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July 7, 2003

Financial Crimes Enforcement Network,
Department of the Treasury
Section 352 Investment Adviser Rule Comments
P.O. Box 39
Vienna, Virginia 22183

Re: Attention: Section 352 Investment Adviser Rule Comments

Ladies and Gentlemen:

We respectfully submit this letter on behalf of our client, Credit Suisse Asset Management, LLC, in response to a request for comment by the Financial Crimes Enforcement Network, Department of the Treasury ("FinCEN"), on the proposed amendment of FinCEN's Bank Secrecy Act ("BSA") rules to require certain investment advisers that manage client assets to establish anti-money laundering ("AML") programs, to establish minimum requirements for such programs and to delegate FinCEN's authority to examine certain investment advisers for compliance with such program requirements to the Securities and Exchange Commission (collectively, the "Rule").[1] Specifically, FinCEN requests comment on, among other matters, whether other investment advisers should be excluded from the Rule and proposed provisions designed to avoid imposing overlapping or duplicative regulation of investment advisers and other financial institutions that are (or are proposed to be) subject to AML program requirements.

We are writing this letter to request that FinCEN clarify that the Rule, as adopted, would not apply to certain investment advisers ("Program Sub-Advisers")[2] participating in investment adviser "wrap" fee programs (as further described herein, "Wrap Programs") with respect to clients in such Wrap Programs.

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[1] Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Investment Advisers, 68 FR 23646 (May 5, 2003) (the "Adviser AML Proposal").

[2] "Program Sub-Adviser" as used in this letter refers to a Program Sub-Adviser that is not a Sponsor.

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Operation of Wrap Programs

Wrap Programs generally are arrangements where a client pays one fee (based on the amount of assets under management) for discretionary investment management, custody and brokerage. The sponsor of a Wrap Program (the "Sponsor") either selects Program Sub-Advisers for clients, advises clients about which Program Sub-Advisers to choose or, in some instances, merely provides information about Program Sub-Advisers without selecting or advising clients; the Sponsor then monitors Program Sub-Advisers' management of client accounts. In some instances, such as in a "private label" model portfolio program, Program Sub-Advisers merely provide the Sponsor with a model portfolio and do not further participate in managing assets of the Sponsor's clients. The Program Sub-Adviser is essentially functioning as a "sub-investment adviser" for the Sponsor's Wrap Program. Usually, both the Sponsor and the Program Sub-Advisers would fall within the definition of "investment adviser" in the Investment Advisers Act of 1940, as amended, and would be subject to the Rule as proposed.

Typically, the Sponsor, rather than the Program Sub-Advisers, serves as the primary contact for Wrap Program clients, maintains client relationships, and gathers and has access to client information.[3] As a result, Program Sub-Advisers usually have little and sometimes no information about, or access to, clients. In fact, the Sponsor, through the Wrap Program agreement or an informal understanding with each Program Sub-Adviser, may specify that the Sponsor will maintain client relationships and may indicate that client information, other than any specific investment restrictions or requirements of a client account or other specific information, is considered proprietary information of the Sponsor, so that the Program Sub-Adviser would not be able to obtain information about the Sponsor's clients, or have any contact with, the Sponsor's clients even if it desired to do so.

[3] The Sponsor also is usually the party responsible for client contact and individualizing clients' participation in the Wrap Program, in accordance with Rule 3a-4 under the Investment Company Act of 1940, as amended (the "1940 Act"), to avoid investment company status under the 1940 Act. See footnote 6 below.

The Rule's Application to Wrap Programs

The Adviser AML Proposal notes that investment advisers are often in a critical position of knowledge as to the movement of large amounts of financial assets through financial markets and, in some cases, an investment adviser may be the only person with a complete understanding of the source of invested assets, the nature of the clients, or the objectives for which assets are invested. The Adviser AML Proposal further notes that, in some cases, an adviser may be the only participant aware of the overall investment program of a client who may use multiple broker-dealers to trade securities in transactions that individually may not raise money laundering concerns.[4] However, we do not believe that this rationale applies to Program Sub-Advisers. Program Sub-Advisers are not in a position to monitor potential money laundering activities. As described above, a Program Sub-Adviser in a Wrap Program may have limited knowledge regarding the identity of the Sponsor's Wrap Program clients and will have no knowledge of the client's source of funds. Frequently a Program Sub-Adviser is responsible for only a portion of assets in the client's account with the Sponsor and cannot observe the client's overall investment program.

Relationship to Recently-Adopted Requirements for Other Financial Institutions

We believe that the Rule should be interpreted for Program Sub-Advisers as applying to the Sponsor as the Program Sub-Advisers' client and that the Rule should not apply to Program Sub-Advisers with respect to the Sponsor's clients in Wrap Programs.

This interpretation would be consistent with the customer identification program rule for mutual funds ("Fund CIP Requirements") recently adopted by Treasury and the Securities and Exchange Commission.[5] The Fund CIP Requirements specifically exempt from the definition of a "customer" of a mutual fund (and thus, from Fund CIP Requirements) underlying beneficial owners holding shares in an "omnibus" or "street name" account through a broker-dealer. These beneficial owners are deemed to be customers of the broker-dealer, rather than the fund. We believe that the relationship of the Program Sub-Adviser to the Sponsor's clients is similar to the relationship of a

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[4] Adviser AML Proposal at 23647.

[5] SEC Rel. No. 24031 (May 9, 2003).

mutual fund to beneficial owners holding fund shares through a broker-dealer's omnibus or street name accounts for its clients.[6]

Overlapping AML Obligations Addressed by Other Financial Institutions

We also believe that excluding clients in Wrap Programs from Program Sub-Advisers' AML obligations under the Rule is consistent with the rationale underlying FinCEN's proposed exceptions to the Rule which would permit investment advisers to exclude from their AML programs any proprietary or third party investment vehicle they advise that is subject to an AML program requirement under BSA rules.

As is the case with investors in a third party vehicle, a Program Sub-Adviser does not have a relationship with the Sponsor's clients.[7] The Sponsor, as an investment adviser that would be covered by the Rule, will already be subject to the Adviser AML Requirements with respect to client accounts in the Wrap Program and, indeed, will be better positioned to perform these responsibilities as discussed above.

Summary

We believe that Program Sub-Advisers in Wrap Programs as discussed in this letter should not be subject to the Rule with respect to the Sponsor's clients in the Wrap Program where the Sponsor is subject to the Rule and serves as the primary contact for Wrap Program clients, maintains client relationships, and gathers and has access to client information. Since Sponsors typically gather client information and Program Sub-Advisers depend on Sponsors for access to this information, it would not be practicable or advantageous in detecting potential money laundering activities for Program Sub-Advisers to be responsible for monitoring activities of Sponsor clients. To apply the Rule to Program Sub-Advisers in respect of the Sponsor's clients would be impractical in the operation of Wrap Accounts, would be inconsistent with other

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[6] While we reference AML requirements for mutual funds in the context of discussing Program Sub-Advisers' AML obligations, this reference is made solely on the basis that Program Sub-Advisers are in a position of accepting assets for management through an intermediary without knowledge of or access to the intermediary's clients, similar to the manner in which mutual funds may accept assets for management through an intermediary. This analogy is not intended to be relevant in any other context, as Wrap Programs are not mutual funds and seek not to inadvertently fall within the definition of "investment company" in the 1940 Act by complying with Rule 3a-4 under the 1940 Act, a "safe harbor" from investment company status.

[7] See footnote 6 above.

AML requirements and proposals, and would duplicate the Sponsor's obligations under the Rule.

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We hope that FinCEN will find these comments helpful, and we would be pleased to discuss these matters at your convenience. Please feel free to contact Hillel Bennett at 212.806.6014 or Janna Manes at 212.806.6141 if you would like to discuss any of these points in further detail.

Very truly yours,

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