Barclays, Credit Suisse Charged With Dark Pool Violations

Washington D.C., Jan. 31, 2016 —

The Securities and Exchange Commission today announced that Barclays Capital Inc. and Credit Suisse Securities (USA) LLC have agreed to settle separate cases finding that they violated federal securities laws while operating alternative trading systems known as dark pools and Credit Suisse's Light Pool.

The New York Attorney General's office is announcing parallel actions against the two firms.

Barclays agreed to settle the charges by admitting wrongdoing and paying $35 million penalties to the SEC and the NYAG for a total of $70 million.

Credit Suisse agreed to settle the charges by paying a $30 million penalty to the SEC, a $30 million penalty to the NYAG, and $24.3 million in disgorgement and prejudgment interest to the SEC for a total of $84.3 million.

"These cases are the most recent in a series of strong SEC enforcement actions involving dark pools and other alternative trading systems," said SEC Chair Mary Jo White. "The SEC will continue to shed light on dark pools to better protect investors."

"Dark pools have a significant role in today's equity marketplace, and the firms that run these venues must ensure that they do not make misstatements to subscribers about their material operations," said Andrew Ceresney, Director of the SEC's Enforcement Division. "These largest-ever penalties imposed in SEC cases involving two of the largest ATSs show that firms pay a steep price when they mislead subscribers."

According to the SEC's order instituting a settled administrative proceeding against Barclays:

- Barclays said that a feature called Liquidity Profiling would "continuously police" order flow in its LX dark pool and that the firm would run "surveillance reports every week" for toxic order flow.
- In fact, Barclays did not continuously police LX for predatory trading using the tools it said it would, and it also did not run weekly surveillance reports.
- Barclays did not adequately disclose that it sometimes overrode Liquidity Profiling by moving some subscribers from the most aggressive categories to the least aggressive. The result was that subscribers that elected to block trading against aggressive subscribers nonetheless continued to interact with them.
- Barclays at times misrepresented the type and number of market data feeds that it used to calculate the National Best Bid and Offer in LX. For example, Barclays represented that it "utilize[d] direct feeds from exchanges to deter latency arbitrage" when in fact Barclays used a combination of direct data feeds and other, slower feeds in the dark pool.

"Barclays misrepresented its efforts to police its dark pool, overrode its surveillance tool, and misled its subscribers about data feeds at the very time that data feeds were an intense topic of interest," said Robert Cohen, co-chief of the Market Abuse Unit. "Investors deserve fair and equitable markets without this misbehavior."

According to the SEC's orders instituting settled administrative proceedings against Credit Suisse:

- Credit Suisse misrepresented that its Crossfinder dark pool used a feature called Alpha Scoring to characterize subscriber order flow monthly in an objective and transparent manner. In fact, Alpha Scoring included significant subjective elements, was not transparent, and did not categorize all subscribers on a monthly basis.
- Credit Suisse misrepresented that it would use Alpha Scoring to identify "opportunistic" traders and kick them out of its electronic communications network, Light Pool. In fact, Alpha scoring was not used for the first year that Light Pool was operational. Also, a subscriber who scored "opportunistic" could continue to trade using other system IDs, and direct subscribers were given the opportunity to resume trading.
- Credit Suisse accepted, ranked, and executed over 117 million illegal sub-penny orders in Crossfinder.
- Credit Suisse failed to treat subscriber order information confidentially and failed to disclose to all Crossfinder subscribers that their confidential order information was being transmitted out of the dark pool to other Credit Suisse systems.
- Credit Suisse failed to inform subscribers that the Credit Suisse order router systematically prioritized Crossfinder over other venues in certain stages of its dark-only routing process.
- Finally, CSSU also failed to disclose that it operated a technology called Crosslink that alerted two high frequency trading firms to the existence of orders that CSSU customers had submitted for execution.

"Two Credit Suisse ATSs failed to operate as advertised, and failed to comply with numerous regulatory requirements over a multi-year period," said Joseph Sansone, Co-Chief of the Market Abuse Unit. "The Commission's action today sends a strong message that the agency will continue to scrutinize ATSs for compliance with the securities laws."

The SEC's order finds that Barclays violated Section 17(a)(2) of the Securities Act, Securities Exchange Act Section 15(c)(3), Rules 15c3-5(c)(1)(i) and 15c3-5(b) of the SEC's Market Access Rule, and Rules 301(b)(2) and (10). The order requires Barclays to pay a $35 million penalty, to cease and desist from these violations, censures Barclays, and requires Barclays to engage a third-party consultant to review its marketing of LX, its Market Access Rule compliance, and its compliance with certain requirements of Regulation ATS.

The SEC's orders find that Credit Suisse violated Section 17(a)(2) of the Securities Act, Rules 301(b)(2), (5) and (10) of Regulation ATS, and Rules 602(b) and 612 of Regulation NMS. The orders require Credit Suisse to cease and desist from these violations, censure Credit Suisse, and require Credit Suisse to pay $30 million in total penalties, disgorgement of $20,675,510.52, and prejudgment interest of $3,639,643.39. Credit Suisse consented to the SEC's orders without admitting or denying the findings.

The SEC's investigation of Barclays was conducted by Jason Burt, Charu Chandrasekhar, John Marino, Mandy Sturmfelz, and Jay Scoggins of the SEC Enforcement Division's Market Abuse Unit, and trial attorneys Stephan Schlegelmilch and James Smith, with assistance from Ilan Felix in the New York Regional Office's examination program. The case was supervised by Mr. Cohen and Mr. Sansone.

The SEC's investigations of Credit Suisse were conducted by Thomas P. Smith Jr. and Nancy A. Brown of the New York office along with Simona Suh, Charles D. Riely, Mandy B. Sturmfelz, and Mathew Wong, Dee O'Hair, Darren Boerner, and Kathryn Pyszka of the Market Abuse Unit and Jonathan Polish of the Chicago Regional Office. The case was supervised by Mr. Cohen, Mr. Sansone, and Timothy Warren of the Chicago office. The SEC examiners who conducted an examination that led to the investigation were Simone Celio, Michael McAuliffe, Sean O'Brien, Richard Heaphy, and Mr. Felix.

The SEC appreciates the assistance of the NYAG.

Recent SEC Actions Charging Dark Pools and Other Alternative Trading Systems

February 2016	**BARCLAYS CAPITAL INC.** Misled dark pool customers about data-connection speeds, and surveillance for "toxic" trading.	SEC SETTLEMENT
February 2016	**CREDIT SUISSE SECURITIES (USA) LLC** Crossfinder: Misrepresented feature for characterizing order flow; executed 117 million illegal sub-penny orders. Light Pool: Misrepresented its use of formula to measure trading kick out 'opportunistic' traders.	SEC SETTLEMENT
August 2015	**ITG INC. (DARK POOL OPERATOR) AND ALTERNET SECURITIES (AFFILIATED BROKER-DEALER)** Operated a secret trading desk that accessed confidential data about dark pool customers.	SEC SETTLEMENT $
January 2015	**UBS SECURITIES LLC** Failed to inform all customers about an order type that gave advantage to orders from market makers and high-frequency traders.	SEC SETTLEMENT $
July 2014	**LAVAFLOW INC. (A CITIGROUP UNIT AND ATS OPERATOR)** Failed to protect LavaFlow's ATS customers by allowing an affiliate to access and use those customers' confidential trading information.	SEC SETTLEMENT
June 2014	**LIQUIDNET INC.** Failed to protect dark pool customers by allowing marketing and sales employees access to the customers' confidential trading data.	SEC SETTLEMENT
October 2012	**eBX LLC** Failed to protect dark pool customers by allowing an outside firm to access and use the customers' confidential trading data.	SEC SETTLEMENT
October 2011	**PIPELINE TRADING SYSTEMS LLC** Misled dark pool customers about how the trading platform would match their orders.	SEC SETTLEMENT