Financial Services Authority

FINAL NOTICE

To: Credit Suisse (UK) Limited (***Credit Suisse UK***)

FSA Reference Number: 124269

Address: 5 Cabot Square
London
E14 4QJ

25 October 2011

1. PROPOSED ACTION

1.1. For the reasons given in this Notice, the FSA hereby imposes on Credit Suisse UK a financial penalty of £5.95 million.

1.2. Credit Suisse UK agreed to settle at an early stage of the FSA's investigation. It therefore qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £8.5 million on Credit Suisse UK.

2. SUMMARY OF REASONS

2.1. During the period from 1 January 2007 to 31 December 2009 (the Relevant Period), Credit Suisse UK breached Principle 3 by failing to take reasonable care to establish and maintain effective systems and controls in respect of the suitability of its advice regarding structured capital at risk products (SCARPS) to its private banking retail advisory customers (Customers).

2.2. One of the FSA's regulatory objectives is the protection of consumers. Consumers, some of whom may be reliant on their financial assets as a source of income, may seek professional advice from firms to help achieve their investment objectives. Firms must therefore take reasonable care to ensure that they provide advice which is suitable for a customer's individual needs and circumstances. In order to do this, firms must have adequate systems and controls in place. This is particularly important when a firm is selling complex investment products, including SCARPs, to customers.

2.3. However, during the Relevant Period, Credit Suisse UK:

(1) failed to have in place adequate systems and controls in respect of the determination of Customers' attitudes to risk. The methods used by Credit Suisse UK to assist in determining and articulating Customers' attitudes to risk were inadequate. As a result, there was an unacceptable risk that Credit Suisse UK may not have accurately understood the level of risk that Customers were willing to accept from their investments;

(2) failed to take reasonable care to adequately evidence that the SCARPs it recommended to its Customers were suitable, given the assets and investments held by those Customers at the time. A review carried out by a skilled person found that for 17 of the 24 SCARP transactions they tested, there was insufficient evidence of consideration of the Customer's overall portfolio by Credit Suisse UK when determining whether the transactions were suitable for the Customer;

(3) failed to have in place adequate systems and controls surrounding the recommendation of leverage to Customers. Where leverage was used to fund transactions, there was often no documentation available to evidence the rationale for recommending leverage, the appropriateness of the amount of leverage in the context of the Customer's overall wealth, or whether the risks associated with the use of leverage had been considered by the relevant Relationship Managers. In addition, there was no formal mechanism to monitor the amount of leverage within Customers' portfolios;

(4) failed to have in place adequate systems and controls surrounding the levels of issuer and investment concentration within Customers' portfolios. There was often no documentation available to evidence that issuer or investment concentration had been considered by the relevant Relationship Managers. Further, there was no formal mechanism to monitor the levels of issuer or investment concentration in Customers' portfolios; and

(5) did not effectively monitor its staff to ensure that they took reasonable care to ensure the suitability of their advice. The conduct of the Relationship Managers was not effectively monitored, as in a significant number of cases the number of Relationship Managers within the scope of oversight of a given Team Leader or Sector Head was too high, or the relevant management had too many competing responsibilities. In addition, Credit Suisse UK management failed to use its internal evidencing tool adequately. This tool was intended to demonstrate that management had reviewed, among other things, the suitability of transactions. An internal report identified that these reviews were sub-standard in 44% of cases.

2.4. As a result of the above failings, Credit Suisse UK's Customers were exposed to an unacceptable risk of being sold a SCARP which was unsuitable for them. The FSA has not proceeded to examine whether any individual advised sales were in fact unsuitable.

2.5. Credit Suisse UK has agreed to carry out a review, overseen by and involving an independent third party, in relation to its sale of SCARPs to Customers who purchased these products during the Relevant Period to ensure that Customers do not lose out as a result of the failings identified in this Notice. As part of this process, Customers may be contacted if this is necessary to allow a decision on suitability to be made. If a Customer has been advised to purchase an unsuitable product, redress will be paid to the Customer to ensure that they have not suffered financially as a result. Credit Suisse UK's agreement to undertake this review has been taken into account when deciding upon the level of financial penalty imposed.

2.6. The FSA considers these failings to be particularly serious because:

(1) A significant amount of Customers' money was placed at risk by Credit Suisse UK's failings. During the Relevant Period, approximately 623 of Credit Suisse UK's Customers invested in excess of £1.099 billion in 1,701 SCARPs.

(2) Credit Suisse UK is one of the leading private banks in the UK. As a result of its competitive position in the market, the firm's practices set an example which is seen by other market practitioners and customers. It is vital therefore that Credit Suisse UK takes reasonable care to ensure the suitability of its advice to Customers.

(3) Credit Suisse UK's failings spanned a period of three years.

2.7. Credit Suisse UK's failings therefore merit the imposition of a significant financial penalty.

2.8. Since the discovery of its failings in 2010, Credit Suisse UK and its current senior management have worked with the FSA in an open and co-operative manner. Credit Suisse UK has also made a significant number of changes to its advisory processes, which have been driven by senior management. It has enhanced the systems and controls in place to ensure the suitability of its advice to Customers. It has also undertaken an extensive exercise to ensure that the information it holds in relation to all of its Customers is accurate and up to date.

3. DEFINITIONS

3.1. The definitions below are used in this Warning Notice.

"CAB" means Client Acceptance Booklet;
"Credit Suisse UK" means Credit Suisse (UK) Limited;
"DEPP" means the Decisions Procedure and Penalties manual;
"ENF" means the Enforcement Manual;
"MICOS" means Managing the Internal Control System;
"PCRM" means the Private Client Relationship Management system;
"the Act" means the Financial Services and Markets Act 2000;
"the FSA" means the Financial Services Authority;
"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber); and
"TSF" means the Transaction Suitability Form.

4. FACTS AND MATTERS

Background

4.1. Credit Suisse UK is a private bank operating within the UK, providing investment advisory services to high net worth individuals, trusts, corporate entities and intermediary firms, based both in the UK and overseas. As at 31 March 2011, Credit Suisse UK managed £9.84 billion worth of assets on behalf of its 5,474 customers.

The framework at Credit Suisse UK

4.2. During the Relevant Period, Credit Suisse UK operated a framework for providing advisory services to its Customers. This framework was intended, among other things, to gather information about Customers' attitudes to risk and investment objectives to enable Credit Suisse UK to provide suitable advice to these customers.

4.3. As part of this framework, Credit Suisse UK had in place an electronic information capturing system, PCRM, to record customers' attitudes to risk and investment objectives. It also made and retained notes of relevant customer interactions with respect to the sale of products. Additionally, in respect of various complex products (which included all SCARPs), Credit Suisse UK's Relationship Managers were required to complete an additional form, the TSF, to evidence the suitability of such transactions prior to their execution.

Relationship Managers

4.4. In an advisory relationship, Relationship Managers had the primary responsibility for providing advice to Credit Suisse UK's Customers. They were the main points of contact for these Customers and were also responsible for completing the required documentation evidencing Customer interactions and suitability. In conjunction with the Customers, and where appropriate, with the support of other Credit Suisse UK specialist groups, they also devised investment approaches to meet individual Customers' attitudes to risk and investment objectives.

SCARPs

4.5. During the Relevant Period, Credit Suisse UK recommended and sold a large number of SCARPs to its Customers. SCARPs are complex financial products that provide an agreed enhanced level of income to customers over a specified period but also expose them to a range of outcomes in relation to the return of the initial capital. The amount of capital returned to the customers on the maturity of the SCARP is generally dependent on the performance of a basket of indices (e.g. FTSE 100) or equities (e.g. shares in particular companies) or other assets. If during the life of the SCARP, one of the indices breaches a set barrier (e.g. 60% of that index's starting level), the investor's capital becomes at risk, and the amount of capital returned to the customer can be significantly reduced. During the Relevant Period, whilst Customers were receiving income, the total value of capital losses suffered by Credit Suisse UK's Customers as a result of investments in SCARPs was estimated at £198.2 million (although it should be noted that these losses occurred at a time of unprecedented turmoil in the financial markets).

4.6. Each individual SCARP may have a different risk profile, which depends on a number of factors including the term of the SCARP, the underlying indices or equities or other assets, and the relevant barriers and market conditions during the life of the product. However, all SCARPs expose the customer to the potential loss of part or, under certain conditions, all of the initial capital invested. It was therefore important when recommending a SCARP that Credit Suisse UK took reasonable care to ensure that each individual SCARP was suitable for each particular Customer, and that the relevant Customer fully understood the nature of and risks involved in investing in that SCARP.

4.7. The FSA's concerns regarding Credit Suisse UK arose as a result of a routine visit to the firm in December 2009. As a result of those concerns, in March 2010, the FSA instructed Credit Suisse UK to appoint a skilled person under section 166 of the Act to review the systems and controls it had in place to support the suitability of recommendations provided to its Customers. The scope of this review included assessing the adequacy and effectiveness of systems, controls and management oversight with respect to the suitability of these recommendations. The review also included a review of a sample of Credit Suisse UK's Customer files to examine how Credit Suisse UK was implementing those systems and controls in practice. The skilled person reported its findings to Credit Suisse UK in February 2011.

Attitude to risk and investment objectives

Client Acceptance Booklet

4.8. Credit Suisse UK's procedures required a new Customer to complete a CAB as part of the customer acceptance process. The responsibility for completing this booklet lay with the relevant Customer, but they were assisted in its completion by their Relationship Manager.

4.9. The CAB required each Customer to provide information on their background, knowledge and experience, level of wealth, attitude to risk, investment purpose and timeframe for investments. The Customer was also required to provide the portfolio mandate, which included the Customers' investment objectives. The CAB was the primary method by which Credit Suisse UK gathered and recorded a Customer's initial attitude to risk and investment objectives.

A Customer's attitude to risk

4.10. The method for determining a Customer's overall attitude to risk involved the Customer scoring themselves between one and five in relation to five questions contained in the section on risk profiling in the CAB. After the Customer had completed these questions, they were asked to add up the value attributed to each question and calculate an average. This was then rounded to the nearest full number and provided the risk indicator for the Customer.

4.11. Each risk indicator corresponded to a risk profile. The available risk profiles were 'low', 'moderate', 'medium', 'enhanced' and 'high'. Each profile was accompanied by a brief explanatory statement in the CAB. However, although the CAB would have been discussed and, typically, completed in conjunction with the Relationship Manager, the wording of some of these statements may have been unclear to inexperienced investors, as it gave little practical indication to the Customer of the level of risk which the Relationship Managers would consider acceptable when recommending products to them. For example, an investor with a 'medium' risk profile was stated to have '*a more pronounced appetite for risk for all or a portion of the investor's portfolio'*.

4.12. Further areas contained in the CAB were also unclear. One question contained in the risk profiling section of the CAB dealt with a Customer's attitude to volatility. To assess this, the Customer was asked to select the statement that best fitted their attitude to volatility. However, none of the statements made any specific references to the periods of time over which the Customer may be expected to bear losses, or what indicative losses may be incurred.

Changes in a Customer's risk profile

4.13. Once Credit Suisse UK had established the risk profile of a Customer, it should have taken reasonable care to ensure that that risk profile continued to represent the level of risk that the Customer was willing to accept from their overall investment portfolio. If the Customer wished to amend their risk profile, Credit Suisse UK had to ensure that the amendment, and the reasons for that amendment, were properly considered and recorded on the Customer's file.

4.14. A number of Customer files contained instances where the Customer's risk profile had been increased during the course of their relationship with Credit Suisse UK. However, in some of these instances, there was insufficient documentary evidence to explain why the Customer's risk profile had been amended. One Customer was recorded on Credit Suisse UK's systems as having a risk indicator of three. That Customer was recommended, and carried out, five SCARP transactions. At the time of executing the fourth and fifth SCARP transactions, the Relationship Manager asked the Customer to increase their risk indicator from three to four to reflect the products that the Customer was holding at that time. Although the Customer agreed to this, the Customer's file did not demonstrate why the Customer's risk profile was increased.

A Customer's investment objectives

4.15. Once a Customer had determined their risk profile, they were required to select their investment objective on the CAB. The available options for the investment objective were: (a) Capital Preservation; (b) Income; (c) Balanced (Capital Growth and Income); (d) High Income; (e) Capital Growth; and (f) Short Term Trading and Speculation. This was separate to the assessment of the Customer's risk profile.

4.16. The selection of one investment objective could link to one of a number of different risk profiles. For instance, in the CAB in use after 1 November 2007, a Customer with a ‘balanced’ investment objective could be compatible with each of the ‘moderate’, ‘medium’ and ‘enhanced’ risk profiles.

4.17. If the risk profile selected by the Customer fell outside the range of risk profiles which were compatible with the Customer’s stated investment objective, the CAB required the Customer to explain the reason why this was the case. However, such explanations were not always provided in the CAB. In these circumstances, Credit Suisse UK was not able to demonstrate an understanding of, and the interaction between, a Customer’s attitude to risk and/or investment objective.

4.18. Further, the independent review carried out by the skilled person identified that in instances where there were inconsistencies between the Customer’s risk profile and investment objectives, there was no documentation on the PCRM system clarifying why this was the case.

4.19. SCARPs, by their nature, carry a risk that the initial capital invested by the customer may not be recouped. A SCARP is therefore not likely to be suitable for a customer with an investment objective of capital preservation. In 2001, one of the Customers stated on its account opening documentation that its investment objective was ‘*conservative/capital preservation and income*’. This was reflected in some comments on the Customer file in February 2003 which stated that the Customer was “*not interested in any [product] issued without capital protection 100%*”. While the majority of the products recommended to the client were capital protected the Customer in question was recommended a SCARP in 2008 in which the Customer invested. At the time its risk indicator was recorded on PCRM as three and the investment objective was recorded as “*high income*”. However, there is no evidence on file to show when and why the Customer’s investment objective and risk profile changed.

Other relevant considerations

A Customer’s portfolio

4.20. A customer’s portfolio refers to the collection of assets and investments which that customer holds with a firm. It is important for firms to take reasonable care to ensure that each recommendation made to a customer is suitable given not only that customer’s risk profile and investment objectives, but also the range of assets and investments already held by that customer in their portfolio.

4.21. Although the Relationship Managers would take into account the fact that each risk profile and investment objective allowed a range of investments when building a portfolio, Credit Suisse UK did not have a formal procedure to support the portfolio building process. Further, there was little or no evidence which explained how the Customer’s attitude to risk and investment objectives were met when transactions were effected within the Customer’s portfolio. As a result, Credit Suisse UK failed to ensure that there was adequate evidence to demonstrate that the SCARPs it recommended to its Customers were suitable, given the assets and investments held by the Customers at the time. The review by the skilled person found that for 17 of the 24 transactions tested, there was insufficient evidence of consideration of the

Customer's overall portfolio when determining whether or not the transaction was suitable for the Customer.

Leverage

4.22. Leverage refers to the amount of debt utilised by a customer to finance their investments. If a customer uses leverage to make an investment and the investment rises in value, then the customer's gains are increased reflecting the amount of leverage used. Conversely, if the investment falls in value, the customer's losses are much greater than they would have been if the investment had not been leveraged. Consequently, leverage magnifies both a customer's gains and losses.

4.23. During the Relevant Period, Credit Suisse UK did not have in place policies and procedures relating to, or mechanisms to monitor, the use of leverage when recommending products to their Customers. Credit Suisse UK did consider the risks associated with leverage from the firm's perspective, for example by conducting credit checks on its Customers. However, there was often no documentation available to evidence that Credit Suisse UK had considered whether the use of leverage was appropriate in light of their Customers' attitudes to risk.

4.24. Relationship Managers were required to record all material customer interactions. However, documentation setting out the rationale for recommending leverage and the appropriateness of the amount of leverage in the context of the Customer's overall wealth was often not present in the Customer files. Similarly, there was often no documentation showing that the downside risks of leverage had been considered by Relationship Managers when advising their Customers to use debt to finance their transactions. As part of their review, the skilled person considered four transactions where leverage was used. In two instances, the files did not contain sufficient evidence to demonstrate that the risks associated with the use of leverage had been explained to the Customer.

4.25. One Customer to whom Credit Suisse UK recommended using leverage was noted in the CAB to have "*very limited investment experience*". Therefore, it was particularly important to explain to this Customer how the concept of leverage operated and the risks associated with leverage. However, there was no information contained in the Customer's file which explained the basis for recommending the use of leverage in the transaction. In addition, the TSF completed for this transaction merely stated that "*This transaction has been fully explained to the client. It has been approved by the client who is fully aware of all the facets of this trade*". There was no documentation on the Customer's file to demonstrate what the Customer had been told regarding the risks of using leverage. This documentation would have acted as an additional control, allowing Credit Suisse UK to ensure that the relevant Relationship Manager had explained all of the material risks involved in using leverage to the Customer.

Issuer and investment concentration

4.26. Issuer concentration refers to the extent to which a customer's portfolio comprises financial instruments issued by one particular issuer of securities. If the portfolio is heavily concentrated with one issuer, the customer faces the risk of significant losses if that particular issuer fails. Investment concentration, on the other hand, refers to the extent to which a customer's portfolio comprises a large proportion of one particular security, exposing the customer to the risk of large losses if that security fails.

4.27. During the Relevant Period, Credit Suisse UK did not have in place policies and procedures relating to, or mechanisms to monitor, issuer and investment concentration in their Customers' portfolios. In addition, there were often no records of discussions concerning issuer and investment concentration on the Customer files. Although interviews carried out by the skilled person during their review identified that Relationship Managers had a good understanding of these issues and discussed them with their clients during periodic meetings and annual review, the review by the skilled person found that 23 out of 30 Customer files contained no evidence of an assessment of issuer concentration, and that 15 out of 30 Customer files contained no evidence of an assessment of investment concentration.

Oversight

Oversight of Relationship Managers

4.28. During the Relevant Period, it was the responsibility of the Team Leaders and Sector Heads to supervise the work of the Relationship Managers. However, Team Leaders also had responsibility for advising Customers of their own. In addition, Team Leaders and Sector Heads were responsible for overseeing all business activity within their respective business units.

4.29. In a significant number of cases the number of Relationship Managers within the scope of oversight of a given Team Leader or Sector Head was sufficiently large, such that, especially when combined with the Customer advisory commitments of Team Leaders, the extent to which the supervisor could effectively monitor the work carried out by those Relationship Managers was restricted. For instance, as at 31 March 2010, the Sector Head for the UK region had 11 Relationship Managers directly reporting to him and the Team Leader for the Middle East region had 16 Relationship Managers reporting to him.

Oversight in relation to suitability

4.30. Credit Suisse UK operated a system called MICOS which enabled it to monitor on a quarterly, half yearly and yearly basis and based on a sampling approach, the performance of certain internal processes, including matters relating to suitability. MICOS updated the previous internal control system in the first quarter of 2009. MICOS required, amongst other things, management to carry out a review of areas relevant to suitability (including the adequacy of the evidence provided to demonstrate the suitability of products given a Customer's risk profile and whether the TSF approval process was effectively executed) and to record the results of that review.

4.31. The reviews carried out were focused on the quality of documentary evidence available and, although they were not intended to repeat the review of the underlying activity, the review did assess whether there was sufficient information documented to enable a conclusion to be reached on the effectiveness of the process. Where relevant, this included assessing whether enough information was recorded to allow a determination on suitability to be made.

4.32. However, Credit Suisse UK did not use MICOS effectively. An internal review carried out by Credit Suisse UK in the last quarter of 2009 (covering the period 1 July 2009 to 30 September 2009) identified that in 44% of the cases, the reviews performed by management (some of which were relevant to suitability) were sub-standard. The issues identified included a poor sampling approach, limited use of documentary evidence to support the review and limited analysis of the process reviewed.

Compliance monitoring

4.33. The Compliance function within Credit Suisse UK was responsible for the oversight of compliance with FSA consumer regulation and provided support to Credit Suisse UK's private banking operation through the provision of advice, training and monitoring activity.

4.34. As outlined in paragraph 4.20, it was important for Credit Suisse UK to take reasonable care to ensure that each recommendation made to a customer was suitable given not only that customer's risk profile and investment objectives, but also the range of assets and investments already held by that customer. Prior to January 2009, compliance monitoring, including consideration of suitability and appropriateness, was contained in a review which considered both the suitability of individual trades against the Customer's risk profile and investment objectives, and the transaction in relation to the Customer's overall portfolio held within Credit Suisse UK. This changed to a quarterly review of 20 transactions by Compliance at the start of 2009. However, this review only considered the suitability of individual trades against the Customer's risk profile and investment objectives, and not against the Customer's existing portfolio of investments. From the last quarter of 2009, these quarterly trade reviews reverted to include both a review of the individual transaction, and also consideration of that transaction in relation to the Customer's overall portfolio held within Credit Suisse UK.

4.35. The failure to monitor transactions in the context of the Customer's overall portfolio in relation to suitability between the first and last quarter of 2009 means that Credit Suisse UK did not effectively monitor these transactions during that period.

5. FAILINGS

5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

5.2. By reason of the facts and matters set out above, Credit Suisse UK breached Principle 3 by failing to take reasonable care to establish and maintain effective systems and controls in respect of the suitability of its advice regarding SCARPs to Customers. During the Relevant Period, Credit Suisse UK:

(1) failed to put in place adequate systems and controls in respect of the determination of Customers' attitudes to risk. A number of terms contained

within the CAB which assisted Credit Suisse UK in determining a Customer's risk profile may not have been clear to inexperienced investors. As a result, there was an unacceptable risk that Credit Suisse UK may not have accurately understood the level of risk that Customer was willing to accept from their investments. Further, there was no direct correlation between the Customer's stated risk profile and their investment objective; one investment objective could link to a number of possible risk profiles. If the risk profile selected by the Customer fell outside the range of risk profiles which were compatible with the Customer's stated investment objective, the CAB required the Customer to explain the reason why this was the case. These explanations were not, however, always provided in the CAB. In these circumstances, Credit Suisse UK could not demonstrate an understanding of, and the interaction between, a Customer's attitude to risk and/or investment objective. Furthermore, there was little clarification provided in the Customer file notes on how the proposed investment objective linked to the Customer's risk profile;

(2) failed to take reasonable care to evidence adequately that the SCARPs it recommended to its Customers were suitable, given the assets and investments held by those Customers at the time. Credit Suisse UK had no formal process in place to assist when building Customers' portfolios. Additionally, the Customer file notes did not demonstrate how the Customer's overall portfolio had been constructed with reference to their investment objectives and risk profile. As a result, testing carried out by a skilled person found that for 17 of the 24 SCARP transactions they tested, there was insufficient evidence of consideration of the Customer's overall portfolio by Credit Suisse UK when determining whether transactions were suitable for the Customers;

(3) failed to put in place adequate systems and controls surrounding the recommendation of leverage to Customers. During the Relevant Period, Credit Suisse UK did not have in place policies or controls which governed the use of leverage. Where leverage was used to fund transactions, there was often no documentation available to evidence the rationale for recommending leverage and the appropriateness of the amount of leverage in the context of the Customer's overall wealth. There was also often no documentation showing that the downside risks of leverage had been considered by relevant Relationship Managers when advising the Customer to use leverage to finance their transactions. In addition, there was no formal mechanism to monitor the amount of leverage within Customers' portfolios;

(4) failed to put in place adequate systems and controls surrounding the levels of issuer and investment concentration within Customers' portfolios. During the Relevant Period, Credit Suisse UK did not have in place policies or controls dealing with issuer or investment concentration, or a formal mechanism to monitor the levels of issuer or investment concentration in Customers' portfolios. There was also often no documentation available to evidence that issuer or investment concentration had been considered by the relevant Relationship Managers when recommending transactions;

(5) did not effectively monitor transactions in the context of the Customer's overall portfolio. Between January and September of 2009, the suitability of transactions was only considered by Compliance against the Customer's risk profile and investment objectives, and not against the Customer's existing portfolio of investments; and

(6) did not effectively monitor its staff to ensure that they took reasonable care to ensure the suitability of their advice. The conduct of the Relationship Managers was not effectively overseen, as the relevant management had too many competing responsibilities. In addition, in the first quarter of 2009, Credit Suisse UK updated its internal evidencing tool which was intended to demonstrate that management had reviewed, amongst other things, the suitability of transactions. However, Credit Suisse UK management at the time did not use this system properly. An internal report identified that reviews performed by Credit Suisse UK's management, some of which were relevant to suitability, were sub-standard in 44% of cases.

5.3. As a result of the above failings, Credit Suisse UK's Customers were exposed to an unacceptable risk of being sold a SCARP which was unsuitable for them.

6. SANCTION

Relevant guidance on sanction

6.1. The FSA has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

6.2. In determining the financial penalty proposed, the FSA has had regard to guidance contained in DEPP and ENF, which formed part of the FSA Handbook during the Relevant Period. Both DEPP 6.5 and Chapter 13 of ENF contained some of the factors that may be of particular relevance in determining the appropriate level of a financial penalty. However, DEPP 6.5.1 G and ENF 13.3.4 G both stated that the criteria listed in DEPP 6.5 and ENF 13.3 respectively were not exhaustive and that all relevant circumstances of the case should be taken into consideration. In determining whether a financial penalty is appropriate and the amount, the FSA is therefore required to consider all the relevant circumstances of the case.

Deterrence

6.3. The FSA considers that in this case, the financial penalty imposed will promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour. It will strengthen the message to the industry that it is vital for firms to take reasonable care to ensure the suitability of their advice, by putting in place adequate systems and controls in this regard.

The nature, seriousness and impact of the breach in question

6.4. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the number of Customers who were exposed to risk of loss and whether the breaches revealed serious or systemic weakness of the management systems or internal controls. For the reasons set out in paragraph 2.6 above, the FSA considers that Credit Suisse UK's breaches are of an especially serious nature. The failings identified within Credit Suisse UK existed for a period of approximately three years.

The extent to which the breach was deliberate or reckless

6.5. The FSA does not consider that these failings on the part of Credit Suisse UK were deliberate or reckless. However, the FSA considers it particularly serious that Credit Suisse UK failed effectively to monitor its staff to ensure that they took reasonable care to ensure the suitability of their advice throughout the Relevant Period.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

6.6. The FSA has taken into account Credit Suisse UK size and financial resources. Credit Suisse UK is one of the largest private banks in the UK. In the year ending 31 March 2011, Credit Suisse UK's gross income was approximately £73 million. During the Relevant Period, Credit Suisse UK advised on the sale of 1,701 SCARPs to 623 Customers. The total value of SCARPs sold by Credit Suisse UK during this period exceeded £1.099 billion.

Conduct following the breach

6.7. In consultation with the FSA, Credit Suisse UK has agreed to undertake a review in relation to its sale of SCARPs to Customers who purchased these products during the Relevant Period to ensure that Customers do not lose out as a result of the failings identified in this Notice. If a Customer has been advised to purchase an unsuitable product, redress will be paid to the Customer to ensure that they have not suffered financially as a result.

6.8. Credit Suisse UK has also made a significant number of changes to its advisory processes, which have been driven by senior management. It has enhanced the systems and controls in place to ensure the suitability of its advice to Customers. It has also undertaken an extensive exercise to ensure that the information it holds in relation to all of its Customers is accurate and up to date.

6.9. Since the commencement of the FSA's investigation, Credit Suisse UK and its senior management have worked in an open and cooperative manner with the FSA.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given under section 206 and in accordance with section 390 of the Act.

Manner of and time for Payment

7.3. The financial penalty must be paid in full by Credit Suisse UK to the FSA by no later than 8 November 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 9 November 2011, the FSA may recover the outstanding amount as a debt owed by Credit Suisse UK and due to the FSA.

Publicity

7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

7.6. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

7.7. For more information concerning this matter generally, contact Tepo Din of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 6834 / fax: 020 7066 6835).

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William Amos
FSA Enforcement and Financial Crime Division

ANNEX A

1. RELEVANT REGULATORY PROVISIONS

1.1. Protecting consumers and market confidence are statutory objectives for the FSA under section 2(2) of the Act.

1.2. Section 206(1) of the Act provides that:

‘If the FSA considers that an authorised person has contravened a requirement imposed on him by or under this Act … it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.’

FSA Principles and Rules

1.3. The FSA’s Principles for Businesses are general statements of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA’s rule making powers as set out in the Act and reflect the FSA’s regulatory objectives.

1.4. Principle 3 of the FSA’s Principles for Businesses states that:

‘A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.’