eligible investors in accordance with the Plan.

As ordered by the Commission, the Fund Administrator disbursed a total of 938 checks in the amount of \$3,531,714.92 from the Fair Fund, pursuant to the Plan.⁷ Of this amount \$3,280,613.20 (92.89%) was successfully distributed to 711 recipient investors, whose losses, calculated in accordance with the Plan of Allocation, were fully compensated for the harm caused, plus reasonable interest.

The Fair Fund earned \$318,548.02 in interest; and paid state and federal taxes of \$115,186.00, investment/bank fees of \$537.63, fund administration expenses of \$156,043.58 and tax administration expenses of \$26,183.71. The Fair Fund currently holds \$4,667,142.66, which is comprised of \$251,101.72 in undeliverable and uncashed checks, and \$4,416,040.94 in accumulated interest and excess funds that are infeasible to distribute to investors.

The Plan provides that the Fair Fund will be eligible for termination and the Fund Administrator for discharge after all of the following have occurred: (a) the final accounting has been submitted by the Fund Administrator for approval, and has been approved by the Commission; (b) all taxes, fees and expenses have been paid; and (c) any funds remaining in the Fair Fund has been received by the Commission.

The Commission staff has confirmed that the Fund Administrator has completed the distribution process in accordance with the Commission's orders, that all taxes, fees and expenses have been paid, and that all monies remaining in the Fair Fund have been received by the Commission. The final accounting, which was submitted to the Commission for approval, as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, has been approved.

⁶ See Order Approving Plan of Distribution, Exchange Act Rel. No. 83999 (Aug. 30, 2018).

⁷ Exchange Act Rel. No. 85027 (Feb. 1, 2019).

Accordingly, it is ORDERED that:

- A. the Fair Fund's remaining funds that are infeasible to return to investors, and any funds returned to the Fair Fund in the future that are infeasible to return to investors, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u-6(g)(3);
- B. the Fund Administrator, Boston Financial Data Services, Inc. n/k/a SS&C GIDS, Inc. is discharged;
- C. the Fund Administrator's bond is canceled; and
- D. the Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary