

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

**SECURITIES ACT OF 1933**  
**Release No. 10943 / May 17, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20310 / May 17, 2021**

**In the Matter of**

**S&P DOW JONES INDICES  
LLC,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against S&P Dow Jones Indices LLC (“Respondent” or “S&P DJI”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

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

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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.

## Summary

1. On Monday, February 5, 2018, the CBOE Volatility Index or “VIX” experienced an unprecedented spike of 115%. S&P Dow Jones Indices LLC (“S&P DJI”) publishes an index, which measures the return from a rolling long position for certain VIX futures contracts, known as the S&P 500 VIX Short-Term Futures Index ER (“Index”), which S&P DJI licenses to, among other entities, sponsors and issuers that use it to establish, structure, manage, offer, and sell securities. One such security was an exchange-traded note (“ETN”) issued by Credit Suisse AG (“CSAG”) called the VelocityShares Daily Inverse VIX Short Term ETNs linked to the S&P 500 VIX Short-Term Futures Index due December 4, 2030 (“XIV”).

2. Despite this notable market volatility on February 5, the Index remained static during certain intervals between the 4:00 PM hour up until 5:08 PM, even though it was supposed to calculate values based on real-time prices of certain VIX futures contracts. This was due to the implementation of a heretofore unknown S&P DJI quality control feature called an “Auto Hold.”

3. An Auto Hold comes into effect if an index value breaches certain thresholds, at which point the immediately prior index value continues to be reported. The repetition of this index value continues until a current index value comes back within those thresholds or responsible S&P DJI personnel manually release the Auto Hold. On February 5, during the intervals described above, S&P DJI personnel did not release the Auto Hold for the Index, resulting in the publication and dissemination of static Index values, rather than values based on the real-time prices of certain VIX futures contracts.

4. The Index was the primary input for the calculation of XIV’s indicative—or economic—value, so like the Index’s values, XIV’s indicative values published by XIV’s calculation agent to the market during the same intervals on February 5 were similarly static. As a result, during certain intervals between the 4:00 PM hour up until 5:08 PM, XIV’s indicative values being reported in real-time were higher than what would have been calculated and disseminated by the calculation agent if the Auto Hold had not been triggered.

5. Critically, unlike the XIV indicative values being published to the market, the XIV indicative values that would have been published if the Auto Hold had not been triggered would have breached a key metric that would have provided CSAG the right to accelerate, or call, all outstanding XIV notes. As such, during the 4:00 PM hour and until 5:09 PM, when the closing indicative value of XIV was published, investors did not know that they had been purchasing and/or holding a product that had an economic value that was substantially less than what XIV’s calculation agent had publicly reported and that was at risk of being accelerated by its issuer.

6. In fact, the next day CSAG exercised its right to accelerate XIV.

7. S&P DJI’s actions with respect to the undisclosed Auto Hold resulted in static Index values being published and disseminated to the market that were not based on the real-time

prices of certain VIX futures contracts. As a result, S&P DJI violated Section 17(a)(3) of the Securities Act.

### **Respondent**

8. S&P Dow Jones Indices LLC is a Delaware limited liability company headquartered in New York, New York. S&P DJI is a joint venture between S&P Global Inc. (“S&P Global”) and one other entity, with S&P Global holding the controlling interest in that joint venture. S&P DJI is one of four reportable segments for S&P Global and serves as a global index provider that maintains a wide variety of valuation and index benchmarks.

### **Other Relevant Entity**

9. Credit Suisse AG is a corporation incorporated and domiciled in Switzerland and headquartered in Zurich, Switzerland. Credit Suisse Securities (USA) LLC (“CSSU”), a CSAG affiliate, is a Delaware limited liability company with its principal place of business in New York, New York and a registered broker-dealer and investment adviser with the Commission. CSAG, acting through its Nassau Branch, was the issuer of XIV, which was listed on The Nasdaq Stock Market (“Nasdaq”).

### **Background**

#### **XIV**

10. As of February 5, 2018, XIV was one of six separate series of ETNs issued by CSAG, pursuant to a pricing supplement dated January 29, 2018 to the prospectus supplement dated June 30, 2017 and prospectus dated June 30, 2017 (“Pricing Supplement”). According to the Pricing Supplement, the ETNs were intended “for sophisticated investors to manage daily trading risks” and were designed “to achieve their stated investment objectives on a daily basis.”

11. XIV, in particular, was intended to provide investors with returns based on the inverse of the performance of the Index, while the Index was intended “to provide investors with exposure to one or more maturities of futures contracts on the [VIX], which reflect implied volatility of the S&P 500 Index at various points along the volatility forward curve.” According to the Pricing Supplement, XIV was not linked to the VIX, but rather to the daily performance of the Index. And, as stated in the Pricing Supplement, the return on XIV was based on the performance of the Index. Thus, XIV offered investors inverse exposure to the performance of the Index.

### **The Index and Auto Hold**

12. S&P DJI calculated the Index’s value, using the relevant VIX futures contracts, as set forth in the S&P VIX Futures Indices Methodology dated October 2017 (“VIX Futures Indices Methodology”). Specifically, S&P DJI’s Global Realtime Index Platform system (“GRIP”) performed an automated calculation of the Index’s intraday value in five-second intervals or “ticks,” with S&P DJI personnel monitoring GRIP’s output.

13. An S&P DJI system captured the relevant VIX futures contracts' values at the end of the trading day and calculated the Index's closing value as of the close of the futures markets at 4:15 PM, with S&P DJI personnel verifying and validating the values and this calculation. S&P DJI disseminated the Index's closing value directly to its clients, as well as to the market generally, typically between approximately 4:40 PM and 5:15 PM.

14. On its public website, S&P DJI published its methodologies relevant to the Index's and other related indices' operations, specifically, the VIX Futures Indices Methodology and the S&P Commodities Indices Policies and Practices Methodology dated April 2017 ("Commodities Indices Methodology") (together, with VIX Futures Indices Methodology, "Methodologies"). The Methodologies contained, among other things, policies for these indices and the construction of these indices, which included the calculation of the Index.

15. In addition to these Methodologies, S&P DJI maintained internal "Index Quality Assurance Procedures" that S&P DJI personnel used to discharge their duties and responsibilities with respect to the Index and other related indices.

16. The Index Quality Assurance Procedures contained, among other things, procedures for real-time futures price inputs for indices and index level monitoring for responsible S&P DJI personnel, including procedures for when GRIP places an index on an Auto Hold. An Auto Hold occurs as a result of either of the following events: (1) when a tick breaches a pre-determined percentage threshold above or below the immediately-preceding tick ("Tick-by-Tick Threshold"); or (2) when a tick breaches a pre-determined percentage threshold above or below a tick established, and then reset, on an hourly basis ("Hourly Threshold") (together, with the Tick-by-Tick Threshold, "Thresholds"). An index's Thresholds are determined by its index committee, based on its conclusion as to what percentage an index value's spike or dip would be deemed to be anomalous and potentially indicative of errors in the real-time futures price inputs or the calculated index values.

17. According to the Index Quality Assurance Procedures, an Auto Hold results in the tick immediately preceding the tick that breaches a Threshold being repeated, with the repeated tick then being published to the market. There is no express indication given to the market that an index is on an Auto Hold.

18. This repeated publication of the same tick continues until the Auto Hold is released in either of the following ways: (1) responsible S&P DJI personnel manually release the Auto Hold following an investigation into its cause and determination that the breach was not the result of an error in the real-time futures price inputs or the calculated index values; or (2) GRIP automatically releases the Auto Hold when a subsequent tick falls within the Thresholds. The Index Quality Assurance Procedures indicate that after a certain period of time after an Auto Hold goes into effect, an email alert is sent to responsible S&P DJI personnel, and those personnel also receive an alert directly on their computer screens. Once the Auto Hold is released, GRIP resumes calculating ticks consistent with the calculations set forth in the S&P DJI methodology, with these ticks being published to the market.

## **The Use of the Index in the Offer of XIV**

19. CSAG used the Index in the offering of XIV pursuant to a license agreement, dated as of January 1, 2002, as amended on October 1, 2010 (“License Agreement”). Specifically, the License Agreement granted, among other things, a license to use the Index “to establish, organize, structure, sponsor, and manage ETNs . . . [and] to List . . . the . . . ETNs on Organized Securities Market(s) in North America,” with “List” being defined as “offered, traded, listed, purchased, sold, crossed, or exchanged through the medium or with the assistance of such Organized Securities Market.” The License Agreement also required submission of informational materials, such as prospectuses and pricing supplements, to S&P DJI for S&P DJI’s approval of the description of the Index.

20. The License Agreement listed XIV among the ETNs to be issued and highlighted the Index as its underlying index. It also set forth the fees owed to S&P DJI for use of the Index.

21. The Pricing Supplement contained, among other things, a description of the Index and its calculation. It provided that “[t]he intraday level of [the Index] is calculated in real time by [S&P DJI] . . . using the same methodology as for calculation of the closing level but applying real time prices of the relevant VIX futures contracts.” The Pricing Supplement also noted that CSAG “derived all information” regarding the Index in the Pricing Supplement “including, without limitation, [its] make-up, method of calculation and changes to [its] components, from publicly available information.”

22. As of February 5, 2018, the Auto Hold had not been publicly disclosed.

### **XIV’s Indicative Value**

23. The Pricing Supplement stated that the “economic value” of XIV was reflected through its indicative value. The primary input for the calculation used to determine XIV’s indicative value was the Index.

24. The indicative value of XIV was distinct from its “market value,” which the Pricing Supplement referred to as its “trading price” and which was the price at which investors could purchase and sell XIV in the secondary market. The Pricing Supplement warned that XIV’s trading price could vary significantly from its indicative value.

25. The Intraday Indicative Value was “designed to reflect the economic value of [XIV] at a given time,” whereas the Closing Indicative Value was “designed to reflect the end-of-day economic value of [XIV].” The calculation agent selected by CSAG calculated the Intraday Indicative Value every 15 seconds and disseminated it “over the Consolidated Tape, or other major market data vendor,” and also calculated the Closing Indicative Value as of the close of the futures markets at 4:15 PM, and typically published it between approximately 4:40 PM and 5:15 PM.

## February 5, 2018

26. Over the course of the February 5, 2018 trading day, stock prices fell sharply, with the Dow Jones Industrial Average decreasing over 1175 points—its then largest ever intraday point drop—and the S&P 500 falling over 4%. Amidst this significant market volatility, the VIX, which is intended to measure the market's expectation of future volatility based on options of the S&P 500, experienced its largest daily increase on record, rising 115% from 17 to 37. For its part, XIV opened at approximately \$110, and at 4:00 PM, closed at approximately \$99. During after-hours trading following the exchange's closing at 4:00 PM, however, the price of XIV dropped sharply, reaching a low of approximately \$10 around 6:30 PM.

### S&P DJI's Activities on February 5, 2018

27. There were three S&P DJI employees responsible for management of the Index—two index managers and a mid-level supervisor—though the index managers had primary responsibility for day-to-day tasks relating to the Index. On February 5, one of the two index managers responsible for monitoring the Index was out of the office. As a result, just one index manager (“Index Manager”) was left to monitor the Index, which was one of thousands of indices he was tasked to monitor that day.

28. During the trading day, the Index Manager knew about and specifically commented on the market volatility, including noting that he was receiving alerts from GRIP. In fact, the Index experienced numerous Auto Holds, due to breaches of the Hourly Threshold, on February 5.

29. Following the close of the equities markets at 4:00 PM, but before the close of the futures markets at 4:15 PM, prices of the VIX futures contracts used to calculate the Index spiked. As a result, the Index experienced a series of Auto Holds triggered by breaches of the Hourly Threshold. Six minutes before the 4:15 PM close of the futures markets, at 4:09:40 PM, the Index experienced an Auto Hold, freezing the tick at 86.51. GRIP automatically released this Auto Hold at 4:12:20 PM, though the Index again experienced an Auto Hold at 4:13:00 PM, freezing the tick at 87.51. This Auto Hold lasted for more than 20 minutes until 4:35:45 PM, when GRIP again automatically released the Auto Hold. The Index experienced another Auto Hold at 4:38:35 PM, freezing the tick at 87.6, which was the last value published by S&P DJI until it published the Index's closing value at 5:08 PM.

30. Despite receiving alerts from GRIP regarding these Auto Holds for the Index, the Index Manager did not release them manually or investigate their cause. Instead, based on oral instructions from his mid-level supervisor, each day the Index Manager prioritized end-of-day validations over real-time price and index level monitoring beginning at 3:10 PM, with this closing process typically running until the end of the 4:00 PM hour or beginning of the 5:00 PM hour. This prioritization of closing files was intended in part to meet S&P DJI's clients' expectations with respect to the timing of delivery of the closing files on a given day.

31. As a result of the Auto Hold that froze the Index's value from 4:13 PM to 4:35 PM, the tick published to the market at 4:15 PM was 87.51. The Index's closing value—*i.e.*, the

Index's value as of the close of the futures markets at 4:15 PM—however, was 96.94, which S&P DJI disseminated at 5:08 PM.<sup>2</sup>

### Auto Hold Impact on XIV's Intraday Indicative Value

32. Because the Index is the primary input for calculating XIV's Intraday Indicative Value, the Intraday Indicative Value experienced flatlines while the Index was on Auto Hold. For example, due to the Auto Hold that began at 4:13:00 PM and lasted until 4:35:45 PM, the Intraday Indicative Value published to the market by XIV's calculation agent remained static at 24.8933.

33. Immediately following S&P DJI's dissemination of the Index's closing value, XIV's calculation agent published the Closing Indicative Value—*i.e.*, the Indicative Value as of the close of the futures market at 4:15 PM—of 4.2217 at 5:09 PM. The published Intraday Indicative Values during the 4:00 PM hour until the publication of the Closing Indicative Value at 5:09 PM never dropped below 24, let alone reached the Closing Indicative Value of 4.2217.

34. Following the publication of the Closing Indicative Value, CSSU contacted S&P DJI to inquire about why the ticks remained static at certain intervals during the 4:00 PM hour, in particular during periods between 4:00 PM and 4:15 PM. At 8:16 PM, an S&P DJI sales representative informed CSSU of the existence of the Auto Hold: “Due to the large swing in the VIX futures contract prices the index was put on an auto-hold by our intraday calculation system. This is what caused the flatline. . . . Further, our policy is to not restate the ticks for indices that were put on auto-hold, so the values will remain as is.” Until the evening of February 5, CSAG had not been informed about the Auto Hold or how it impacted the Index.

### **Acceleration Event**

35. The Pricing Supplement stated that CSAG had the right to accelerate, or call, all of the outstanding ETNs of XIV under defined circumstances. Specifically, an Acceleration Event included “any event that adversely affect[ed] [CSAG's] ability to hedge or [its] rights in connection with the ETNs,” such as, “if the Intraday Indicative Value is equal to or less than 20% of the prior day's Closing Indicative Value.”<sup>3</sup>

36. During the evening of February 5, CSAG concluded that it would exercise its right to accelerate all of the outstanding ETNs of XIV. According to a CSSU employee who played an advisory role in this decision to accelerate, among the facts considered was “S&P's suspension of the calculation of the S&P 500 VIX Short-Term Futures Index on February 5, 2018.”

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<sup>2</sup> In fact, no tick published during the 4:00 PM hour up until the publication of the Index's closing value at 5:08 PM reached 88, let alone the closing value of 96.94.

<sup>3</sup> According to the Pricing Supplement, “upon acceleration [noteholders] w[ould] receive a cash payment in an amount . . . equal to the Closing Indicative Value,” as of a defined valuation date for purposes of the acceleration.

37. At 4:00 AM on February 6, Nasdaq halted trading of XIV in advance of the exchange's opening at 9:30 AM, pending the release of material news. Later that morning, CSAG filed a press release, announcing XIV's acceleration, "[b]ecause the intraday indicative value of XIV on February 5, 2018 was equal to or less than twenty percent of the prior day's closing indicative value."

38. The February 5 Closing Indicative Value (4.2217) published at 5:09 PM was less than 20% of the February 2 Closing Indicative Value (108.3681). Due to Auto Holds, however, none of the Intraday Indicative Values published to the market on February 5 (e.g., 24.8993 from 4:13 to 4:35 PM) was less than 20% of the February 2 Closing Indicative Value.<sup>4</sup> As such, any investor who purchased and/or held XIV during the Auto Holds of the 4:00 PM hour up until 5:09 PM did so without direct knowledge that a February 5 Intraday Indicative Value would have breached 20% of the February 2 Closing Indicative Value if the Auto Hold had not been implemented. And, importantly, those investors purchased and/or held XIV without direct knowledge that the ETN would have earlier satisfied the conditions of CSAG's right to accelerate.

39. An undisclosed feature of the Index, the Auto Hold resulted in S&P DJI's publication of static ticks that were not based on the real-time prices of certain VIX futures contracts, due to its failure to release Auto Holds during certain periods during the 4:00 PM hour up until 5:08 PM on February 5. S&P DJI failed to have sufficient personnel available to monitor the Index on that date. Moreover, at least in part due to oral instructions to prioritize end-of-day validations over real-time price and index level monitoring, those personnel who were available did not follow S&P DJI's procedures with respect to real-time futures price and index level monitoring. And, as the Index was the primary input for purposes of calculating XIV's indicative value, the publication of static ticks impacted by Auto Holds resulted in the publication of similarly static Intraday Indicative Values.

40. As a result of the conduct described above, S&P DJI violated Section 17(a)(3) of the Securities Act, which prohibits in the offer or sale of securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud on the purchaser.<sup>5</sup>

### **S&P DJI's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

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<sup>4</sup> These published Intraday Indicative Values were approximately 23% of the February 2 Closing Indicative Value.

<sup>5</sup> Negligence is sufficient to establish a violation of Section 17(a)(3) of the Securities Act. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent S&P DJI's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondent S&P DJI cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

B. Respondent S&P DJI shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$9,000,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying S&P DJI as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel Michael, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph B. above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30

days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary