

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059467802**

TO: NYSE AMERICAN LLC

RE: Wedbush Securities, Inc., Respondent
CRD No. 877

During the periods of January 1, 2016 through July 31, 2020 and December 9, 2020 through April 7, 2021 (the “Relevant Periods”), Wedbush Securities, Inc. violated: (1) Regulation SHO Rules 204(a), (b), and (c) by failing to timely close out fails-to-deliver as required by Rule 204(a), failing to place securities in the “penalty box” as required by Rule 204(b), and failing to comply with the notice requirement of Rule 204(c); (2) NYSE American Rule 3110(a) and (b) (Supervision) by failing to establish and maintain a system of supervisory controls, including Written Supervisory Procedures (“WSPs”), reasonably designed to achieve compliance with Regulation SHO Rules 204(a) and (c). Consent to a censure, a \$112,500 fine (resolved simultaneously with similar matters for a total fine of \$900,000),¹ and an undertaking.

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”)² Code of Procedure, Wedbush Securities, Inc. (“Wedbush” or the “Firm”) submits this Letter of Acceptance, Waiver, and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, NYSE American will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Wedbush hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE American, or to which NYSE American is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NYSE American:

¹ These matters were brought by NYSE, NYSE Chicago, Inc., NYSE National, Inc., and the Financial Industry Regulatory Authority (“FINRA”).

² For a portion of the time of the violation, the Exchange was known as “NYSE MKT LLC,” and the NYSE American rules referenced in this AWC were denominated NYSE MKT rules.

BACKGROUND AND JURISDICTION

1. Wedbush became a member of NYSE American in 1988 and is an Amex Trading Permit (“ATP”) Holder. The Firm is headquartered in Los Angeles, California and it has more than 530 registered representatives and maintains 69 branches. The Firm engages in securities trading on behalf of individual and institutional clients.

VIOLATIONS

Wedbush did not comply with Regulation SHO Rules 204(a), (b) and (c)

2. The Securities and Exchange Commission adopted Regulation SHO to address concerns regarding persistent failures to deliver and potentially abusive “naked” short selling, e.g., the sale of securities that an investor does not own or has not borrowed. Regulation SHO imposes certain requirements on broker-dealers with respect to sales of equity securities to promote market stability, preserve investor confidence, and increase short sale transparency. These requirements include Regulation SHO Rule 204(a)’s close out provisions, Rule 204(b)’s “penalty box” provision, which restricts short selling in securities when the close out requirement is not satisfied unless the broker-dealer borrows or arranges to borrow the security, and Rule 204(c)’s notice provision, which requires a firm to provide written notice to any customer for whom the firm clears and settles trades when it enters and leaves the penalty box.
3. A fail to deliver (“FTD”) occurs when a seller fails to deliver securities to the buyer when delivery is due. Rule 204(a) provides that a participant of a registered clearing agency that has a FTD at a registered clearing agency resulting from short sale transactions in an equity security close out the FTD by purchasing or borrowing securities of like kind and quantity by no later than the beginning of market open on the settlement day following the settlement date of the transactions that caused the fail. The participant must close out FTDs resulting from long sale transactions in an equity security by the beginning of market open on the third consecutive settlement day following the settlement date of the transactions that caused the fail.
4. Rule 204(b) provides that if a participant has an FTD position in any equity security at a registered clearing agency and does not close out the FTD, the participant may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, without first borrowing the security, or arranging to borrow the security. This requirement, known as the “penalty box” provision, remains in effect until the participant closes out the FTD by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.
5. Rule 204(c) provides that the participant must notify any broker or dealer from which it receives trades for clearance and settlement that the participant has an FTD position in an equity security that has not been closed out in accordance with Rule 204(a) and when it leaves the penalty box by closing out the FTD position.
6. When Wedbush had an FTD, an automated system attempted to identify the FTD and

to borrow or recall shares to close out it out. If the automated system failed to acquire the shares, Firm staff was required to borrow, recall or buy-in shares to close out the FTD. Firm staff, however, failed to timely recall shares that had been out on loan or execute buy-ins where the Firm initiated a stock loan recall but did not receive the shares in time to deliver them to the Continuous Net Settlement System (“CNS”).³

7. During the Relevant Periods, the Firm failed to timely close out approximately 2,056 FTD positions due to the Firm failing to timely borrow shares, recall shares that were out on loan or otherwise acquire shares and deliver them in accordance with the requirements of Rule 204(a).
8. During the period between January 1, 2016 through July 31, 2020, on approximately 390 occasions, the Firm further failed to place a security in the penalty box as required by Regulation SHO Rule 204(b) and to send the notice required by Regulation SHO Rule 204(c).
9. By virtue of the foregoing, Wedbush violated Regulation SHO Rules 204(a), (b) and (c).

Wedbush’s supervisory system and WSPs were not reasonably designed to achieve compliance with Regulation SHO Rules 204(a) and (c)

10. NYSE American Rule 3110(a) requires members to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.”
11. NYSE American Rule 3110(b) requires members to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.”
12. During the Relevant Periods, Wedbush failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Regulation SHO Rules 204(a) and (c). The Firm’s system for complying with Rule 204(a) relied on an automated and then a manual component to obtain shares to close out FTDs. The Firm’s WSPs included only summary instructions to close out FTDs and failed to offer reasonable guidance on the steps that Firm staff needed to take to execute buy-ins if the automated process did not result in closing an FTD. The Firm failed to effectively delegate responsibility for ensuring that the Firm was closing out each FTD.
13. The Firm was on notice that its process for closing out FTDs was unreasonable because in its 2018 and 2019 exams FINRA’s Department of Member Supervision identified FTDs to the Firm that were not properly closed out, but the Firm failed to institute effective remedial measures to its supervisory system in response to these red

³ The National Securities Clearing Corporation uses CNS to clear and settle securities transactions.

flags. Additionally, the Firm did not maintain any WSPs for complying with Rule 204(c).

14. By virtue of the foregoing, Wedbush violated NYSE American Rule 3110(a) and (b).

RELEVANT PRIOR DISCIPLINARY HISTORY

15. In September 2017, FINRA entered into an Acceptance, Waiver and Consent with the Firm imposing a fine of \$470,000 (\$70,000 of which was allocated to the Exchange) for violations similar to those under review in this matter.⁴ The 2017 AWC stated that during various review periods between April 1, 2010 and June 28, 2013, the Firm failed to timely close out 171 FTD positions and that the Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with Regulation SHO Rule 204(a).

SANCTIONS

B. The Firm also consents to the imposition of the following sanctions:

1. Censure and fine in the amount of \$900,000 (of which \$112,500 shall be allocated to NYSE American).⁵

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

2. Undertaking

Within 60 days of the execution of this AWC, the Firm agrees to certify that deficiencies in its supervisory procedures have been addressed through implementation of procedures that are reasonably designed to achieve compliance with the rules and regulations cited

⁴ See Matter Nos. 2011030598001 and 20120333282 (related Offer of Settlement and Consent brought on behalf of NYSE Arca, Inc.).

⁵ These matters were brought by NYSE, NYSE Chicago, NYSE National, and FINRA.

herein pertaining to Regulation SHO Rules 204(a) and (c).

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE American Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in Rule 9120 in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III. OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE American pursuant to NYSE American Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:

1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
 4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
 5. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity

to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

September 12, 2022

Date

Wedbush Securities, Inc.,
Respondent

By: Andrew Druch

Andrew Druch
Executive Vice President, General Counsel
and Chief Administrative Officer

Accepted by FINRA

September 15, 2022

Date

Jason Mogel

Jason Mogel
Senior Counsel
FINRA, Department of Enforcement

Signed on behalf of NYSE American LLC,
by delegated authority from its Chief
Regulatory Officer