



SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-34941; File No. 812-15474]

Credit Suisse Asset Management, LLC., et al.; Notice of Application and Temporary Order

June 7, 2023.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application:

Applicants have applied for an order exempting them from section 9(a) of the Act with respect to the Injunction (as defined below) entered against Credit Suisse Securities (USA) LLC (“CSSU”), Credit Suisse First Boston Mortgage Securities Corp. (“CSFB”), and DLJ Mortgage Capital, Inc. (“DLJ”, and together with CSSU and CSFB, the “Settling Entities” and each a “Settling Entity”) on October 24, 2022, by the Superior Court of New Jersey (“New Jersey Court”), in connection with a consent order between the Settling Entities and the Acting Attorney General of New Jersey, on behalf of the Acting Chief of the New Jersey Bureau of Securities (“Bureau”) until the Commission takes final action on an application for a time-limited order exempting them from section 9(a) of the Act (“Time-Limited Exemption”). Upon the expiration of the Time-Limited Exemption, Applicants will be disqualified from engaging in Fund Servicing Activities (defined below). Applicants, on behalf of UBS Covered Persons (defined below), also have applied for a temporary exemption from section 9(a) of the Act until the Commission takes final action on an application for a permanent order exempting them from section 9(a) of the Act (the “Permanent Order”). The temporary order is set forth herein (the “Temporary Order” and, together with the Time-Limited Exemption and the Permanent Order, the “Orders”).

Applicants: Credit Suisse Securities (USA) LLC (“CSSU”), Credit Suisse First Boston Mortgage Securities Corp. (“CSFB”), DLJ Mortgage Capital, Inc. (“DLJ”), Credit Suisse Asset

Management, LLC (“CSAM”), Credit Suisse Asset Management Limited (“CSAML”) and Credit Suisse AG (“CSAG”).¹

Filing Date: The application was filed on June 7, 2023.

Hearing or Notification of Hearing: The Temporary Order will be effective until such time as the Commission takes final action on the application (or, in the case of the Time-Limited Exemption, until it expires by its terms, if sooner) by issuing an order granting the requested relief, unless the Commission orders a hearing. Interested persons may request a hearing on any application by e-mailing the Commission’s Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by e-mail, if an e-mail address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on July 3, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by e-mailing the Commission’s Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Neal Heble and Lou Anne McInnis, Credit Suisse Asset Management, LLC, Eleven Madison Avenue, New York, NY 10010; Barry P. Barbash, Justin L. Browder, and Bissie K. Bonner, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Toyin Momoh, Senior Counsel, or Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

¹ CSAG is a party to the application solely for purposes of making the representations and agreeing to the conditions in the application that apply to it. For such purpose, it is included in the term “Applicants” solely with respect to such representations and conditions.

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. For Applicants' representations, legal analysis, and conditions, please refer to the application, dated June 7, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

Applicants' Representations:

1. DLJ, a corporation organized under the laws of Delaware, is licensed as a mortgage seller/servicer by the U.S. Department of Housing and Urban Development and Fannie Mae. DLJ is an indirect wholly-owned subsidiary of CSAG (defined below). Its principal activity is buying, selling and servicing residential mortgage whole loans.
2. CSFB, a limited liability company organized under the laws of Delaware, was created to form trusts to issue and sell collateralized mortgage obligations and pass-through certificates collateralized by Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Association and conventional residential mortgage whole loans. CSFB is an indirect wholly-owned subsidiary of CSAG (defined below).
3. CSAM, a limited liability company formed under Delaware law, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

CSAM serves as investment adviser (either as primary investment adviser or as investment sub-adviser) to each Fund² listed in Part 1 of Appendix A of the application.

² The term "Fund" as used herein refers to any investment company that is registered under the Act ("RIC"), employees' securities companies ("ESC"), or investment company that has elected to be treated as a business development company under the Act ("BDC"), for which a Fund Servicing Applicant currently provides Fund Servicing Activities, or for which a UBS Covered Person, subject to the terms and conditions of the Orders, may in the future provide Fund Servicing Activities.

4. CSAML, a corporation formed under the laws of the United Kingdom, is registered as an investment adviser under the Advisers Act. CSAML serves as investment sub-adviser to the Fund listed in Part 2 of Appendix A of the application.
5. CSSU, a limited liability company formed under Delaware law, is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and as an investment adviser under the Advisers Act. CSSU serves as principal underwriter to each Open-End Fund listed in Part 3 of Appendix A of the application.
6. Each of the above Applicants is either a direct or indirect wholly owned subsidiary of CSAG (CSAG, together with its wholly-owned subsidiaries and affiliated entities, “Credit Suisse”). CSAG is a wholly owned subsidiary, and the principal operating subsidiary, of Credit Suisse Group AG (“CS Group”), which operates as a holding company. Credit Suisse Holdings (USA), Inc. (“CS Holdings USA”) is a wholly owned subsidiary of CSAG, and serves as the holding company for Credit Suisse’s U.S. entities, including Applicants. Both CS Group and CSAG are corporations organized under the laws of Switzerland. Upon the Transaction (as defined below), CS Group will merge with and into UBS Group AG (“UBS”) resulting in UBS remaining as the surviving company. Upon the Merger, UBS Covered Persons will become Affiliated Persons (as defined below) of the Settling Entities.
7. Currently, CSAM, CSAML and CSSU (together, the “Fund Servicing Applicants”), collectively serve as investment adviser or investment sub-adviser to RICs or series of such companies and ESCs and as principal underwriter to open-end management investment companies registered under the Act (“Open-End Funds”) (such activities, collectively, “Fund Servicing Activities”).³ CSSU is a Settling Entity, and CSAM and CSAML are Affiliated Persons of the Settling Entities.

³ Other than the Fund Servicing Applicants, no existing company of which the Settling Entities are an “affiliated person” within the meaning of Section 2(a)(3) of the Act currently serves as an investment adviser or

8. Applicants request that any relief granted by the Commission pursuant to the application also apply to “UBS Covered Persons” which means: (i) any existing company of which an Applicant becomes an Affiliated Person upon the closing of the transactions (collectively, the “Transaction”) contemplated under the merger agreement entered into by and among CS Group and UBS, dated as of March 19, 2023 (the “Merger Agreement”) (but excluding any company, any Affiliated Person of which is an Applicant as of the date of the application); and (ii) any company of which an Applicant becomes an Affiliated Person following the closing of the Transaction (but excluding any company, any Affiliated Person of which is an Applicant as of the date of the application).⁴
9. On December 17, 2013, the Bureau filed a complaint in the New Jersey Court in the action captioned *Ruotolo v. Credit Suisse Securities (USA) LLC, et al.*, Docket No. MER-C-137-13 (N.J. Sup. Ct.) alleging that CSSU, FBMSC and DLJ violated the New Jersey Uniform Securities Law (“New Jersey Securities Law”) in connection with the offer, sale, or purchase of residential mortgage-backed securities (“RMBS”) prior to the global financial crisis of 2008.
10. On October 24, 2022, the New Jersey Court entered the Consent Order and Final Judgment (“Consent Judgment”), negotiated and submitted by the parties, which, in relevant part, ordered that, under N.J.S.A. 49:3-69, the Settling Entities “shall not violate” the New Jersey Securities Law (the “Injunction”). On the following day, the Bureau entered a

depositor of any RIC, ESC or BDC, or as principal underwriter for any Open-End Fund, registered unit investment trust (“UIT”), or registered face-amount certificate company (“FACC”). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person (“Affiliated Person”). The term “Fund Servicing Activities,” as it relates to the UBS Covered Persons (defined below), refers to each of the capacities identified in Section 9(a) of the Act in which a UBS Covered Person currently serves or may serve in the future.

⁴ The term “CS Covered Persons” refers collectively to Applicants and their Affiliated Persons as of the date of the application (with the exception of CS Group). CSAG and CS Group do not and will not serve as investment adviser, depositor or principal underwriter to any RIC, ESC or BDC. UBS Covered Persons may, if the Order is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act. Any existing or future entities that may rely on the Orders in the future will comply with the terms and conditions of the application.

related Administrative Consent Order (“ACO”) which includes findings of fact by the Bureau, to which the Settling Entities neither admitted nor denied.

Applicants’ Legal Analysis:

1. Section 9(a)(2) of the Act provides, in pertinent part, that a person may not serve or act as, among other things, an investment adviser or depositor of any registered investment company or as principal underwriter for any registered open-end investment company, UIT, or FACC, if such person “. . . by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.” Section 9(a)(3) of the Act makes the prohibitions of section 9(a)(2) applicable to a company, any Affiliated Person of which has been disqualified under the provisions of section 9(a)(2). Applicants and, upon closing of the Transaction, UBS Covered Persons would be precluded pursuant to Sections 9(a)(2) and 9(a)(3) of the Act from acting in the capacities specified in Section 9(a).
2. Section 9(c) of the Act provides that: “[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection 9(a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.” Applicants have

filed an application pursuant to section 9(c) seeking a Temporary Order, a Time-Limited Exemption (with respect to Applicants) and a Permanent Order (with respect to UBS Covered Persons) exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c) for the Time-Limited Exemption. Applicants argue that the Time-Limited Exemption is necessary to complete the transition of Fund Servicing Activities to other service providers and/or to restructure their businesses so they may provide Fund Servicing Activities without being subject to a section 9(a) disqualification (“CS Fund Servicing Restructuring”).
4. Applicants assert that, absent the Time-Limited Exemption, the prohibitions of Section 9(a) would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the protection of investors or the public interest to grant the Time-Limited Exemption. Applicants point out that a continuing Disqualification would deprive the Funds they serve of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that the effects of a Disqualification prior to CS Fund Servicing Restructuring could operate to the financial detriment of the Funds and their shareholders, including by causing the Funds to spend time and resources to engage substitute advisers, subadvisers, and principal underwriters, which would be an unduly and disproportionately severe consequence given that it would result from Conduct which occurred over 15 years ago, and was unrelated to any Funds or to any Fund Servicing Activities provided by Fund Servicing Applicants, which occurred within a distinctly separate and currently inactive business operation of Credit Suisse.
5. Applicants assert that if the Fund Servicing Applicants were not granted the Time-Limited Exemption, the effect on their businesses and employees would be severe. Applicants state that the Fund Servicing Applicants have committed substantial capital and other resources

to establishing expertise in advising and sub-advising Funds with a view to continuing and expanding this business. Similarly, Applicants represent that if CSSU were unable to obtain the Time-Limited Exemption they have requested, the effect on its current business and employees would be significant. CSSU has committed substantial resources to establish expertise in underwriting the securities of the Funds that are Open-End Funds and to establish distribution arrangements for Open-End Fund shares. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Servicing Activities prior to the CS Fund Servicing Restructuring would not only adversely affect their business, but would also adversely affect their employees who are involved in these activities.

6. In support of their application, Applicants assert that the Conduct did not involve any Fund Servicing Applicants in their performance of the Fund Servicing Activities.⁵ Instead, the Applicants state that the CSSU personnel involved in the Conduct were not associated or involved in any way with the business unit providing underwriting and distribution services to the Funds.
7. Applicants represent that: (i) none of the current or former directors, officers or employees of Applicants (other than certain current and former personnel of the Settling Entities who were not and are not involved in Fund Servicing Activities) had any involvement in the Conduct; (ii) no current or former director, officer, or employee of the Settling Entities or any CS Covered Person who previously has been or who subsequently may be identified by the Settling Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant, CSAG, and of any UBS Covered Person (except that any employees of CSSU involved in the Conduct may continue to be employed by CSSU prior to and following the closing of

⁵ FBMSC and DLJ each does not and will not serve in any of the capacities described in Section 9(a) of the Act, and CSSU's Fund Servicing Activities will continue to be separate, during the 12 months from the date of the closing of the Transaction, from its other internal business units.

the Transaction but will not be allowed to participate in any Fund Servicing Activity of any Applicant); (iii) such directors, officers, and employees and any other persons who otherwise were involved in the Conduct have had no, and will not have any future, involvement in Applicants', CSAG or UBS Covered Persons' activities in any capacity described in Section 9(a) of the Act; and (iv) because the directors, officers and employees of Applicants (other than certain current and former personnel of the Settling Entities who were not involved in any Fund Servicing Activities) did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter.⁶

8. In addition, each Settling Entity will comply in all material respects with the material terms and conditions of the Consent Judgment and ACO as such terms and conditions are applicable to it. In addition, Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders, Consent Judgment and ACO within 30 days of discovery of the material violation.
9. Applicants further state that Credit Suisse has undertaken certain other remedial measures, as described in greater detail in the application. These include three types of remedial measures: (i) selling a significant portion of its business engaged in sponsoring and underwriting RMBS to an entity that is not an Affiliated Person of Applicants or the CS Covered Persons; (ii) implementing a number of enhancements to the mortgage

⁶ Applicants state that this representation with respect to the UBS Covered Persons is made based on the actual knowledge of UBS as of the date of the application. Within 180 days from the issuance of the Orders, UBS will conduct a review reasonably designed to ensure the accuracy of this representation with respect to the UBS Covered Persons.

securitization process to incorporate stronger business practices; and (iii) industry-wide reforms designed to address the Conduct.

10. Applicants represent that Credit Suisse has developed enhanced policies and procedures for considering potential collateral consequences associated with the settlement of matters involving regulators and law enforcement authorities. This process requires the engagement of outside counsel to complete a collateral consequences analysis in advance of all anticipated settlements with regulators and law enforcement authorities, regardless of the form of resolution, to ensure that any potential disqualifications are promptly identified and proactively addressed.
11. Applicants represent that upon closing of the Transaction, section 9(a)(3) of the Act would make it unlawful for the UBS Covered Persons to conduct Fund Servicing Activities. Applicants argue that such an outcome would force UBS to incur significant damage to its existing business as a result of completing the merger, all based on conduct that was outside of UBS' control, that UBS entities and employees were not involved in, and long pre-dated the Transaction. Applicants assert that the prohibitions of section 9(a), as applied to UBS Covered Persons, are unduly or disproportionately severe.
12. Applicants also have agreed that Applicants, CSAG and UBS Covered Persons (in the case of UBS Covered Persons, in respect of Fund Servicing Activities) will not employ any person that has been or subsequently may be identified by the Settling Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to Section 9(c).⁷

⁷ Applicants represent that any employees of CSSU involved in the Conduct may continue to be employed by CSSU prior to and following the closing of the Transaction but will not be allowed to participate in any Fund Servicing Activity of any Applicant.

13. Further, Applicants have agreed that each of the CS Covered Persons and UBS Covered Persons will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders granted under section 9(c).
14. As a result of the foregoing, the Applicants submit that absent relief, the prohibitions of section 9(a) as applied to the UBS Covered Persons would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption to the UBS Covered Persons.
15. Certain of the Applicants and their affiliates have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the application.

Applicants' Conditions:

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any Order, if granted, shall only become effective upon the closing of the Transaction.
2. Any temporary exemption granted pursuant to the application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, CS Covered Persons or UBS Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from Section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.
3. Applicants, CSAG and UBS Covered Persons (in the case of UBS Covered Persons, in respect of Fund Servicing Activities) will not employ any person that has been or subsequently may be identified by the Settling Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to Section 9(c),

except that any employees of CSSU involved in the Conduct may continue to be employed by CSSU prior to and following the closing of the Transaction but will not be allowed to participate in any Fund Servicing Activity of any Applicant.

4. Each of the CS Covered Persons and UBS Covered Persons will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders applicable to it within 60 days of the date of the Permanent Order.
5. Each Settling Entity will comply in all material respects with the material terms and conditions of the Consent Judgment and the ACO as such terms and conditions are applicable to it.
6. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders, Consent Judgment, and ACO within 30 days of discovery of the material violation.
7. The Time-Limited Exemption will remain in place for 12 months from the date of the closing of the Transaction.
8. Within 30 days of the expiration of the Time-Limited Exemption, Applicants will submit a report, signed by the chief executive officer of CS Holdings USA, to the Chief Counsel of the Commission's Division of Investment Management, describing (i) the findings of the internal compliance review concerning the process for assessing collateral consequences described in Section IV.G of the application and any steps taken to address areas for improvement identified in those findings and (ii) the steps that the Fund Servicing Applicants have taken since the date of the Time-Limited Exemption to foster a culture of compliance, as further described in Section IV.G of the application.
9. As a condition of the Temporary Order, Applicants will hold in a segregated account, amounts equal to all fees payable by the Funds to the Fund Servicing Applicants for the

period from October 24, 2022 through the date upon which the Commission grants the Temporary Order. Amounts placed in the segregated account will be released from the account after the Commission has acted on the application for the Permanent Order.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that the Applicants and UBS Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the closing of the Transaction, solely with respect to the Injunction, subject to the representations and conditions in the application, until the Commission takes final action on their application (or, in the case of the Time-Limited Exemption, until it expires by its terms, if sooner).

By the Commission.

Sherry R. Haywood,

Assistant Secretary.