

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62603 / July 30, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3062 / July 30, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13986**

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**In the Matter of**

**ERIC S. BUTLER,**

**Respondent.**

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**ORDER INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO SECTION  
15(b) OF THE SECURITIES EXCHANGE ACT  
OF 1934 AND SECTION 203(f) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Eric S. Butler (“Respondent” or “Butler”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A.     RESPONDENT**

1.       From November 2003 until September 2007, Respondent was a registered representative associated with Credit Suisse Securities (USA) LLC (“Credit Suisse”), which was registered with the Commission as a broker-dealer and as an investment adviser. Respondent, 39 years old, is a resident of New York, NY.

## B. THE COMMISSION'S CIVIL INJUNCTIVE ACTION

2. On September 3, 2008, the Commission filed a civil injunctive action against Butler and another former registered representative at Credit Suisse, Julian Tzolov. *SEC v. Julian T. Tzolov and Eric S. Butler*, 08 Civ. 7699 (S.D.N.Y.) (SAS) (“Civil Injunctive Action”) charging Butler and Tzolov with violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Commission’s complaint alleged, among other things, that Butler and Tzolov, while they both were registered representatives associated with Credit Suisse, made fraudulent misrepresentations; that Butler and Tzolov were authorized by certain corporate customers to purchase only auction rate securities collateralized by federally guaranteed student loans; that without authorization Butler and Tzolov purchased over \$1 billion in auction rate securities collateralized by subprime mortgages, collateralized debt obligations, mobile home contracts and other non-federally guaranteed, non-student loan collateral; and that Butler and Tzolov concealed from certain customers these unauthorized purchases.

3. On July 13, 2010, the Commission moved for summary judgment in the Civil Injunctive Action against Butler based upon the criminal conviction described below.

## C. RESPONDENT'S CRIMINAL CONVICTION

4. On September 3, 2008, an indictment was unsealed in the United States District Court for the Eastern District of New York, alleging criminal violations by Butler and Tzolov arising out of the conduct alleged by the Commission in its complaint in the Civil Enforcement Action. *United States v. Eric Butler and Julian Tzolov*, 08 CR 370 (E.D.N.Y.) (JBW) (“*U.S. v. Butler*”).

5. On April 14, 2009, a grand jury in the Eastern District of New York handed down a fourth superseding indictment (“Superseding Indictment”) against Butler and Tzolov in *U.S. v. Butler* charging Butler and Tzolov with one count of conspiracy to commit securities fraud in violation of 18 U.S.C. §§ 371, 3551, *et seq.*; one count of securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff and 18 U.S.C. §§ 2, 3551 *et seq.*; and one count of conspiracy to commit wire fraud in violation of 18 U.S.C. §§ 1349, 3551 *et seq.*

6. On August 17, 2009, the jury in *U.S. v. Butler* returned a verdict finding Butler guilty on each count of the Superseding Indictment, specifically count one (conspiracy to commit securities fraud), count two (securities fraud) and count three (conspiracy to commit wire fraud).

7. The counts of the Superseding Indictment to which the jury found Butler guilty alleged, among other things, that Butler, while a registered representative with Credit Suisse, engaged in a fraudulent scheme which included using certain customers’ funds to purchase other types of auction rate securities, instead of the securities that those customers requested; and that he transmitted and caused to be transmitted wire communications in interstate and foreign commerce in furtherance of the fraudulent scheme.

8. On January 22, 2010, the Court in *U.S. v. Butler* sentenced Butler to five years imprisonment, three years of supervised release, and a \$5 million fine. In addition, the Court ordered Butler to forfeit \$250,000.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within

the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy  
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, and Notice of Hearing ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
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