

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8578 / May 31, 2005**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 51764 / May 31, 2005**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2391 / May 31, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11936**

**In the Matter of**

**CHARLES J. O'BRIEN, JR. &  
CREDIT SUISSE FIRST  
BOSTON, LLC,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT OF  
1933, SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTION 203(f) OF THE  
INVESTMENT ADVISERS ACT OF 1940**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Charles J. O'Brien, Jr. ("O'Brien") and Credit Suisse First Boston, LLC (collectively "Respondents").

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondents and the subject matter of

these proceedings, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents Offer, the Commission finds<sup>1</sup> that

#### **Respondents**

1. Credit Suisse First Boston, LLC (“CSFB”) is a broker-dealer and investment adviser registered with the Commission pursuant to Section 15 of the Exchange Act and Section 203(c) of the Investment Advisers Act of 1940. CSFB’s principal offices are located at 11 Madison Avenue, New York, New York 10010.<sup>2</sup> CSFB provides the full range of services offered by a multi-purpose investment bank, including securities underwriting, sales and trading and investment banking. Credit Suisse First Boston Australia Equities Limited (“CSFBAEL”) is an indirect wholly owned subsidiary of Credit Suisse First Boston, the Swiss Bank located in Zurich. From 1998 through October 2000 CSFB owned 75% of CSFBAEL. CSFBAEL conducted domestic Australian sales and trading business through its primary office in Sydney, Australia. From March 1, 2000 through October 1, 2000 (“Relevant Period”), CSFBAEL conducted trading through the United States (“US”) markets by utilizing a sales and trading desk located at CSFB’s office in New York known as the Australia/New Zealand Equities Desk (“the Australia Desk”), which had personnel in CSFB’s New York City office as well as personnel at CSFBAEL. The Australia Desk’s main purpose was to facilitate trades for accounts of customers at CSFBAEL. However, it also had the ability, at the instruction of CSFBAEL, to engage in some proprietary trading for the account of CSFBAEL.

2. In 1998, CSFB had purchased a 75% stake in what came to be called CSFBAEL (which up until that time had been running as a fully independent company called First Pacific Stockbrokers). Pursuant to the shareholders agreement then in place with CSFBAEL, CSFB did not assume full legal title and supervisory control over all of CSFBAEL’s activities until December 31, 2000. Until that time, certain supervisory functions for CSFBAEL and the Australia Desk in New York were to be performed by CSFBAEL supervisors and the back office located in Australia and not by the back offices or supervisors located in New York. As a result, due to the shareholders agreement, CSFBAEL was to run essentially as a stand-alone company until December 31, 2000 at which point full legal title and control was to pass to CSFB. CSFB was going to share in a portion of the profits generated by CSFBAEL. Although the employees on the Australia Desk in New York

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> On January 17, 2003, the broker-dealer known as Credit Suisse First Boston Corporation, a Massachusetts corporation was reorganized as Credit Suisse First Boston, LLC a Delaware limited liability company.

were registered with the NASD and associated with CSFB in New York, they were paid (salary and bonus) by CSFBAEL and were required to report all positions and profit and loss to CSFBAEL.

3. O'Brien, age 34, a resident of Massapequa, New York, was associated with CSFB from 1993 through September 2000. O'Brien began his career as a sales assistant at the Australia Desk in CSFB's New York City office. In or about October 1998, O'Brien was promoted to trader assigned to the Australia Desk in CSFB's New York City office. O'Brien held that position until his termination on September 28, 2000. During the Relevant Period, O'Brien, age 29, held the proper licenses to be a trader having previously passed the Series 7, 55 and 63 exams given by the NASD.

### **Background**

4. O'Brien began his employment at CSFB as a sales assistant assigned to the Australia Desk in CSFB's New York City office. The Australia Desk located in New York was an "implant desk" where trades were executed on US securities markets for Australian customers of CSFBAEL and for proprietary accounts of CSFBAEL. During the Relevant Period, the Australia Desk consisted of salesmen and sales traders (and the trader O'Brien) who were employed by CSFB and possessed proper licenses in the United States, including the NASD's Series 7, 55 and 63 exams, which are generally required to be a registered representative or trader, and Series 24 and 8 exams, which are generally required to supervise traders or salespersons. The personnel on the Australia Desk in New York primarily interacted with customers and executed trades on behalf of customers. O'Brien also executed trades in the US securities markets on instruction from traders in Australia who were conducting transactions for CSFBAEL's proprietary accounts ("Australia traders"). During the Relevant Period, CSFB shared in the profit and losses generated from proprietary trading and other business generated by CSFBAEL.

5. Many of the trades executed by the Australia Desk were for American Depositary Receipts ("ADRs") traded on US securities markets, which corresponded to an underlying security traded on the Australian securities markets. Each ADR represents shares of a foreign security which is usually traded on a foreign stock exchange. Shares traded on the foreign exchange are referred to as "ordinary shares." For example, during the Relevant Period, the ADR at issue here traded on the NASDAQ and corresponded to the shares of common stock issued by the Australian company Look Smart Ltd. ("LOOK"). One LOOK ADR represented 20 ordinary shares of common stock issued by LOOK. The ordinary shares of LOOK traded on the Australian stock exchange. In the US, through banks that hold ordinary shares, the ADRs could be exchanged and converted to ordinary shares that could then be traded on the foreign exchange.

6. During the Relevant Period, most of the proprietary ADR transactions that the Australia Desk undertook on behalf of CSFBAEL were for the purpose of an arbitrage trading strategy (i.e., buying and selling to generate spreads) which were short-term and were to be unwound on the books of CSFBAEL. Arbitrage opportunities existed because of price differences between the ADRs on the US securities markets and the price of the underlying ordinary shares traded on the Australian exchange.

7. During the time he functioned as a sales assistant, O'Brien reported to a salesman on the Australia Desk in New York who was associated with CSFB and who had passed a Series 8 and 24 exam and supervised other salesmen in CSFB's New York office (the "New York Salesman"). As a sales assistant, O'Brien assisted the traders at CSFBAEL on a clerical basis with executing trades on US markets for CSFBAEL customer and proprietary accounts by relaying orders to traders in New York licensed to execute trades on US markets.

8. In or about October 1998, senior management from CSFBAEL promoted O'Brien to trader. CSFBAEL arranged for CSFB to promote O'Brien to the position of trader associated with CSFB. CSFB gave O'Brien the authority to execute trades at CSFB directly in US securities markets on behalf of CSFBAEL in order to conduct proprietary trading for the benefit of CSFBAEL. CSFBAEL directed O'Brien to focus his proprietary trades on employing arbitrage strategies to exploit price differences between ADRs trading in the US and the corresponding ordinary shares trading in the local market in Australia.

9. Supervisors at CSFBAEL determined that since O'Brien would be a trader executing trades at their instructions, the New York Salesman on the Australia Desk in New York would not supervise O'Brien's trading activity as he did not have any trading experience. Instead, the New York Salesman would supervise administrative matters concerning O'Brien, such as approving vacations. Managers at CSFBAEL assigned a trading supervisor located in Australia and employed by CSFBAEL to supervise O'Brien's trading activities in New York (the "Australian Supervisor").

10. The Australian Supervisor assigned to O'Brien was not licensed by any Self Regulatory Organization ("SRO") in the United States and had not passed any supervisory licensing exams in the United States, such as the Series 24 exam. CSFBAEL had notified CSFB's Human Resources department in NY ("HR") of O'Brien's new reporting line to the Australian Supervisor. Despite firm policy, no one informed CSFB senior management or the Legal and Compliance Department in New York ("Legal Department") that: (a) O'Brien had been promoted from sales assistant to trader associated with CSFB; (b) he would no longer report to the New York Salesman; and (c) he was instead reporting abroad to the Australian Supervisor.

11. At the time of O'Brien's promotion to trader, the Australian Supervisor gave him specific trading instructions to follow, including that: (a) any securities O'Brien purchased for proprietary or customer accounts were to be disclosed in daily e-mail messages to the Australian Supervisor; (b) all ADRs purchased on behalf of CSFBAEL were to be converted to ordinary shares at the end of the trading day; and (c) at the end of the trading day, the ordinary shares would then be transferred in a trade out of O'Brien's trading account, ("AQ Trading Account") at CSFB in New York into a separate account maintained by CSFBAEL in Australia.

12. In order to convert the ADRs into ordinary shares, O'Brien was required to execute a "sale" of the ADRs from the AQ Trading Account into an internal account at CSFB known as the "conversion account." The conversion account was used to effectuate the conversion of ADRs into their underlying ordinary shares. In order to properly complete the conversion, O'Brien would execute a near simultaneous "buy" of the ordinary shares from the conversion account on behalf of

a separate account of CSFBAEL. This process unwound the ADRs into ordinary shares and transferred the securities from the AQ Trading Account through the conversion account into a separate account owned by CSFBAEL. At the end of the trading day the AQ Trading Account at CSFB in New York was not supposed to hold any securities overnight and the risk and ownership of the ADRs (which were now converted into ordinary share form) would have been transferred onto the books of CSFBAEL in Australia.

### **O'Brien's Unauthorized Trades and Other Misconduct**

13. On or about March 15, 2000, an Australian trader at CSFBAEL directed O'Brien to purchase a certain number of LOOK ADRs at a price of \$54 per ADR. O'Brien failed to execute the trade at that price. Instead, on March 15, 2000, O'Brien executed the trade at prices ranging from \$56 to \$57 per ADR. Because O'Brien was embarrassed that he did not obtain the purchase at the requested price and because CSFBAEL did not authorize him to make the purchase at that price, O'Brien did not disclose the trade to anyone in CSFB or CSFBAEL, and did not include the trade in his daily email to his Australian Supervisor. In order to hide the transaction from his Australian Supervisor, O'Brien did not execute the required conversion of the ADR shares into ordinary shares at the end of the trading day. O'Brien instead kept the ADRs in the AQ Trading Account hoping that the price would increase so the position could be sold for a profit while not revealing his failure to make the initial trade.

14. Due to market volatility during the Relevant Period, the price of LOOK ADRs declined below the price of the March 15, 2000 purchase. On March 24, 2000, faced with a significant trading loss and in an attempt to average down his losses, O'Brien purchased additional LOOK ADRs at prices ranging from \$44 to \$48, a price significantly lower than the price on March 15, 2000. O'Brien did not disclose the trades to his Australian Supervisor or attempt to initiate the conversion process. The price of LOOK continued to decline during the last week of March 2000 and by the end of the month, O'Brien had accumulated significant losses. As of March 31, 2000, O'Brien had purchased a total of 108,000 LOOK ADRs with a market value of \$4,996,836.

15. On the last day of March 2000, O'Brien again took steps for the purpose of concealing his losing position in LOOK ADRs from CSFB and CSFBAEL. At the end of each month, CSFB transmitted a profit and loss report for the Australia Desk in New York to CSFBAEL ("Month End Report"). The Month End Report included an automatically generated calculation of profits and losses for the AQ Trading Account. O'Brien knew that if he kept the LOOK ADRs in the AQ Trading Account at the end of the month, the Month End Report would reveal the unauthorized trades and the corresponding unrealized losses. On March 31, 2000, in order to conceal the unauthorized trades from his Australian Supervisor, O'Brien booked a "sale" of all 108,000 ADRs into the conversion account at CSFB. O'Brien internally booked this "sale" at an inflated price and not the market price for LOOK that day. O'Brien also internally booked the sale into the conversion account with a settlement date of "trade plus 7," four days longer than the normal settlement period for ADRs of "trade plus 3." O'Brien however, did not internally book a corresponding "buy" of the underlying ordinary shares on behalf of CSFBAEL from the conversion account as required to complete the conversion process and transfer the securities onto

the books of CSFBAEL. By internally booking only one side of the transaction (the “sale” of ADRs into the conversion account), O’Brien did not actually convert the ADRs into ordinary shares and the ADRs remained in the conversion account at CSFB.

16. At the end of March 2000, CSFB transmitted the Month End Report to CSFBAEL. The Month End Report did not disclose the unrealized losses for the 108,000 LOOK ADRs which had been transferred into the conversion account. By internally booking a “one-sided” conversion ticket, O’Brien removed the ADRs from the AQ Trading Account thereby concealing the losing position from CSFBAEL and CSFB. In addition, O’Brien manually recorded a price that did not reflect the market price, on CSFB’s books and records for the one-sided sale of the ADRs into the conversion account. This caused CSFB’s ledgers to reflect an inflated value for the LOOK ADRs held in the conversion account and artificially decreased the amount of O’Brien’s unrealized losses.

17. O’Brien also extended the settlement date of the one-sided conversion in order to keep the unauthorized LOOK position in the conversion account until *after* CSFB sent the Month End Report to CSFBAEL. In addition, the extended settlement date gave O’Brien additional time to prevent any transfer of the ADRs from occurring. On April 10, 2000, O’Brien directed clerks at CSFB’s operations department to cancel the March 31, 2000 one-sided conversion ticket, claiming it was an error. The effect of such cancellation was to transfer the 108,000 LOOK ADRs out of the conversion account back into the AQ Trading Account.

18. In addition to the Month End Report that CSFB sent CSFBAEL, a CSFB document called the Trader’s Position Detail Report (“TPDR”) recorded O’Brien’s daily trading activity. The TPDR is a daily management report which details the profit and loss for each trading account at CSFB. The TPDR extracts data from CSFB’s trading sub-ledgers. The sub-ledgers are records CSFB is required to make and keep current. The TPDR detailed all trades executed by O’Brien for the previous day, whether proprietary or on behalf of customers. The TPDR also showed the unauthorized manual price changes O’Brien made to the LOOK purchases and to the month end one-sided conversion with the signifier “MPM” (manual price mark). Most significantly, the TPDR contained a daily profit and loss calculation for the AQ Trading Account, which showed the increased losses generated by O’Brien’s unauthorized trading. O’Brien was aware that the TPDR contained red-flags indicating his unauthorized and mis-marked trades. However, O’Brien also knew that CSFB delivered the TPDR only to him and not to O’Brien’s Australian Supervisor. In addition, during the Relevant Period, O’Brien was aware that CSFB had not assigned any trading supervisor in New York to review the TPDR for O’Brien’s trades.

19. Until his termination on September 28, 2000, O’Brien continued to make unauthorized purchases of LOOK ADRs. O’Brien made additional purchases of LOOK ADRs to average down his losses and sell if the price increased. O’Brien also made several unauthorized sales of LOOK ADRs during the Relevant Period in a futile attempt to recoup some of his losses. O’Brien continued to internally book one-sided sales of LOOK ADRs at month end to the conversion account to conceal the unauthorized purchases from his Australian Supervisor and continued to omit the LOOK trades from his daily e-mail report to the Australian Supervisor. During the Relevant Period, O’Brien initiated nine one-sided trades into the conversion account at

month-end. O'Brien also repeatedly entered manual prices that were different from the market price for the purchase of LOOK ADRs and the one-sided conversion trades. These prices were substantially higher than the market price for LOOK ADRs and falsely decreased the unrealized losses that appeared on CSFB's ledgers. Each month between April 1, 2000 and September 28, 2000, after CSFB sent CSFBAEL the Month End Report, O'Brien cancelled the one-sided conversion and continued purchasing LOOK ADRs in the AQ Trading Account.

20. During the Relevant Period, O'Brien also executed several unauthorized foreign currency transactions in an attempt to offset his trading losses in LOOK ADRs. Altogether, O'Brien purchased approximately \$2 million in Australian currency.

21. On September 28, 2000, CSFB notified O'Brien that he would shortly be terminated for reasons unrelated to his trading activities: CSFB's pending acquisition of another broker-dealer made his position redundant. O'Brien realized he could no longer continue concealing the fraud and, on that day, he disclosed his misconduct to CSFBAEL sales personnel in New York who immediately fired him.

22. By September 28, 2000, O'Brien had accumulated 739,000 LOOK ADRs for a total purchase price of approximately \$19 million. CSFB liquidated O'Brien's unauthorized position in LOOK ADRs resulting in a \$12.6 million dollar loss to CSFB. CSFB also liquidated O'Brien's unauthorized currency position resulting in an additional \$954,000 loss to CSFB.

23. As a result of O'Brien's actions, CSFB's books and records, namely the ledgers and other records reflecting assets and liabilities, did not accurately reflect and record the assets because O'Brien entered manual prices that were higher than the market price and inflated the value of the LOOK ADRs on CSFB's ledgers. O'Brien also improperly removed the value of securities from the AQ Trading Account on CSFB's books by temporarily transferring the securities into the conversion account at month-end and transferring the securities back to the AQ Trading Account after the month-end reconciliation had been completed. The LOOK ADRs that O'Brien temporarily placed in the conversion account at month-end were improperly removed from the AQ Trading Account and thus did not appear on the TPDRs at month-end and were therefore omitted from the Month End Reports for the AQ Trading Account. As a result, O'Brien caused CSFB's ledgers to inaccurately reflect assets and liabilities and income and expenses.

24. During the Relevant Period, O'Brien received ill-gotten gains from his conduct in the form of a bonus from CSFBAEL in June 2000 totaling \$114,800. After CSFB discovered the misconduct and terminated O'Brien, O'Brien voluntarily repaid his ill-gotten gains to CSFB.

25. O'Brien fully cooperated with the Commission's investigation by, among other things, waiving his Fifth Amendment Privilege and providing sworn testimony to the Commission staff in which he admitted his misconduct.

## **CSFB's Failure Reasonably to Supervise O'Brien**

26. "The responsibility of broker dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities market." In the Matter of Lehman Brothers, Inc., Exchange Act Release No. 37673 (Sept. 12, 1996)(citing In re Smith Barney, Harris Upham & Co., Exchange Act Release No. 21813 (Mar. 5, 1985)).

27. During the Relevant Period, CSFB failed reasonably to supervise O'Brien with a view to preventing the violations described above. CSFB's supervision was deficient in that: (1) CSFB failed to establish systems to implement supervisory procedures because its business arrangement with CSFBAEL led to relaxed "back office" monitoring of the Australia Desk in New York, including the monitoring of the TPDRs referencing O'Brien's transactions; (2) there were inadequate systems to implement procedures on the Australia Desk for tracking and monitoring supervisory appointments to ensure all registered representatives in the US were assigned to a properly licensed supervisor; (3) CSFB had no procedures for monitoring activity in the conversion account; and (4) CSFB's procedures for the approval of cancelled trades were inadequate and allowed traders, such as O'Brien, to obtain pro forma approval from various supervisors. If CSFB had established or implemented reasonable procedures for supervising O'Brien in any one of these areas, it is likely that the firm could have detected and prevented O'Brien's misconduct.

## **Inadequate System to Implement Procedures Regarding Monitoring of the Australia Desk**

28. During the Relevant Period, as a result of its business arrangement with CSFBAEL, CSFB unreasonably relaxed the review of the operations of the Australia Desk in New York by several "back office" departments of CSFB including the Product Control department and the Operations department ("Back Office"). Because the CSFB Back Office departments believed that review of CSFBAEL and its Australia Desk were being conducted by the back-office departments in Australia, the Back Office oversight at CSFB in New York did not include review of: (a) the TPDRs that listed O'Brien's improper trades and detailed the manual price changes O'Brien made to his LOOK purchases; or (b) the conversion account that O'Brien used to conceal those trades. Under the firm's procedures, the firm and its supervisors relied in part, on review by the Back Office to identify problematic trading and report issues to supervisors. Had CSFB established systems to implement these procedures to the Australia Desk, it could have detected and prevented O'Brien's violations of the securities laws.

29. The 1998 agreement between CSFB and CSFBAEL resulted in CSFB not employing supervisory mechanisms to the Australia Desk that it already had in place for monitoring other trading desks located in New York. This included failing to implement procedures that would have detected and prevented O'Brien's misconduct. For example, in the normal course of CSFB's business, firm procedures provided that the Product Control department had responsibility on a daily basis, to independently review and monitor a trader's daily profit and loss as it appeared in the TPDR. The firm's procedures also required Product Control personnel to review the TPDR for unusual activity, such as excessive losses, a large concentration in one security, or manual price markings that were not reflective of market prices. The firm's procedures



required Product Control personnel to report any unusual activity to the trader and the trader's supervisor. The TPDRs for the AQ Trading Account used by O'Brien contained red-flags indicating the large unrealized losses that O'Brien incurred in his trading account from his numerous unauthorized purchases, as well as manually marked prices that were not reflective of market prices.

30. Because of the business arrangement with CSFBAEL, the firm failed to establish a system to implement these procedures and consequently, employees of CSFB's Product Control Department in New York did not monitor the daily TPDRs generated for the Australia Desk which reflected O'Brien's unauthorized and manually marked trades and did not report any unusual activity to firm supervisors. Had the firm established systems to implement these procedures, firm personnel could have undertaken appropriate Back Office review in New York of O'Brien's activities, and the firm and its supervisors could have detected and prevented O'Brien's misconduct.

### **Inadequate Systems to Implement Procedures for Tracking and Monitoring Supervisory Assignments on the Australia Desk**

31. During the Relevant Period, because of CSFB's business arrangement with CSFBAEL, CSFB had inadequate systems to implement procedures for monitoring supervisory assignments on the Australia Desk. Because CSFB was unaware that CSFBAEL had promoted O'Brien to trader, CSFB did not assign any supervisor in New York to supervise O'Brien's trading, nor did CSFB take steps to determine if O'Brien was otherwise adequately supervised. In fact, O'Brien was not adequately supervised because the Australian Supervisor: (a) was not licensed in the United States; (b) primarily relied on e-mails sent to him by O'Brien to monitor O'Brien's trading; and (c) did not have access to the daily TPDRs generated by CSFB, which if reviewed, would have exposed the unauthorized trades, the one-sided conversions and the manually marked prices that were not reflective of market prices.

32. CSFB's supervisory procedures required its supervisors, together with the Legal Department, to insure that each licensed employee, including all traders, was assigned to a properly licensed supervisor. For example, during the Relevant Period, the Legal Department maintained a record for tracking supervisory assignments of personnel who had passed the Series 7 exam required by NASD rules. It was CSFB's policy to make certain that every trader who passed a Series 7 exam was supervised by personnel who passed a Series 24 exam. The Legal Department also determined whether a supervisor was qualified to supervise a particular type of activity.

33. During the Relevant Period, CSFB's Legal Department should have received notification whenever a person was hired, promoted or an employee's supervision changed, so that updates could be entered into the records ensuring every trader was supervised by licensed personnel ("Assignment Policy"). Although CSFB had an Assignment Policy, the Australia Desk, the New York Salesman and the Australian Supervisor were apparently unaware of the existence or content of the policy.

34. Because the Australian Supervisor and the New York Salesman were unaware of the need to report O'Brien's promotion to trader and change in supervisor to the Legal Department, they only reported O'Brien's promotion and change in supervisor to CSFB's HR Department in New York. The employee in CSFB's HR Department who received this notice was also apparently unaware of the need to notify the Legal Department and did not pass on information regarding O'Brien's promotion and the need to assign a new supervisor for him. As a result, no employee at CSFB or CSFBAEL notified the Legal Department and the Legal Department was unaware that (a) O'Brien had been promoted to trader; (b) the New York Salesman would no longer supervise O'Brien; and (c) an employee of CSFBAEL in Australia, who was not licensed in the US and did not have access to the TPDR and other records necessary to adequately supervise O'Brien, had become his new supervisor.

35. Because CSFB failed to implement its procedures by providing notice of the Assignment Policy to the employees on the Australia Desk or CSFBAEL, a licensed New York supervisor was never assigned to supervise O'Brien's trading during the Relevant Period and O'Brien was not otherwise adequately supervised. Appropriate supervision of O'Brien's trading in New York could have detected and prevented O'Brien's misconduct.

#### **No Procedures for Monitoring the Conversion Account**

36. CSFB failed to establish and implement procedures for monitoring activity in the conversion account which O'Brien used to hide his fraudulent transactions. Had CSFB established and implemented procedures, such as requiring a supervisor to review the conversion account, CSFB supervisors could have observed red flags indicating O'Brien's improper trading and followed up as appropriate.

37. The conversion account is an internal account at CSFB used to facilitate the conversion of ADRs into their underlying ordinary shares. Thousands of ADRs from all parts of CSFB's trading operation pass through the account on a daily basis. During the Relevant Period, CSFB did not monitor trading activity into and out of the account. In particular, there was no mechanism for detecting positions that were held in the account longer than the settlement date or for detecting one-sided conversion trades. Functioning solely as an internal "pass-through" account for conversions, securities sitting in the account for more than a short period of time should have raised immediate red-flags to anyone monitoring that account. In one instance, O'Brien left unconverted positions in the account for more than a month before he initiated a cancellation. Because the conversion account was not monitored for unusual activity, O'Brien was able to indefinitely place LOOK ADRs in the account, thus removing the LOOK position from the AQ Trading Account and CSFB's trading ledgers.

38. Had CSFB established and implemented procedures for monitoring activity in the conversion account, it could have detected and prevented O'Brien's misconduct.

## **Inadequate Systems for Monitoring Trade Cancellations**

39. CSFB had inadequate systems for monitoring and approving the cancellation of trades. As a result, O'Brien was able to cancel the one-sided trades made into the conversion account while obtaining no meaningful review or approval from various trading supervisors at CSFB.

40. In order to cancel a trade at CSFB, a trader was required to direct a clerk to prepare a cancellation form. The cancellation form identified the security to be cancelled and included the original trade date and settlement date. The form did not require information concerning the monetary value of the cancellation. The form only required a cursory explanation as to the reason for the cancellation. The cancellation then had to be approved by a list of supervisors authorized to approve trade cancellations. CSFB's procedures during the Relevant Period did not require that a trader's direct supervisor approve the cancellation or for any supervisors to periodically review a pattern of cancellations by a single trader for problematic practices. Since trade cancellations were a routine part of trading, various supervisors could approve numerous cancellations daily, making it difficult for these supervisors to meaningfully question and review a pattern of cancellation requests from one trader.

41. During the Relevant Period, O'Brien directed clerks to prepare cancellation forms for the one-sided LOOK conversions. O'Brien, who had no direct trading supervision at CSFB in New York, knew that other supervisors unfamiliar with his trading activity were unlikely to question his cancellation requests. The various trading supervisors were equally unlikely to detect the irregularities with the cancellations O'Brien requested since the form did not disclose that the cancellations concerned repeated one-sided transactions involving LOOK ADRs in the conversion account.

42. During the Relevant Period, O'Brien cancelled eight one-sided conversions that were signed by five different supervisors, none of whom had any knowledge of O'Brien's trading activity or that the same security (LOOK ADRs) was being cancelled from the conversion account each month shortly after month-end. One of these cancellations was processed and approved weeks after the initial trade was made to the conversion account and long after the purported settlement date for the trade had passed. The cancellation of a one-sided trade from the conversion account well after settlement date was highly unusual and should have raised red-flags. The inadequacies of CSFB's cancellation procedure allowed O'Brien to shift the losing position from the AQ Trading Account to the conversion account and avoid detection. Had CSFB established and implemented adequate procedures for monitoring trade cancellations, it could have detected and prevented O'Brien's misconduct.

## **CSFB's Remedial Undertakings**

43. Since the Relevant Period, CSFB immediately implemented new procedures and made improvements to existing procedures to address the supervisory failures detailed above.<sup>3</sup> In accepting CSFB's offer, the Commission considered CSFB's undertakings and the cooperation it afforded the Commission staff. CSFB undertakes to maintain the following improvements:

### **a. Implementation of Control Over The Australia Desk In New York**

After discovery of O'Brien's unauthorized trades, CSFB began exercising full control over the Australia Desk in New York by implementing supervisory procedures and Back-Office Review consistent with those in place over other trading desks in the United States. CSFB's reforms included conducting a full review of the Australia Desk, including daily independent profit and loss analysis by Product Control, appointing a licensed New York based supervisor to oversee trading at the Australia Desk in New York, and distribution of the TPDR for the Australia Desk to the newly-appointed supervisor in New York as well as to the Australian Supervisor at CSFBAEL.

### **b. Improved Trade Cancellation Procedures**

CSFB improved the procedures for the cancellation of trades by requiring the supervisors who approve the cancellations to obtain detailed explanations for the cancellation. In addition, CSFB now requires that only the trader's direct supervisor can review and approve the cancellation request.

### **c. Monitoring the Conversion Account**

CSFB implemented procedures to monitor the conversion account. CSFB's Product Control department monitors all activity into and out of the conversion account. Any manual price markings of securities in the conversion account are flagged and reviewed by Product Control. One-sided conversions or securities remaining in the account past settlement date are promptly flagged and brought to the attention of the initiating trader's direct supervisor as well as senior operations management.

44. As a result of the conduct described above in paragraphs 3 through 25, O'Brien willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

45. As a result of the conduct described above in paragraphs 3 through 25, CSFB willfully violated, and O'Brien willfully aided and abetted and caused CSFB's violations of,

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<sup>3</sup> In addition to the remedial undertakings, CSFB conducted a review of all registered employees to ensure that each of them reported to an appropriately licensed supervisor in the U.S. CSFB did not discover any other unsupervised employees.

Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder. Section 17(a) provides that each broker, dealer, or member of a national securities exchange shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Rule 17a-3(a)(2) requires every broker or dealer to make and keep current ledgers or other records reflecting all assets and liabilities, income and expenses and capital accounts. As a result of O'Brien's misconduct, CSFB failed to comply with Section 17(a) and Rule 17a-3(a)(2) by failing to make and keep ledgers that accurately recorded the value of assets and liabilities and income and expenses.

46. As a result of the conduct described above in paragraphs 3 through 42, CSFB failed reasonably to supervise O'Brien, who was subject to its supervision, with a view to preventing and detecting O'Brien's violations as described above.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b)(6) and 21C of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent O'Brien shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- B. Respondent CSFB shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder;
- C. Respondent O'Brien shall cease and desist from causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder;
- D. Respondent O'Brien be, and hereby is barred from association with any broker, dealer, or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;
- E. Any reapplication for association by Respondent O'Brien will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent O'Brien, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award

related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

F. It is further ordered that Respondent CSFB shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; and (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies CSFB as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Alexander M. Vasilescu, Esq., Division of Enforcement, Securities and Exchange Commission, 233 Broadway, New York, NY 10279.

By the Commission.

Jonathan G. Katz  
Secretary