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VIA E-MAIL & FEDERAL EXPRESS

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RE: CREDIT SUISSE'S VIOLATIONS OF FINRA RULES

Dear Sirs:

This law firm and law firms from across the country, listed below, represent brokers formerly employed by Credit Suisse Securities (USA) LLC ("Credit Suisse"), a FINRA member firm. We are hereby notifying FINRA of Credit Suisse's blatant and egregious violations of FINRA rules that require it to arbitrate disputes with its former brokers at FINRA. Credit Suisse's firm-wide Employment Dispute Resolution Program ("EDRP") both mandates single-arbitrator dispute resolution before AAA or JAMS and expressly denies access to the FINRA forum and its procedural rules and regulatory protections. The EDRP and similar programs are not only deeply prejudicial to our clients but threaten the integrity of the financial industry's self-

regulatory system. We write to urge FINRA to act swiftly and decisively to enforce its rules, and to impose sanctions against Credit Suisse for failing to submit employment related disputes to FINRA arbitration.

Credit Suisse is Required to Arbitrate Employment Disputes at FINRA

The FINRA Code of Arbitration Procedure for Industry Disputes (the "Code") unambiguously requires Member firms and Associated Persons to arbitrate their disputes under the Code:

> Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among:
>
> - Members;
> - Members and Associated Persons; or
> - Associated Persons

FINRA Rule 13200. The plain language of Rule 13200 does not permit derogation or waiver. A dispute *must* be arbitrated under the Code and arbitrations under the Code must be administered in the FINRA forum. There is no provision for contractual waiver or modification of this requirement. Indeed, it is a violation of Rule 2010 "for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure." FINRA Rule IM-13000.

FINRA's "Arbitration Overview," which discloses the basics of arbitration to the public, states that arbitration is mandatory:

> Required Industry Arbitration
>
> A broker or a brokerage firm must arbitrate **at FINRA** if:
> - The dispute arises out of the securities business activities of a broker and/or a brokerage firm; and
> - The dispute is between or among the following members of FINRA: brokerage firms, brokerage firms and brokers, or brokers.

See https://www.finra.org/arbitration-and-mediation/arbitration-overview. (emphasis added). There are only two exceptions to mandatory industry arbitration for discrimination claims and whistleblowers.

Credit Suisse's attempt to compel a waiver of its former broker's rights and obligations to arbitrate disputes before FINRA is in direct contravention of FINRA Rules 13200, 2010 and IM-13000. FINRA Dispute Resolution prides itself on providing a fair, efficient, transparent, and economical forum to resolve disputes between firms, brokers, and investors. The purpose of FINRA Rule 13200 is to ensure market participants, both Members and their Associated Person employees, take advantage of it. The basis of mandatory FINRA arbitration is that FINRA not only can but *should* resolve intra-industry disputes, as it has what no private arbitration company

has: The authority, expertise, and Congressional mandate to resolve intra-industry disputes in a manner that fairly and efficiently protects the markets, market participants, and the public. FINRA has for decades promulgated rules and procedures, selected arbitrators, and developed materials that promote these goals.

FINRA Must Enforce Its Rules that Credit Suisse is Brazenly Disregarding

When Credit Suisse became a FINRA member firm it agreed "to comply with the federal securities laws, the rules and regulations thereunder...FINRA By-Laws, and all rulings, orders, directions, and decisions; issued...under the [FINRA] Rules." *See* FINRA Manual, Application for Registration. Credit Suisse has implemented the EDRP for its own benefit without regard for these obligations, FINRA rules, and FINRA's role as the industry's SRO.

The EDRP requires employees to arbitrate virtually all employment related claims against Credit Suisse in New York before a single arbitrator in either JAMS or AAA, private, non-regulatory fora.[1] This is inequitable and will be detrimental to associated persons, market integrity and the investing public. Credit Suisse will have exclusive knowledge of the dispositions, preferences and approaches of the arbitrators that serve in those forums. Credit Suisse will face only one non-industry arbitrator, without regard to the complexity and amount of the claim, selected only by mutual consent from a list that makes no distinction between public and industry experience and imposes none of FINRA's qualification and disclosure requirements. Credit Suisse will also avoid publication of awards against it, undermining FINRA's goal of transparency in the forum. Mandatory arbitration in New York is also prejudicial to out-of-state brokers who cannot get their locally based witnesses to travel to New York and who will have to incur additional travel expenses. Credit Suisse will have the benefit of its undisclosed financial arrangements with AAA and JAMS, creating an inherent conflict of interest between Credit Suisse and JAMS/AAA. Equally significant, JAMS or AAA offer no public oversight and accountability that FINRA has developed over years of arbitrating customer and industry disputes. Indeed, the Code permits arbitrators to refer to FINRA for investigation during the pendency or at the conclusion of the proceedings any matter that comes to the arbitrator's attention "which the arbitrator has reason to believe poses a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken." *See* FINRA Rule 13104. Without this, Credit Suisse will avail itself of FINRA never knowing about flagrant violations of FINRA rules that may be revealed during a AAA or JAMS arbitration. These are presumably the very reasons Credit Suisse has chosen JAMS or the AAA in its EDRP.

FINRA is unquestionably the better and more appropriate forum. Credit Suisse prefers not to use it. Credit Suisse has already filed a petition in the Southern District of New York on the basis of the EDRP seeking to stay FINRA claims filed by two brokers in Florida.[2] We believe that this is just the first of hundreds of cases Credit Suisse will attempt to bar from FINRA in the coming months. There is no better illustration that FINRA's role as the dispute resolution forum of the financial services industry is indispensable to its role as the financial services industry SRO. FINRA, as well as the SEC and Congress, may continue to make the

[1] *See* EDRP attached hereto at Exhibit A.
[2] *See* Petition to Stay FINRA Arbitration and to Compel Arbitration dated February 12, 2016 in the matter, *Credit Suisse v. Gittler and Spiegelman,* 1:16-cv-01108, attached hereto at Exhibit B.

rules, but the EDRP reflects the dogged determination of the industry to choose the decision makers and prejudice the brokers. This is why FINRA's arbitration provisions are mandatory and exclusive, and why they should never be enforced more vigorously than when a Member is trying to evade them.

The EDRP Threatens FINRA's Integrity as the Regulator of the Financial Services Industry

The EDRP, if upheld, cuts FINRA off at the knees. Even in its narrowest form, applying only to the Code, contractual waiver will allow Members to withdraw all of their employment, business, commercial, and competition disputes from FINRA and hide them in private arbitrations with no reporting requirements, no enforcement arm, no securities industry expertise, and no mandate to protect and promote healthy markets. Leaving aside its duty to enforce the securities laws and resolve disputes between Members and Associated Persons, FINRA will surrender its institutional presence in the marketplace, its capacity to measure the impact of its rules and the securities laws on actual market participants, a valuable enforcement mechanism, and all sense of how customers, Members, and Associated Persons are coming into and resolving their disputes. FINRA will not even know how many disputes there are.

The Industry Code, and many of the rules now enforced through FINRA arbitration, will cease to function as regulation and will become nothing more than one among many voluntary private dispute resolution mechanisms, with devastating consequences for employees, the rule of law, and FINRA's regulatory function. Compounding all the rest, FINRA will lose the significant revenue it derives from industry disputes, which it uses to fund investor protection, education and regulation.

There is no reason to believe contractual waiver applies only to industry disputes, however. In 2014, the Second Circuit Court of Appeals held that forum selection clauses in contracts between Members and customers supersede Rule 12200, permitting Members to force their customers out of FINRA arbitration and into state and federal court. *See Goldman, Sachs & Co. v. Golden Empire Sch. Fin. Auth.*, 764 F.3d 210, 217 (2d Cir. 2014) (substantially broadening its holding in *Applied Energetics, Inc. v. NewOak Capital Markets, LLC*, 645 F.3d 522, 526 (2d Cir. 2011) and finding that such clauses need not even contain specific waivers). The Ninth Circuit took the same view in *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 747 (9th Cir.). Even the Fourth Circuit, in requiring express and specific waiver of FINRA Rule 12200, held that Members can contract their customers out of FINRA and into court. *See UBS Fin. Servs., Inc. v. Carilion Clinic*, 706 F.3d 319, 328 (4th Cir. 2013). The language of these decisions strongly suggests that the federal courts would take the same approach to an arbitration clause waiving the FINRA Code in favor of another arbitration forum.

On January 28, 2016, the Second Circuit took that approach in an industry case, *Credit Suisse Securities (USA) LLC v. Tracy*, 2016 WL 336190 (2d Cir. 2016). While *Tracy* is an industry case and the Second Circuit held only that Rule 13200 is waivable, notwithstanding its own language, the language of the Securities Act, and the anti-waiver provision of Rule IM-13000, it is no more so than any other provision of the FINRA Rules deploying the words "must" and "shall" as though they mean "must" and "shall." At a minimum, Credit Suisse's reasoning

applies as naturally to Rule 12200.[3] The mandatory language is identical in the core provisions, 13200 and 12200, and the Industry and Customer Codes track one another throughout. There is no principled distinction here, and the Second Circuit's stray attempt at one is unpersuasive, particularly given its holding in *Golden Empire*. The court suggests, by footnote, that had FINRA wanted industry arbitration to be mandatory, it would have adopted an equivalent to Rule 2268, which lays out the requirements of a pre-dispute arbitration agreement between a customer and a Member and prohibits language derogating from the FINRA Rules. But FINRA did adopt an equivalent, Rule 2263, in the same "Disclosures" section, which requires a Member firm to inform an employee that he or she is submitting to binding FINRA arbitration each time he or she signs the Form U-4. The sole difference between these provisions is that customers are not bound to arbitrate in FINRA by default but must be bound by a pre-dispute arbitration agreement, the contents of which are governed by Rule 2268. Registered Persons are already bound to arbitration by the pre-dispute arbitration agreement in Section 15A(4) of the Form U-4, which tracks the requirements of Rule 2268.

FINRA also expressly prohibited derogation from mandatory arbitration in employment disputes. Under Rule IM-12000, it is a violation of Rule 2010 for a Member to fail to submit to a customer arbitration or otherwise fail to comply with the Code. Under Rule IM-13000, in identical language, it is a violation of Rule 2010 for a Member to fail to submit to an industry arbitration or otherwise fail to comply with the Code. Both IM-12000 and IM-13000 provide that: "It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure."

If contractual waiver is allowed in the EDRP, other FINRA Member firms will adopt the same provision and, indeed, some already have.[4] As there is no distinction in the FINRA Rules that will spare customers the fate of employees, the contractual waiver will inevitably be attempted in customer disputes as well.

FINRA Has the Authority to Enforce Its Mandatory Arbitration Rules

The Second Circuit's decision in *Tracy* concerns the effect of superseding contractual arbitration provisions under the Federal Arbitration Act. That decision is wrong. For FINRA, however, and the markets, investors, brokers, broker-dealers, and general public it serves, it is also beside the point. The Second Circuit did not rule on, did not consider, Rule IM-13000's anti-waiver provision, or FINRA's authority and obligation to enforce its mandatory arbitration rules generally. There is no question that Members are required to submit all industry disputes to

[3] FINRA Rule 12200 states as follows:
Parties must arbitrate a dispute under the Code if:
- Arbitration under the Code is either:
  (1) Required by a written agreement, or
  (2) Requested by the customer;
- The dispute is between a customer and a member or associated person of a member; and
- The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

[4] Undersigned counsel have lately seen JAMS provisions in settlement agreements with broker dealers.

FINRA arbitration *as a condition* of membership, nor that waiver provisions such as the EDRP violate a Member's obligation to observe high standards of commercial honor and just and equitable principles of trade.

The FINRA By-Laws provide for the imposition of sanctions against members who fail to submit a dispute for arbitration as required by the Code:

> Article XIII Powers of Board to Impose Sanctions
>
> Sec. 1. The Board is hereby authorized to impose appropriate sanctions applicable to members. including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation or activities, functions, and operations of a member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:
>
> ***
>
> failure by a member or person associated with a member to: (i) submit a dispute for arbitration as required by the Rules of the Corporation…

In 2012, FINRA censured and fined Merrill Lynch $1 million for failing to comply with its obligation to arbitrate disputes with its associated persons in violation of FINRA Rule 2010. The censure and fine arose out of promissory notes that were issued by a Merrill Lynch affiliate that was a non-FINRA member firm. The promissory notes required the brokers to bring any actions regarding the notes exclusively in New York Supreme Court, thereby waiving their right to arbitrate under the FINRA rules.

FINRA found that, notwithstanding that the promissory notes were issued by a non-FINRA Member entity, Merrill Lynch violated FINRA Rule 13200(a) and FINRA Rule 2010 (as defined by FINRA IM-13000) by instituting promissory note collection actions against associated persons outside FINRA's arbitration process. FINRA and Charles Schwab also agreed to a $500,000 sanction for including a class action waiver and prohibiting consolidated claims in arbitration. FINRA found that "Schwab violated NASD and FINRA rules by preventing arbitrators from consolidating claims in FINRA arbitration."

Tracy is of vital importance to FINRA in one respect: It is an unmistakable signal from the federal courts that they will not enforce the FINRA Rules under the Federal Arbitration Act, and it is unlikely to be the last. FINRA has both the obligation and the authority to compel Members to abide by the mandatory arbitration provisions of the Industry Code through censure, fine, or, if necessary, suspension for violations of Rules 13200, 2263, and 2010. Our clients, and all Associated Persons, small Member firms, investors, and the public, are entitled to the protections of the Code. Beyond all this, FINRA must act on its own behalf to continue functioning as a credible regulator.

The undersigned respectfully request a meeting or conference call to further explain our position and the serious effects of FINRA's inaction on this subject. Thank you in advance for your consideration of this matter.

ENC

Regards,

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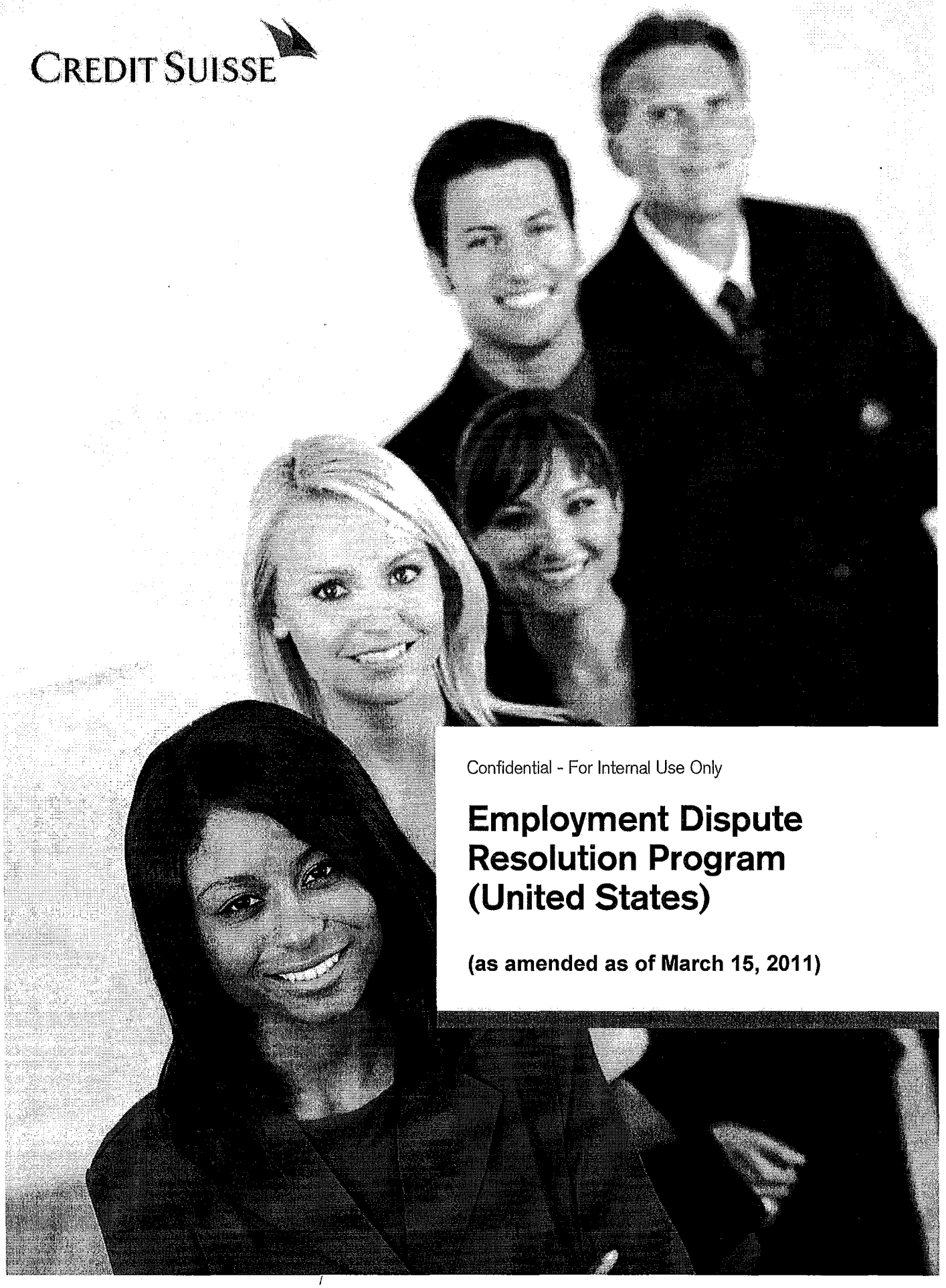
EXHIBIT A

CREDIT SUISSE



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Employment Dispute Resolution Program (United States)

(as amended as of March 15, 2011)

The Program

The Credit Suisse Employment Dispute Resolution Program (the "Program") is a three-step program of dispute resolution procedures. It is designed to provide employees located in the United States with an opportunity to resolve employment-related claims in a speedy, cost-effective, and confidential manner.

The three steps of the Program are an internal grievance procedure; mediation with a neutral third party; and final and binding arbitration before a neutral third party. These procedures are, and since January 1, 1998, have been, the only means by which Credit Suisse employees located in the United States are able to seek resolution of employment-related claims of the type covered by the Program. They may not sue in court as to these claims.

Credit Suisse is also required to bring any claims it may have against employees located in the U.S. under the Program if the claims are of the type covered by the Program.

As used herein, "Credit Suisse" includes all subsidiaries of Credit Suisse Group AG, including each of its past, present, and future legal entities, and its and their past, present and future directors, officers, and employees, in both their personal and their institutional capacities, and "employee" refers to both former employees and current employees and to applicants for employment.

The Types of Claims That Are Covered

All present and future claims against Credit Suisse by an employee, and all present and future claims against an employee by Credit Suisse, are covered by the Program if: (i) they relate to or arise from the employee's application for employment, employment, or termination (including manner of termination) of employment, or from events occurring after termination but relating to one of the foregoing, and (ii) they assert the violation or infringement of a legally protected right; provided that any internal appeal process set forth in a benefit plan must be followed to its completion prior to any claim under such benefit plan being deemed to be covered by the Program. Claims covered by the Program include, without limitation:

- All employment-related claims under Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, the Civil Rights Act of 1866, the Age Discrimination in Employment Act of 1967 ("ADEA") as amended by the Older Workers Benefit Protection Act, the Equal Pay Act of 1963, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Workers Adjustment and Retraining Notification Act, the Genetic Information Nondiscrimination Act of 2008, or any other federal, state, or local statute, ordinance, regulation, or common law rule or decision regarding employment discrimination, civil rights, human rights, whistleblower/public policy protection, conditions of employment, or termination (including manner or notice of termination) of employment, as the foregoing may from time to time be amended. State and local laws that are covered by the foregoing references include, without limitation, the laws of New York, California, Connecticut, Illinois, Texas, Florida, Georgia, Massachusetts, Maryland, New Jersey, North Carolina, Pennsylvania, and Washington, D.C. and any other state or any locality where Credit Suisse has, had, or may at any time have an office;

- Claims arising under the Employee Retirement Income Security Act of 1974 as amended ("ERISA") only to the extent permitted by law and set forth in the Program; and

- All claims of breach of a contract entered into or alleged to have been entered into in connection with an employee's employment, all claims asserted under the Credit Suisse Group Master Share Plan or any other equity or deferred compensation plan or any employee investment plan, and all employment-related claims for indemnification.

The types of employment-related claims that are not covered by the Program are:

- Claims arising under the National Labor Relations Act, claims for workers' compensation, and claims for unemployment benefits. These will continue to be handled in accordance with applicable law.

- Claims arising with respect to the following Credit Suisse benefit plans that are both insured and administered by a third party: Personal Accident Insurance Plan, Business Travel Accident Insurance Plan, Long-Term Care Insurance Plan, Retiree Group Life Insurance Plan, Excess Liability Plan, and any other similar third-party insured and administered benefit plan.

- Claims arising with respect to a Credit Suisse health care benefit program or disability benefit program that is defined as an "employee welfare benefit plan" within the meaning of ERISA and in which the employee is or claims to be a participant, except that the employee may elect that, upon the completion of the internal appeals process set forth in the applicable benefit program, the employee's claim shall be submitted to binding arbitration under the Program.

- Claims that are expressly prohibited by Federal or state statute (such as Sarbanes-Oxley claims) from pre-dispute arbitration agreements will only be subject to Steps One and Two of the Program, however, an employee may agree with the consent of Credit Suisse to submit these claims to arbitration to the extent permitted by law.

Claims of the type covered by the Program, as described above, are hereafter referred to as "Employment-Related Claims."

Other Important Information

- Credit Suisse personnel are specifically prohibited from taking any retaliatory action against an employee who has sought to use the Program. Violations of this rule will be treated with the utmost seriousness. Any employee who believes that he or she has been retaliated against for using the Program should immediately notify the Human Resources Department or the Legal and Compliance Department.

- Adoption of the Program and an employee's use of the Program will not affect an employee's status as an at-will employee, and will not limit Credit Suisse's ability to take disciplinary or other personnel action against the employee. If an employee believes he or she has an Employment-Related Claim against Credit Suisse as a result of its taking any such action, the employee may institute proceedings under the Program, but may not sue in court.

- Credit Suisse reserves the right to amend or repeal the Program at any time, upon notice. No such amendment or repeal will affect the applicability of the Program to Employment-Related Claims that arose before the effective date of the amendment or repeal.

- Establishment of the Program does not affect an employee's right to pursue, in accordance with applicable law, any administrative agency process that may be available to the employee.

- A Credit Suisse employee who is (or is required to be) a registered representative is not excused from complying with any aspect of the Program by virtue of such status. Neither Credit Suisse nor an employee may demand or file for arbitration with respect to an Employment-Related Claim in a forum not authorized under the Program.

- Nothing in the Program shall be construed to prevent Credit Suisse or an employee from invoking any applicable law, rule or procedure, in any court of competent jurisdiction, to compel arbitration under the Program or to obtain a temporary restraining order or preliminary injunction (i) in aid of arbitration, or (ii) to

prevent irreparable injury from occurring pending the commencement or completion of an arbitration under the Program. An employee's agreement to abide by the terms of the Program includes an agreement to submit to the jurisdiction of any available federal or state court located in New York City for proceedings of a type described in this paragraph. In the event Credit Suisse or an employee obtains a temporary restraining order or preliminary injunction of a type described in this paragraph, the party obtaining such relief shall, if requested, cooperate in efforts to reasonably expedite the arbitration process.

- An employee may not assert Employment-Related Claims in or as part of a class or collective action, or accept any money damages or other relief awarded to class members in such an action on account of any Employment-related Claim, unless such action is prosecuted in accordance with the provisions of the Program. Further, a mediator or arbitrator appointed pursuant to the Program may not consolidate Employment-Related Claims of different employees absent the written consent of Credit Suisse and all of the employees involved.

- If any provision of the Program is for any reason found by any court to be invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of the Program, but shall be confined and limited to the provision of the Program directly involved in the controversy in which such judgment was rendered.

- Credit Suisse is committed to the principles of alternative dispute resolution set forth in the Program and to the early resolution of employment disputes. In individual circumstances, it may deviate from the Program's provisions and procedures in order to promote these principles and benefit employees. Credit Suisse's doing so shall not constitute or be construed as a waiver by Credit Suisse of its right to require adherence to the Program's provisions or of the enforceability of the Program.

The Three Steps

Step One of the Program is the internal grievance procedure. Step Two is mediation before a neutral third party. Step Three is final and binding arbitration before a neutral third party. The three steps must be taken in sequence. The procedures an employee must follow to initiate each of the three steps and the manner in which proceedings pursuant to each step are to be conducted are explained below.

Step One – Internal Grievance Procedure

If an employee believes he or she may have an Employment-Related Claim against Credit Suisse, the employee should first, and as promptly as possible, bring the problem to the attention of an appropriate person at Credit Suisse. Generally an employee's supervisor will be in the best position to understand and resolve a problem because he or she is most likely to be familiar with the employee's working situation and to know the other personnel in the employee's department. The first person an employee speaks to should therefore usually be his or her supervisor. If an employee does not feel comfortable speaking to his or her supervisor (because, for example, he or she believes the supervisor is part of the problem), he or she should take the issue to the supervisor's supervisor or to another appropriate person above the supervisor in the department's chain of command. Instead of directly approaching a supervisor, an employee may also, at any point in the process, contact his or her Human Resources representative to discuss the issue. Supervisors with whom issues are raised should contact their Human Resources representatives for assistance in resolving such issues.

If Credit Suisse believes it has an Employment-Related Claim against an employee, it will bring the issue to the attention of the employee and seek to resolve the claim through discussions with the employee or his or her representative before proceeding to Step Two of the Program.

As a matter of Credit Suisse policy, all employment-related issues that are raised in connection with the foregoing dispute resolution procedure are to be handled confidentially to the extent reasonably practicable under the circumstances. Often the matter can be dealt with by a supervisor without his or her bringing anyone else (other than, in appropriate cases, a member of the Human Resources Department) into the discussions. At other times it may be necessary that another manager or other employees be consulted in order to resolve the matter. All supervisors, managers, and other employees are specifically prohibited from taking any retaliatory action against an employee who has raised an Employment-Related Claim and sought to utilize the foregoing procedure or any of the other dispute resolution procedures set out in the Program. Step One of the Program may be used not only in connection with Employment-Related Claims but also in connection with any other employment-related grievances an employee may have.

Step Two – External Mediation

If an employee or Credit Suisse raised an Employment-Related Claim through the Step One internal grievance procedure and believes the dispute was not satisfactorily resolved through that procedure, he or she or it may elect to proceed to Step Two. Step Two consists of the mediation of an Employment-Related Claim by a neutral third party. To elect to proceed to mediation, an employee or Credit Suisse must make a request for mediation in the manner described below. Each may also request mediation of an Employment-Related Claim asserted by the other. An employee or Credit Suisse may request mediation only in respect of an "Employment Related Claim," as that term is defined above.

What Mediation Is

In mediation, the parties (and, if they so choose, their attorneys) meet in a confidential setting with a neutral third party, the mediator. The mediator encourages the parties to discuss their differences and assists them in developing a resolution that is satisfactory to each of them. If the parties are able to resolve their dispute through the mediation process, they typically set forth the terms of their agreement in a legally binding writing.

Mediation is widely considered a much more effective and appropriate means than litigation for resolving employment-related disputes. The proceedings are private, confidential, and flexible. If the dispute is resolved, the resolution is not one that was imposed on the parties but rather is one both parties played a part in designing and to which they both agreed. Often the parties are able to resume an amicable relationship after the resolution is achieved.

Conduct of Mediation

All mediations pursuant to the Program will be conducted by a single mediator supplied by JAMS, an independent provider of dispute resolution services. The mediator will be experienced in resolving disputes involving employment issues.

Making a Request for Mediation

To make a request for mediation of an Employment-Related Claim under the Program, an employee or Credit Suisse, as the case may be, must submit a written request to the other (to the attention of the employee's Human Resources representative and to the Legal and Compliance Department in the case of a request made by an employee) and to JAMS and pay a filing fee of $200 to JAMS. Employees requesting mediation of an Employment-Related Claim asserting rights under ERISA shall not be required to pay the filing fee to JAMS. Employees may obtain a copy of the request form from the Human Resources Department or the Legal and Compliance Department.

Time Period for Making Request

A request for mediation under the Program must be filed within six months of the time that the complained of action or actions took place, or during such longer period as is allowed by any statute of limitations applicable to the Employment-Related Claim in question. If an employee or Credit Suisse does not file a request for mediation within the required period, he or she or it will forfeit any further right to make use of the Program and will be foreclosed from bringing an action in any court on the Employment-Related Claim.

Step Three – Final, Binding Arbitration

It is Credit Suisse's expectation that most Employment-Related Claims will be resolved through Step One or Step Two. If, however, an employee or Credit Suisse has made an effort to resolve such a claim through mediation in accordance with Step Two but the mediation proceedings did not result in a resolution, he or she or it may proceed to Step Three, final and binding arbitration. To elect to proceed to arbitration, the employee or Credit Suisse must (1) in matters other than seeking a temporary restraining order or a preliminary injunction, notify the other side in writing two weeks prior to filing a request for arbitration that, in the party's view, the mediation proceedings are not likely to result in a resolution, and (2) make a request for arbitration in the manner described below. Final, binding arbitration will be an employee's and Credit Suisse's exclusive remedy for resolving an Employment-Related Claim that was mediated unsuccessfully. Both the employee and Credit Suisse will be bound by any decision rendered by an arbitrator pursuant to Step Three, whether in respect of a claim asserted by an employee or in respect of a claim asserted by Credit Suisse, subject to the right to seek judicial review of the decision in accordance with applicable law.

What Final, Binding Arbitration Is

Final, binding arbitration is a process in which a dispute is presented to a neutral third party, the arbitrator, for a final and binding decision. The arbitrator renders a decision after considering the evidence and arguments presented by both parties.

Arbitration is less formal than a court trial and generally is quicker. It is, however, an orderly proceeding, governed by rules of procedure and legal standards of conduct. Each party has the right to pre-hearing discovery in accordance with the rules of the forum selected to hear the dispute, to present his or her proof, through testimony and documentary evidence, and to cross-examine the other party's witnesses. The arbitrator's decision is legally enforceable. In other words, the party to whom relief is granted may, if the other party does not comply with the terms of the award, sue in court to enforce the award.

Conduct of Arbitration

All arbitrations under the Program will be conducted by a single arbitrator, or upon written consent of both parties, a panel of three arbitrators, supplied by JAMS or the American Arbitration Association ("Service Providers"). The arbitrator(s) will be selected, and the arbitration proceeding will be conducted, in accordance with the rules and procedures of such Service Provider applicable to the arbitration of employment disputes (the "Employment Arbitration Rules" of such entity), as such rules and procedures are then in effect. JAMS and the American Arbitration Association are both independent, experienced providers of arbitration services. The party that first requests an arbitration will choose which of the two Service Providers will be used for the proceeding. Copies of the two Service Providers' current Employment Arbitration Rules are available from the Legal and Compliance Department.

Making a Request for Arbitration

To make a request for arbitration of an Employment-Related Claim under the Program, an employee or Credit Suisse, as the case may be, must submit a written request to the other (to the attention of the employee's Human Resources representative and the Legal and Compliance Department in the case of a request made by an employee) and to the Service Provider he or she or it has selected. No filing fee in

addition to the filing fee of $200 payment that was required in order to initiate the mediation of such claim under the Program is required to be paid to commence an arbitration. Employees may obtain a copy of the request form from the Human Resources Department or the Legal and Compliance Department.

Time Period for Making Request

A request for arbitration under the Program must be filed within six months of the time that the complained of action or actions took place, or during such longer period as is allowed by any statute of limitations applicable to the Employment-Related Claim in question. The time that elapses from when a request for mediation is filed pursuant to Step Two of the Program until two weeks after the employee gives Credit Suisse written notice, or Credit Suisse gives the employee written notice, that, in such party's view, the mediation proceedings are not likely to result in a resolution will not be counted in calculating the time remaining in the applicable period. If an employee or Credit Suisse does not file his or her or its request for arbitration within the required period, he or she or it will forfeit any further right to make use of the Program and will be foreclosed from bringing an action in any court with respect to the Employment-Related Claim.

Arbitration of a Claim Related to a Credit Suisse Health Care Benefit or Disability Benefit Program

As described above, an employee who asserts a claim with regard to a Credit Suisse health care benefit program or a disability benefit program and who has completed the internal appeals steps provided by the benefit program may voluntarily elect to appeal his or her claim to binding arbitration as an alternative to proceeding to court. If, upon completing the internal appeals steps, the employee does not elect to proceed to arbitration, Credit Suisse will not assert a failure to exhaust the administrative remedies contained in the benefit program under which the dispute arises, and any statute of limitations or any defense based on timeliness shall be tolled during the period of the arbitration. The employee's election to participate in binding arbitration or not to do so shall have no effect on the employee's rights to any other benefits under any Credit Suisse benefit plan. If the employee elects binding arbitration of such a claim, that claim shall be denominated an Employment-Related Claim and the provisions of the Program shall be applicable to such claim, except that the employee shall not be required to pay any filing fee with regard to the commencement of the arbitration.

Additional Mediation and Arbitration Rules and Procedures

The following additional rules and procedures will apply to any mediation or arbitration under the Program, whether initiated by an employee or by Credit Suisse:

1. Representation by Counsel. An employee as well as Credit Suisse will have the right to be represented by counsel. Each will be responsible for paying the fees and disbursements of his or her or its own counsel, unless otherwise directed by an arbitrator(s) pursuant to his or her authority referred to in paragraph 6 below.

2. The Mediator or Arbitrator(s). The mediator or arbitrator(s) will be experienced in employment law and will be neutral and impartial. Any mediator or arbitrator(s) will be selected by agreement of the employee and Credit Suisse from a panel provided by the mediation or arbitration service. If the employee and Credit Suisse cannot agree on a mediator or arbitrator(s), the service provider will make the selection in accordance with its procedures as then in effect.

3. Expenses. There will be various expenses associated with a mediation or arbitration, such as the mediator's or arbitrator(s)'s daily fees and travel expenses. In the case of a proceeding under the Program initiated by an employee, the employee will, as noted above, be responsible for an initial filing fee of $200, payable prior to commencement of Step Two (mediation). Credit Suisse will, with the employee's consent, bear all of such expenses of the mediator, or of the arbitrator(s) in any subsequent, related arbitration, that are in excess of the initial filing fee. Each party will be responsible for the fees

and disbursements of his or her or its own counsel and the expenses relating to the production of witnesses or other evidence by him or her or it, subject to the authority of the arbitrator(s) set forth in paragraph 6 below.

4. Location of a Mediation or Arbitration. Any mediation or arbitration will be held in the New York City metropolitan area or, at the request of the party initiating the proceeding and with the consent of the other party, in the location of the Credit Suisse office where the employee applied for a position or works or worked when the complained of action or actions took place. If a proceeding initiated by an employee in respect of an Employment-Related Claim asserted by him or her takes place other than in the location of the office where the employee applied for a position or works or worked when the complained of action or actions took place, Credit Suisse will reimburse the reasonable expenses of the employee and any witnesses produced by him or her in an arbitration for their expenses incurred in connection with traveling to the site of the proceeding.

5. Governing Law. The law applied by a mediator or arbitrator(s) will be the laws of the State of New York, without regard for the conflicts of laws principles thereof that could result in the application of another jurisdiction's law.

6. Authority of Arbitrator(s). In the case of an arbitration, the arbitrator(s)'s authority will be limited to the resolution of legal disputes between the employee and Credit Suisse. The arbitrator(s) will be bound by and will be required to apply all applicable law, including that relating to the allocation of the burden of proof and remedies (including any award of attorney's fees) for violations of such law, if any, as well as all points of substantive law. Similarly, the arbitrator will be bound by and will be required to apply all applicable law for the award of remedies with respect to any claims asserted before the arbitrator (including any award of attorney's fees and costs to a prevailing party). He or she will have no authority either to abridge or to enlarge substantive rights available under existing law. He or she will not have authority to consolidate separate arbitration proceedings or to entertain class-wide claims, absent the express written consent of the employee(s) and Credit Suisse. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone not a named party to the arbitration.

7. Arbitrator(s)'s Decision in Writing. The arbitrator(s) will be required to render a written award that identifies the parties, summarizes the issues in controversy, and sets forth the decision of the arbitrator(s) and the factual and legal bases for the decision.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CREDIT SUISSE SECURITIES (USA) LLC, Petitioner, v. ALAX GITTLER and MERYL SPIGELMAN, Respondents.	Case No. 16-cv-1108

PETITION TO STAY FINRA ARBITRATION AND TO COMPEL ARBITRATION ACCORDING TO THE PARTIES' AGREEMENTS

Petitioner, by its undersigned attorneys, hereby seeks an injunction under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, requiring Respondents Alax Gittler and Meryl Spigelman to withdraw the arbitrations they have filed before the Financial Industry Regulatory Authority ("FINRA") and to compel arbitration of their claims, if any, in JAMS, according to Respondents' signed agreements with Petitioner. In support of its Petition, Petitioner states as follows:

The Parties

1. Petitioner, Credit Suisse Securities (USA) LLC ("Credit Suisse" or "Petitioner"), is a limited liability corporation organized and existing under the laws of the State of Delaware with its principal place of business at 11 Madison Avenue, New York, New York 10010. Credit Suisse is a wholly owned subsidiary of Credit Suisse (USA), Inc., a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 11 Madison Avenue, New York, New York 10010.

2. Upon information and belief, Respondent Alax Gittler ("Gittler") is a resident and citizen of the State of Florida. Until the time his resignation became effective, Gittler held the position of Relationship Manager with the corporate title of Director in Credit Suisse's Private Banking USA Group ("Private Banking").

3. Upon information and belief, Respondent Meryl Spigelman ("Spigelman") is a resident and citizen of the State of Florida. Until the time her resignation became effective, Spigelman held the position of Relationship Manager with the corporate title of Vice President in Private Banking.

Jurisdiction and Venue

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties in each case, and more than $75,000, exclusive of interest and costs, at stake in each underlying arbitration between the parties.

5. Venue is proper in this district because the arbitration agreement sought to be enforced requires arbitration in New York, New York.

Factual Allegations

6. Upon information and belief, Respondents are sophisticated financial professionals, each having decades of experience in the securities industry. At the time of their resignations from Credit Suisse, Gittler had been employed at Credit Suisse for over 15 years and Spigelman for more than seven. At all times relevant hereto, both were Relationship Managers in the Private Banking division of the Credit Suisse's Miami, Florida office.

7. As a Relationship Managers, Respondents serviced many of Credit Suisse's valuable clients and managed many complex and sophisticated accounts. Gittler was a Credit Suisse Director and Spigelman was a Vice President, corporate titles that reflected their experience and the trust Credit Suisse placed in them.

8. At all times relevant hereto, Respondents' employment and compensation were governed by various documents including their signed offer letters, the written plans under which they were compensated, and the Credit Suisse United States Employment Handbook (the

"Handbook"), which included the Credit Suisse Employment Dispute Resolution Program (the "EDRP") which is appended thereto.

9. By letter dated December 1, 2015, Respondent Gittler resigned from Credit Suisse. Although Gittler asserted, in this letter, that his resignation was not "voluntary," he also stated "I have chosen employment at UBS Financial Services, Inc."

10. By letter dated December 1, 2015, Respondent Spigelman resigned from Credit Suisse. Spigelman also claimed, in her letter, that her resignation was not "voluntary," but she too stated "I have chosen employment at UBS Financial Services, Inc."

11. With the exception of the names and signatures, Respondents' resignation letters are identical in all respects: they consist of five paragraphs of identical language, in identical fonts, with identical included graphics and capitalization for emphasis of certain words. Both letters identify Curtis Carlson as counsel for Respondents.

12. Upon receipt of the letters, Credit Suisse replied to Mr. Carlson, rejecting the assertion that Respondents' resignation had not been voluntary, and reserving its rights.

Respondents' Compensation

13. Respondents were well compensated at Credit Suisse, including by base salary, commissions, bonus compensation and various awards of deferred compensation.

14. All deferred compensation at issue here is governed by the Credit Suisse Group Master Share Plan (the "Share Plan"), and various Award Certificates (the "Awards") reflecting awards made thereunder.

15. The Share Plan and the Awards at issue all state, among other things, that any vesting of unvested deferred compensation awards ceases upon an employee's voluntary resignation from Credit Suisse.

16. The Share Plan also states that "Any dispute between the Group and a Participant, including without limitation, any dispute under the Plan or any Award Certificate, shall be finally settled in accordance with the Group's alternative dispute resolution policy applicable to the Participant as in effect from time to time." The Awards at issue explicitly refer back to that Share Plan language in their sections on dispute resolution.

17. At all times relevant hereto, the alternative dispute resolution policy applicable to Respondents was the EDRP, as it was part of the governing employment handbook and specifically agreed to by Respondents as set forth below.

18. Among other things, the EDRP requires that "[a]ll arbitrations under the Program will be conducted" by arbitrators "supplied by JAMS or the American Arbitration Association," at the election of the party initiating the arbitration. Furthermore, the EDRP provides that binding arbitration before one of those two fora will be "an employee's and Credit Suisse's exclusive remedy for resolving an Employment-Related Claim that was mediated unsuccessfully." The EDRP expressly forbids Respondents from pursuing their Employment-Related Claims in any other forum.

19. Despite the clear terms of these agreements, Respondents now seek to bring claims against Credit Suisse for payment of their unvested deferred compensation, in FINRA arbitration, in violation of the EDRP.

20. These claims are without merit; but for purposes of this petition, the merits of the underlying claims are not before the Court.

21. Rather, Credit Suisse here seeks only to enforce the choice of arbitral forum set out in the EDRP.

22. Thus, the only issue for this Court is the enforceability of the choice of forum to which Respondents agreed in accepting the EDRP and the benefits that went along with it.

23. This Court has repeatedly addressed that exact issue, under identical circumstances, and decided it in Credit Suisse's favor; and the Second Circuit recently and unambiguously upheld those decisions, noting that "the EDRP's arbitration-forum provisions are enforceable, and the district court did not err in compelling Employees to dismiss the FINRA arbitration and pursue their claims before JAMS." *Credit Suisse Sec. (USA) LLC v. Tracy*, No. 15-345-CV, 2016 WL 336190, at *5 (2d Cir. Jan. 28, 2016).

Respondents' Agreements to Abide by Credit Suisse's Employment Dispute Resolution Program

24. By accepting the monetary benefits of the Share Plan, and now seeking to bring actions relating to additional benefits thereunder, Respondents have accepted the terms of the Share Plan, including the obligation to resolve disputes by the terms set out therein.

25. In addition to the Share Plan, which explicitly requires disputes to be addressed under the operative dispute resolution program (here, the EDRP), Respondents repeatedly agreed to resolve disputes with Credit Suisse under the EDRP in multiple enforceable contracts.

26. For example, at the time of her employment by Credit Suisse in 2008, Spigelman signed and accepted an offer letter dated May 30, 2008 that explicitly stated:

> All United States employees are subject to the Credit Suisse United States Employment Dispute Resolution Program, as amended from time to time (the "Program"). The Program provides that all employment-related claims, including all statutory claims, an employee may at any time have are to be resolved through a three-step process consisting of an internal grievance procedure; mediation before an independent service provider; and (in the case in which a claim is not resolved through the first two steps) binding arbitration before one of three independent service providers in accordance with its arbitration rules. Any disputes arising hereunder shall be resolved in accordance with such Program.

27. On June 5, 2008, in connection with the commencement of her employment, Spigelman also signed a one-page "Agreement to Use Employment Dispute Resolution Program Procedures" in which she again agreed to be bound by the EDRP.

28. In addition, as U.S. employees of Credit Suisse, both Gittler and Spigelman were bound by the provisions of the Handbook, which specifically states, in the section on "Workplace Rules:"

> Credit Suisse has adopted an Employment Dispute Resolution Program that provides that all employment-related claims a U.S.-based employee may at any time have, including any arising in connection with his or her application for employment, employment or termination of employment, must be resolved through a three-step process consisting of the internal grievance procedure described above; mediation before an outside service provider; and if the claim is not resolved through the first two steps, binding arbitration before one of two outside service providers in accordance with the service provider's arbitration rules as then in effect. . . A copy of a Statement of Policy describing the Employment Dispute Resolution Program has been provided to every U.S. employee and is given to every new U.S. employee. A copy is also included in this Handbook, as Appendix A.

29. As noted, a copy of the EDRP was included with the Handbook and provided to all U.S. employees, including Respondents.

30. By continuing to work at Credit Suisse (Gittler for more than 15 years and Spigelman for more than seven), and by accepting the very substantial compensation and benefits that flowed from their employment year after year, Respondents agreed to be bound by the terms and conditions of employment set out in the Handbook.

31. If this were not enough, however, Respondents also repeatedly and explicitly agreed, year after year (through an annual electronic compliance program that required them to electronically acknowledge and agree), to be bound by the Handbook and, specifically, that they

were aware of and agreed to be bound by the provisions of the applicable employment dispute resolution program, the EDRP.

32. Respondents were required to confirm their acceptance of these terms annually, and did so most recently for calendar year 2014, the last full year of their employment with Credit Suisse.

33. Thus, through their agreements (written and electronic), their employment, and their acceptance of substantial awards under the Share Plan, Respondents agreed to be bound by the EDRP.

34. The EDRP covers "Employment-Related Claims," which are defined as "[a]ll present and future claims against Credit Suisse by an employee, and all present and future claims against an employee by Credit Suisse . . . if (i) they relate to or arise from the employee's application for employment, employment, or termination (including manner of termination) of employment, or from events occurring after termination but relating to one of the foregoing, and (ii) they assert the violation or infringement of a legally protected right." The EDRP explicitly governs any claim brought under the Share Plan.

35. Under the terms of the EDRP (the "EDRP Procedures"), if a current or former employee seeks to assert Employment-Related Claims against Credit Suisse, he or she must follow a three-step procedure: (1) the employee must partake in the internal Credit Suisse grievance procedure by "bring[ing] the problem to the attention of an appropriate person at Credit Suisse"; (2) if the employee "believes the dispute was not satisfactorily resolved through [the internal grievance] procedure, he or she may elect to proceed" to mediation "by a neutral third party"; and (3) if "an employee or Credit Suisse has made an effort to resolve . . . a claim through mediation . . . but the mediation proceedings did not result in a resolution, he or she or it

may proceed to . . . final and binding arbitration." The EDRP Procedures also apply to any Employment-Related Claim Credit Suisse asserts against a current or former employee.

36. The EDRP requires that "[a]ll arbitrations under the Program will be conducted" by arbitrators "supplied by JAMS or the American Arbitration Association," at the election of the party initiating the arbitration. Furthermore, the Procedures provide that binding arbitration before one of those two fora will be "an employee's and Credit Suisse's exclusive remedy for resolving an Employment-Related Claim that was mediated unsuccessfully." Moreover, the EDRP Procedures expressly forbid Respondents from pursuing their Employment-Related Claims in any other forum.

37. The EDRP requires that "[a]ny mediation or arbitration will be held in the New York City metropolitan area or, at the request of the party initiating the proceeding and with the consent of the other party, in the location of the Credit Suisse office where the employee applied for a position or works or worked when the complained of action or actions took place." Credit Suisse has not consented to arbitration of this matter in any other venue.

Respondents Resigned from Credit Suisse, Immediately Began Working for a Competitor, and have now Purported to Commence Arbitration in FINRA, In Violation of the EDRP

38. On or about December 1, 2015, Respondents resigned together from Credit Suisse and immediately began working for UBS, a competitor of Credit Suisse.

39. As a result of their resignations, Respondents were not entitled to the unvested balance of certain Awards made under the Share Plan.

40. Respondents contest this determination, and, upon information and belief, have filed separate actions in FINRA seeking payment of the unvested portions of those Awards.

41. Credit Suisse has not been served with the claim filed by Respondent in FINRA but a copy of the claim filed by Respondent Gittler has appeared in the industry press.

42. On February 12, 2016 Credit Suisse, acting pursuant to Step 2 of the EDRP, initiated mediations against Respondents to attempt to resolve the issues set out in the FINRA claims. In the event those mediations are not successful, the claims will have to be arbitrated in JAMS or the AAA in New York, pursuant to the terms of the EDRP.

43. The claims asserted by Respondents in FINRA are all Employment-Related Claims, as they arise out of the employment relationship and seek payment of amounts under the Share Plan, which is explicitly governed by the EDRP.

44. These Employment-Related Claims must be arbitrated before JAMS or AAA, and Respondents' initiation of FINRA proceedings is a violation of the parties' written agreements.

Prayer for Relief

45. The parties' agreements to arbitrate Employment-Related Claims pursuant to the procedures set forth in the EDRP are enforceable by this Court pursuant to the Federal Arbitration Act, 9 US.C. § 1, *et seq.*, which specifically authorizes this Court, upon this Petition, to enter an Order directing that arbitration proceed in the manner provided for in the arbitration agreement. *See* 9 U.S.C. § 4.

46. The parties' agreements to arbitrate Employment-Related Claims pursuant to the procedures set forth in the EDRP is also enforceable by this Court pursuant to New York C.P.L.R. § 7503, which authorizes this Court, sitting in diversity, to enforce an agreement to arbitrate through the issuance of an Order compelling arbitration in the manner specified in the agreement.

WHEREFORE, Petitioner Credit Suisse requests that the Court enter an injunction:

A. Directing Respondents immediately to withdraw their claims from FINRA arbitration;

B. Directing Respondents to arbitrate their claims, if at all, before JAMS in accordance with the provisions of the EDRP; and

C. Awarding Petitioner such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 12, 2016

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