

**NYSE ARCA, INC.
BUSINESS CONDUCT COMMITTEE**

NYSE Regulation, on behalf of
NYSE ARCA, INC.,

Complainant,

v.

Wedbush Securities Inc. (CRD No. 877)

and

Edward W. Wedbush (CRD No. 461221),

Respondents.

Disciplinary Proceeding
No. 2016-07-01264

STATEMENT OF CHARGES

NYSE Regulation, on behalf of NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”),
alleges:

Summary

1. This matter involves the knowing and systemic failure by Wedbush Securities Inc. (“WEDB” or the “Firm”) to oversee and supervise the trading activities of its principal, Edward W. Wedbush (“Mr. Wedbush”).
2. In addition to serving as the President of WEDB and the Chairman of WEDB’s parent company, Wedbush, Inc., Mr. Wedbush spent several hours each trading day actively managing and trading in more than 70 accounts (collectively, the “EW Controlled Accounts”). These accounts consisted of multiple discretionary accounts over which he had power of attorney (including accounts for relatives, friends, and WEDB employees), as well as personal and proprietary accounts for affiliates of WEDB and Wedbush, Inc. (of which Mr. Wedbush was also the majority shareholder).

3. Despite Mr. Wedbush's active trading in dozens of customer, personal, and proprietary accounts, Respondents failed to implement any process to monitor or supervise Mr. Wedbush's order entry, trade executions, or trade allocations in the EW Controlled Accounts, including for potential conflicts of interest and potential manipulative activity.

4. The absence of monitoring or supervision of his trading activities allowed Mr. Wedbush to handle the EW Controlled Accounts in an unfettered manner that was not permitted for other traders at the Firm.

5. For example, Mr. Wedbush regularly instructed a Firm employee to enter orders under a general account, waiting until the end of the trading day to allocate executed trades among the various EW Controlled Accounts (*i.e.*, to customers, personal accounts, or proprietary accounts). Mr. Wedbush's post-execution allocations were determined based entirely on his own discretion, and the Firm had no process to ensure that trade allocations among the EW Controlled Accounts were not being made to steer profitable trades to preferred EW Controlled Accounts or for other improper purposes. Mr. Wedbush's orders for the EW Controlled Accounts were made and executed on a separate trading platform, not used by other WEDB traders. And no other Wedbush employees, besides Mr. Wedbush, were allowed to make post-execution allocations.

6. Mr. Wedbush's unsupervised trading violated numerous Securities Exchange Act of 1934 ("Exchange Act") and NYSE Arca rules. Among other things, Mr. Wedbush's trading:

- a. Ignored Exchange Act and NYSE Arca rules regarding account designation that protect against such risks as "cherry picking"—whereby traders choose to allocate the best performing trades to their own or preferred accounts;
- b. Violated Exchange Act and NYSE Arca rules requiring firms to make and retain books and records;

- c. Resulted in thousands of trades being mismarked when entered into the Exchange's systems; and
- d. On several occasions, coincided with manual overrides of a security's closing price, with no oversight to ensure that such adjustments were not discriminatory.

7. Respondents' violations resulted, in large part, from the Firm's failure to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to ensure compliance with laws, regulations, and rules relevant to Mr. Wedbush's trading in the EW Controlled Accounts.

8. Indeed, the Firm's co-Chief Compliance Officer (the "co-CCO"), shortly after being hired, raised concerns about the lack of supervision of Mr. Wedbush's trading with the Audit Committee of WEDB's Board of Directors (the "Audit Committee"). The Firm, however, took no meaningful action to address the co-CCO's compliance concerns.

9. The Firm's abject failure to monitor or supervise Mr. Wedbush's trading in the EW Controlled Accounts continued for years. Even after senior management was alerted to it in connection with investigations by both FINRA and NYSE Regulation, the Respondents declined to implement a supervisory system to address Mr. Wedbush's trading activities.

10. A key reason for the Firm's failure to supervise Mr. Wedbush's trading was the Respondents' refusal to devote the resources required to do so.

11. By abdicating responsibility to supervise Mr. Wedbush's trading activities, the Firm allowed him to trade essentially unchecked, resulting in hundreds of thousands of violations of Exchange Act and NYSE Arca rules.

Respondents and Jurisdiction

12. WEDBUSH SECURITIES INC. (known as Wedbush Morgan Securities Inc. until April 2010) is headquartered in Los Angeles, California, and has been registered with the Exchange as an Equity Trading Permit (ETP) Holder since 2004. The Firm employs over 400 registered representatives in approximately 100 branch offices. WEDB has been registered with FINRA since 1955, and is also registered with multiple other equities and options exchanges. At all relevant times, including the entirety of the period during which it committed the misconduct at issue, WEDB was registered as an ETP Holder of the Exchange.

13. EDWARD W. WEDBUSH joined the securities industry in 1955 when he co-founded WEDB. At all relevant times, including the entirety of the period during which he committed the misconduct at issue, Mr. Wedbush served as the President of WEDB and the Chairman of WEDB's parent company, Wedbush, Inc.

14. WEDB and Mr. Wedbush have a long history of disciplinary actions related to supervisory deficiencies. For example:

- In *Wedbush Securities, Inc. and Edward William Wedbush*, Admin. Proc. File No. 3-16329 (Aug. 12, 2016) (the "regulatory filing matter"), the Securities and Exchange Commission sustained a FINRA order that imposed a fine of \$300,000 against WEDB and \$50,000 against Mr. Wedbush for extensive and widespread supervisory deficiencies related to regulatory filings, and also suspended Mr. Wedbush in all principal capacities for 31 days.
- On December 1, 2015, WEDB consented to fines totaling \$1,800,000 in four related matters brought by the Exchange and other self-regulatory organizations concerning deficient supervisory systems and procedures governing market access

and anti-money laundering requirements (the “market access matters”). *See, e.g., Department of Market Regulation v. Wedbush Securities, Inc.*, Proceeding No. 20110263118-03 (Dec. 1, 2015).

- In addition to the regulatory filing matter and the market access matters described above, WEDB, in the ten years preceding those matters, was fined over \$2,000,000 by regulators in more than a dozen separate actions involving supervisory failures.¹

15. NYSE Regulation, as well as FINRA’s Department of Market Regulation (“FINRA Market Regulation”) on behalf of NYSE Regulation, conducted an investigation of WEDB concerning potential violations with respect to (among other things): (i) order handling and post-execution allocation of trades; (ii) order and account books and records; (iii) trade mismarking; (iv) manual pricing overrides of closing prices of Exchange-listed securities; and (v) supervision of trading activity by Mr. Wedbush and related supervisory issues.

16. In letters dated May 5, 2014 and March 4, 2015, FINRA, on behalf of the Exchange, provided notice that the matters under investigation with respect to WEDB and its associated persons had been referred to the Legal Section of FINRA Market Regulation for further action.

¹ *See Department of Enforcement v. Wedbush Securities Inc.*, Proceeding No. 2012034934301 (Aug. 27, 2015); *In the Matter of Wedbush Securities Inc., et al.*, Exchange Act Rel. No. 73652 (Nov. 20, 2014); *Department of Market Regulation v. Wedbush Securities Inc.*, Proceeding No. 20070077690 (June 25, 2013); *Department of Enforcement v. Wedbush Securities, Inc., et al.*, Proceeding No. 20080127380-02 (Sept. 10, 2012); *Wedbush Morgan Securities, Inc.*, NYSE Proceeding No. 06-196 (Mar. 12, 2008); *see also Wedbush Securities Inc.*, BATS Proceeding No. 20100249132-01 (Aug. 21, 2015); *Department of Market Regulation v. Wedbush Securities Inc.*, Proceeding No. 20130362285 (May 12, 2015); *Wedbush Securities Inc.*, NYSE Proceeding No. 20120327429-01 (Dec. 19, 2013); *Wedbush Securities Inc.*, NASDAQ Proceeding No. 20090170026-02 (Apr. 2, 2013); *Wedbush Securities Inc.*, BATS Proceeding Nos. 20090170026 and 20100216049 (Mar. 4, 2013); *Wedbush Securities, Inc.*, Proceeding No. 20110275603 (Jan. 2, 2013); *Wedbush Securities Inc.*, BATS Proceeding No. 20110709 (May 21, 2012); *Wedbush Securities Inc.*, NASDAQ Proceeding No. 20080152870-01 (June 29, 2010); *Wedbush Morgan Securities Inc.*, NYSE Proceeding No. 09-01 (Jan. 6, 2009); *Wedbush Morgan Securities Inc.*, Proceeding No. 20060052881-01 (Sept. 25, 2008); *Wedbush Morgan Securities, Inc.*, Proceeding No. 20050002518-01 (Jan. 9, 2007); *Wedbush Morgan Securities, Inc.*, Proceeding No. 2004100023501 (Dec. 20, 2006); *Wedbush Morgan Securities, Inc.*, Proceeding No. E0220040229-01 (Dec. 14, 2006).

In letters dated December 21, 2015, NYSE Regulation and the Legal Section of FINRA Market Regulation provided notice that NYSE Regulation was assuming responsibility for further review and investigation of these matters as of January 1, 2016.

Statement of Facts

**For Years, Respondents' Trading in the EW Controlled Accounts
Violated Numerous Exchange Act and NYSE Arca Rules**

17. At all relevant times, Mr. Wedbush served as the authorized trader for the EW Controlled Accounts, which comprised dozens of accounts for family, clients, and friends, as well as personal and proprietary accounts. Mr. Wedbush held limited power of attorney over accounts for his wife, sister, brother, other relatives, and friends, as well as a WEDB director, a WEDB employee, and the spouse of a second employee.

18. In handling the EW Controlled Accounts, Mr. Wedbush worked with a WEDB employee ("Employee A"), who served as Mr. Wedbush's trading assistant. Although he did not supervise Mr. Wedbush's trading, Employee A was listed as the designated manager on account opening forms for several of the EW Controlled Accounts.

19. Traders at WEDB used standard systems that routed orders to multiple exchanges, including the Exchange. However, Mr. Wedbush and Employee A used a separate order management system (the "Platform"), not used by other WEDB traders. The Platform was used for direct entry of orders to NYSE Arca. Unlike the systems used by other WEDB traders, the Platform was not configured to assign orders to specific accounts before execution, and did not interface directly with the Firm's back office system. Account allocations for trades executed on the Platform were input manually by Employee A.

20. Orders for the EW Controlled Accounts were not assigned to any account prior to execution. Instead, Mr. Wedbush provided Employee A with trading instructions including the

security name, number of shares, and price, and Employee A entered each order in the Platform under a general account; the capacity code for each order was virtually always marked as “agency.” At the end of the day, long after trade executions had been completed, Mr. Wedbush and Employee A, under Mr. Wedbush’s direction, aggregated the shares acquired or sold, and conducted a volume weighted average price calculation. Mr. Wedbush determined which of the EW Controlled Accounts would be assigned each execution, and Employee A would allocate the trades accordingly.

21. “Bunching” is the practice of aggregating orders on behalf of two or more accounts. Bunching is typically used by professional money managers within an investment adviser pursuant to a formula that provides for the allocation of execution prices on a fair and equitable basis, in a consistent and timely manner. Mr. Wedbush, however, handled the EW Controlled Accounts outside of the Firm’s advisory business. And, his method for determining the allocations was not disclosed, documented, or supervised. Because Mr. Wedbush had unfettered latitude to allocate the bunched trades among proprietary accounts, family accounts, and customer accounts, Mr. Wedbush had the unchecked ability to grant preferential treatment, including to himself and his family, with no effective mechanism at the Firm to ensure that the allocations were made fairly.

22. Respondents’ practice of allocating trades in the EW Controlled Accounts at the end of the trading day violated the Firm’s own written supervisory procedures. Chapter 9 of the Firm’s WSPs, governing orders, stated that among other required information, orders had to record the identification of the account and, if a discretionary account, a notation whether discretion was exercised or not exercised. This was not done with respect to orders entered on behalf of the EW Controlled Accounts.

23. The Firm's WSPs also provided that each order, prior to execution, must include the name or designation on the order. WEDB had no procedures permitting or describing a process for post-execution allocation of trades, yet the post-execution allocation of trades in the EW Controlled Accounts continued unabated over the course of years.

24. In November 2015, the Firm began migrating some, but not all, of the EW Controlled Accounts to an investment advisory platform. Yet, Mr. Wedbush and Employee A continued to route orders solely to NYSE Arca and to allocate trades to accounts after execution, with no process to ensure that trade allocations were being made properly.

25. Beginning in June 2016, Mr. Wedbush and Employee A began using a new order management system, transitioning from using the Platform for trading in the EW Controlled Accounts. Yet, Mr. Wedbush and Employee A continued to route orders solely to NYSE Arca and to allocate trades to accounts after execution, with no process to ensure that trade allocations were being made properly.

26. Respondents' conduct in connection with the EW Controlled Accounts violated numerous NYSE Arca and Exchange Act Rules throughout the period January 1, 2010 through October 13, 2016 (the "relevant period").

27. First, NYSE Arca Rule 9.14-E (Account Designation)² requires that before any customer order is executed, the name or designation of the account for which the order is to be executed must be placed on the order slip or other record. This rule guards against traders conveying an improper advantage to themselves or to particular customers.

² On August 17, 2017, NYSE Arca Equities, Inc., a wholly owned subsidiary of the Exchange, was merged with and into the Exchange. In conjunction with the merger, certain rules of the Exchange were renumbered or amended to facilitate the integration of NYSE Arca Equities, Inc. and create a single rulebook for the Exchange's equities and options markets. At the time of Respondents' violations, NYSE Arca Rule 9.14-E was denominated NYSE Arca Equities Rule 9.14.

28. By failing to designate the specific EW Controlled Accounts for which orders were being entered and instead allocating trades to accounts after the fact based on Mr. Wedbush's discretion (subject to no oversight to address conflicts of interest and opportunities for fraud, manipulation, and customer harm), WEDB and Mr. Wedbush violated NYSE Arca Rule 9.14-E, as well as NYSE Arca Rules 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).³

29. Second, NYSE Arca and Exchange Act rules, including NYSE Arca Rule 2.28 (Books and Records)⁴ and Exchange Act Rules 17a-3 and 17a-4, require that ETP Holders make and retain certain prescribed books and records. Under these rules, an ETP Holder must make and retain a memorandum of each brokerage order, showing, among other things, the account for which the order was entered. The memorandum must be made at the time of the transaction, and be preserved for not less than three years. These books and records rules guard against traders conveying an improper advantage to themselves or to particular customers.

30. By failing to record account designations until the end of the trading day in connection with the EW Controlled Accounts, WEDB and Mr. Wedbush violated NYSE Arca Rules 2.28, 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade), and WEDB violated Section 17(a) of the Exchange Act, and Rules 17a-3 and 17a-4 thereunder.

31. ETP Holders are also required to create and maintain records regarding discretionary accounts and orders, pursuant to Exchange Act Rules 17a-3 and 17a-4, and NYSE Arca Rules

³ At the time of the violations described in this Statement of Charges, NYSE Arca Rules 11.1(b) and 11.2(b) were denominated NYSE Arca Equities Rules 6.1(b) and 6.2(b). NYSE Arca Rule 9.2010-E was denominated NYSE Arca Equities Rule 2010 (for conduct on or after June 30, 2011).

⁴ At the time of Respondents' violations, NYSE Arca Rule 2.28 was denominated NYSE Arca Equities Rule 2.24 (ETP Books and Records).

9.6-E(a) (Discretion as to Customers' Accounts), 9.6-E(b) (Records of Discretionary Accounts), and 9.6-E(c) (Marking Discretionary Orders).⁵ WEDB violated these Exchange Act and NYSE Arca rules in connection with the EW Controlled Accounts by failing to identify each discretionary order as such, and by failing to retain required documentation, including new account application forms for nine accounts and a power of attorney form for one account.

32. Third, NYSE Arca Rule 7.33-E (ETP Holder Users)⁶ requires that an ETP Holder User that enters a proprietary order into the NYSE Arca marketplace mark the order with the appropriate designator. The entry of inaccurate capacity codes causes audit trails to be inaccurate, and adversely impacts the ability to detect violative conduct, and/or creates false positives.

33. During the relevant period, Mr. Wedbush and Employee A entered hundreds of thousands of orders for the EW Controlled Accounts. Respondents marked virtually all orders executed on behalf of the EW Controlled Accounts as "agency" orders, without regard to the lack of any account designation at the time of the order, and without regard to the fact that a significant percentage of trades in the EW Controlled Accounts were proprietary trades. By doing so, WEDB violated NYSE Arca Rule 7.33-E, as well as NYSE Arca Rules 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).

34. Fourth, at the instruction of Mr. Wedbush, WEDB, on several different occasions, changed on its internal records the official closing price of selected equity securities, including for purposes of calculating margin. Mr. Wedbush's practice of changing the closing prices for

⁵ At the time of Respondents' violations, NYSE Arca Rules 9.6-E(a), 9.6-E(b), and 9.6-E(c) were denominated NYSE Arca Equities Rules 9.6(a), 9.6(b), and 9.6(c).

⁶ At the time of Respondents' violations, NYSE Arca Rule 7.33-E was denominated NYSE Arca Equities Rule 7.33.

selected equity securities for margin calculations was done in the absence of processes or reviews to ensure that the adjustments were not applied in a discriminatory fashion. This practice is inconsistent with FINRA Rule 4210 (which defines current market value based on official closing prices), and caused inconsistent and inaccurate books and records with respect to account valuations.

35. WEDB changed the official closing price of selected equity securities to reflect what Mr. Wedbush said he considered to be a more current valuation based on after-hours trading. Mr. Wedbush instructed the Firm's Internal Control Department to reduce official closing prices on at least the following occasions:

Date	Security Description	Closing Price	Adjusted Price	Difference
8/7/2012	Company A	\$679.80	\$575.00	(\$104.80)
1/19/2012	Company B	\$639.57	\$595.00	(\$44.57)
7/25/2011	Company C	\$281.53	\$258.00	(\$23.53)
4/25/2011	Company C	\$251.67	\$240.00	(\$11.67)
4/15/2010	Company B	\$595.30	\$567.00	(\$28.30)
4/15/2010	Company D	\$648.96	\$642.00	(\$6.96)

36. These price overrides remained in effect between post-close and the next day opening of trading. WEDB used the adjusted prices to value all of the accounts that held long and short positions in the subject securities for buying power and cash available calculation purposes.

37. By selectively applying manual overrides to the closing prices of securities without documented processes or independent reviews, WEDB and Mr. Wedbush violated NYSE Arca Rules 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).

Respondents Refused to Implement Adequate Oversight, Supervisory Systems, and Written Supervisory Procedures for Mr. Wedbush's Trading

38. As discussed above, Mr. Wedbush's trading in the EW Controlled Accounts resulted in hundreds of thousands of violations of NYSE Arca and Exchange Act rules over the course of years. This is hardly surprising given that Respondents allowed Mr. Wedbush to trade with impunity and without any semblance of reasonable supervision.

39. Respondents failed to establish and maintain a supervisory system, including WSPs, reasonably designed to ensure compliance with laws, regulations, and rules relevant to Mr. Wedbush's trading in the EW Controlled Accounts, including for order entry and marking, trade execution, post-trade allocations, potential conflicts of interest, order and account books and records, and changes to official closing prices of equity securities, in violation of numerous NYSE Arca rules.

40. Respondents never designated anyone as responsible for reviewing the EW Controlled Accounts for potential manipulative activity or other potential trading violations in connection with the heightened conflict of interest that Mr. Wedbush's handling of the EW Controlled Accounts presented. Mr. Wedbush's trades were subject only to the most minimal monitoring, such as with respect to securities on the Firm's restricted list. Otherwise, Mr. Wedbush was permitted to purportedly "self-monitor."

41. Moreover, various Firm procedures were not applied to Mr. Wedbush's handling of the EW Controlled Accounts in the same way that they applied to other employees. For example, although the Firm's WSPs stated that "a designated supervisor must approve the account as discretionary prior to effecting discretionary transactions," Employee A was noted as the purported designated supervisor who approved and signed account forms for the EW Controlled Accounts—despite the fact that he was actually Mr. Wedbush's assistant and

followed Mr. Wedbush's instructions. Accordingly, Employee A did not act as Mr. Wedbush's designated supervisor and his appointment as such was for ministerial purposes only.

42. Additionally, pursuant to the Firm's WSPs, day-to-day client account activity conducted by sales managers performing similar supervisory functions was subject to review and supervision by someone senior to or at least independent of the producing manager; the WSPs stated that any level of client activity qualified for designation as a producing manager. These WSPs were not followed in connection with the EW Controlled Accounts.

43. The Firm's co-CCO, within months of his being hired, raised concerns to the Firm's Audit Committee about the lack of supervision and oversight of Mr. Wedbush's trading. These concerns, however, were essentially ignored.

44. At an Audit Committee meeting on or about May 22, 2008, the co-CCO reported on the lack of supervision and oversight of Mr. Wedbush's trading activity. The co-CCO explained that nobody at the Firm was supervising or overseeing Mr. Wedbush's trading activity for potential conflicts of interest, and that, as a direct report of Mr. Wedbush, he was not in position to do so.

45. The Audit Committee agreed that it was not acceptable for the co-CCO to review Mr. Wedbush's trading activity because the co-CCO reported directly to Mr. Wedbush. While the committee discussed various potential means for addressing the supervisory and oversight violations relating to Mr. Wedbush's trading activity, ultimately none of those options (nor any others) were pursued as a means to address the supervisory violations and conflicts of interest presented by the handling of the EW Controlled Accounts.

46. Rather, in response to the co-CCO's concerns about the lack of supervision over Mr. Wedbush, the Audit Committee took no remedial action. The Audit Committee claimed that it

was not feasible to conduct reviews itself or have the WEDB Board of Directors do so because the Committee and Board members were not WEDB employees and were not present at WEDB's offices on a daily basis. Although there was discussion as to whether the Audit Committee should dissuade Mr. Wedbush from engaging in such trading activity, this did not occur either.

47. While WEDB had other options available for supervising Mr. Wedbush's trading, the Firm did not invest in the resources necessary to do so.

48. For example, the Audit Committee had a staff of personnel who did internal audit work and reported to the Audit Committee's Chair. During investigative testimony, WEDB's head of internal audit stated that trading by a principal executive was, "along with a whole lot of other things," the type of issue that internal audit should be looking at. The co-CCO also testified that internal audit "should be reviewing his [Mr. Wedbush's] activities."

49. Yet, internal audit never reviewed Mr. Wedbush's trading. A key reason for this was that Respondents failed to provide internal audit with adequate resources. WEDB's Audit Committee Chair stated, during investigative testimony, that internal audit did not have the personnel available to review Mr. Wedbush's trading, and the head of internal audit stated that internal audit could not even complete its normal audit plan "for the simple reason that there are only two individuals," despite WEDB being a "4, 6 billion [dollar] operation going on with different moving parts."

50. According to the co-CCO's investigative testimony, absent a review of Mr. Wedbush's trading by internal audit, the Audit Committee should have hired a third party to perform such a review. Yet, Respondents also failed to take this step. Indeed, the Audit Committee Chair expressed doubt that the Audit Committee would want to "battle" Mr.

Wedbush by requesting additional resources to assist with reviews of his trading, and testified that he was concerned that such a request could lead to “no more Audit Committee.”

51. Even after being notified on multiple occasions, since at least 2012, that FINRA Market Regulation (and, subsequently, NYSE Regulation) were investigating the absence of supervision, oversight, or controls relating to the EW Controlled Accounts, Respondents have repeatedly refused, to this day, to establish a system of oversight concerning trading in the EW Controlled Accounts, prohibit the improper order handling and post-execution allocation of trades, or otherwise address the significant conflicts of interest created by Mr. Wedbush’s unfettered control over the EW Controlled Accounts.

52. Respondents’ failure to establish, maintain, and implement adequate supervisory systems, including WSPs, reasonably designed to monitor Mr. Wedbush’s trading and the EW Controlled Accounts to ensure compliance with applicable rules and regulations resulted in widespread supervisory deficiencies, including but not limited to the following:

- Order Handling. WEDB lacked procedures to prevent improper bunching of orders and post-execution allocations. The Firm failed to ensure that the EW Controlled Accounts were handled in accordance with NYSE Arca and Exchange Act books and records rules, and Firm WSPs, which require that each order, prior to execution, have a designation for whose account the order is being entered.
- Order Records and Account Documents. WEDB failed to establish or implement any procedure for conducting reviews to ensure compliance with books and records requirements in connection with the EW Controlled Accounts, including order records. As a result, order records for the EW Controlled Accounts did not comply with requirements that account names and designations be determined and identified

upon trade execution, and WEDB also failed to maintain complete and accurate discretionary account documents.

- Submission of Inaccurate Capacity Codes. WEDB failed to have a supervisory review designed to detect and prevent the inaccurate entry of order capacity designators.
- Overriding Closing Prices. WEDB failed to establish or implement any procedure to ensure that the Firm's overrides of official closing prices of equity securities were conducted in a non-discriminatory fashion.
- Potential Conflicts of Interest. There was no independent supervisory review conducted of potential conflicts of interest with respect to the EW Controlled Accounts.

53. As a result of the aforementioned failures to supervise, Respondents violated NYSE Arca Rules 11.18 (Supervision), 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), 9.1-E(d) (Conducting Business with the Public), 9.2-E(b) (Account Supervision), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).⁷

Charges

CHARGE I

Improper Order Handling and Post-Execution Allocations (Violations of NYSE Arca Rules 9.14-E, 11.1(b), 11.2(b), and 9.2010-E⁸)

54. NYSE Regulation re-alleges and incorporates by reference each preceding paragraph.

⁷ At the time of Respondents' violations, NYSE Arca Rules 11.18, 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E were denominated NYSE Arca Equities Rules 6.18, 6.1(b), 6.2(b), 9.1(d), 9.2(b), and 2010 (for conduct on or after June 30, 2011).

⁸ NYSE Arca Equities Rule 2010, the predecessor to NYSE Arca Rule 9.2010-E, became effective on June 30, 2011.

55. NYSE Arca Rule 9.14-E provides that, before any order for a customer of an ETP Holder is executed, “there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed.”

56. NYSE Arca Rule 11.1(b) requires ETP Holders and their associated persons to adhere to the principles of good business practices in the conduct of their business affairs.

57. NYSE Arca Rule 11.2(b) prohibits “[c]onduct or proceeding inconsistent with just and equitable principles of trade,” and “declared among other things, that the willful violation of any provision of the federal securities laws, the regulations of the Securities and Exchange Commission and ... the Bylaws and Rules and procedures of the Exchange shall be considered conduct or proceedings inconsistent with just and equitable principles of trade.”

58. Similarly, on and after June 30, 2011, pursuant to NYSE Arca Rule 9.2010-E, an ETP Holder, in the conduct of its business, is required to observe high standards of commercial honor and just and equitable principles of trade.

59. As described in detail above, WEDB and Mr. Wedbush handled orders and allocations for the EW Controlled Accounts in a manner that presented significant conflicts of interest and opportunities for fraud, manipulation, and customer harm, and resulted in repeated, systemic violations of the federal securities laws and Exchange rules. WEDB and Mr. Wedbush proceeded as if Mr. Wedbush were exempt from these federal securities laws and Exchange rules, as well as various WEDB policies and procedures.

60. In managing the EW Controlled Accounts, Mr. Wedbush: (i) handled various customer accounts together with proprietary and personal accounts, in the same securities at the same time; (ii) “bunched” orders for the EW Controlled Accounts; (iii) failed to record account

names or designations prior to trade execution; and (iv) waited until after trade execution to allocate trades among the EW Controlled Accounts.

61. By failing to record account names or designations prior to trade execution, WEDB and Mr. Wedbush violated NYSE Arca Rule 9.14-E. In addition, WEDB and Mr. Wedbush failed to adhere to the principles of good business practices in the conduct of their business affairs, and failed to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business, in violation of NYSE Arca Rules 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).

CHARGE II

Failure to Make and Preserve Order and Account Books and Records (Violations of Section 17(a) of Exchange Act, Exchange Act Rules 17a-3 and 17a-4, and NYSE Arca Rules 2.28, 11.1(b), 11.2(b), 9.6-E(a), 9.6-E(b), 9.6-E(c), and 9.2010-E)

62. NYSE Regulation re-alleges and incorporates by reference each preceding paragraph.

63. Exchange Act Section 17(a)(1) requires Exchange members, and every broker or dealer transacting business through the medium of any Exchange member, to create and maintain records of business operations in conformity with the rules of the Securities and Exchange Commission. Moreover:

- a. Exchange Act Rule 17a-4(b)(1) mandates that every such member, broker or dealer create and maintain certain records, including memoranda of orders and purchases and sales, and all guarantees of accounts, powers of attorney and other evidence of the granting of discretionary authority, for a minimum of three years.
- b. Exchange Act Rule 17a-3(a)(6) requires every such member, broker or dealer to create and maintain a “memorandum of each brokerage order, and of any other

instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.”

- c. Rule 17a-3(a)(6) requires, among other disclosures, that every order ticket identify the account for which the order is entered, the time the order was received, the time of entry, the time of execution, and whether the order was entered pursuant to an exercise of discretionary authority.
- d. Rule 17a-3(a)(17)(ii) requires that such members, brokers or dealers create and maintain a record containing the dated signature of each customer or owner granting discretionary authority and the dated signature of each natural person to whom such authority was granted.

64. NYSE Arca Rule 2.28 requires that ETP Holders shall “make and retain all the books and records prescribed by the Bylaws and Rules of the Exchange, the rules and regulations of the Securities and Exchange Commission and the constitution, rules and regulations of other regulatory or governmental bodies to which such ETP Holders ... are subject.”

65. NYSE Arca Rules 9.6-E(a) and (b) require an ETP Holder to keep and preserve records of all customer discretionary accounts, including the signature of the individual who may exercise discretion in handling the account, and prohibit delegating discretionary authority to others absent written authorization of the customer. NYSE Arca Rule 9.6-E(c) further provides that every ETP Holder “shall identify each discretionary order by appropriately marking each discretionary order accordingly.”

66. Account names and designations for orders on behalf of the EW Controlled Accounts were not determined prior to their execution. Order records for the EW Controlled Accounts did not bear the account name or designation until after trade execution.

67. By failing to record account names or designations at the time of each transaction and otherwise failing to create and maintain complete and accurate order records for the EW Controlled Accounts, WEDB and Mr. Wedbush violated NYSE Arca Rules 2.28 (Books and Records), 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade) (for conduct on or after June 30, 2011), and WEDB willfully violated Section 17(a) of the Securities Exchange Act of 1934, and Rules 17a-3 and 17a-4 thereunder.

68. Additionally, by failing to create and maintain complete and accurate discretionary account documents for the EW Controlled Accounts, WEDB violated NYSE Arca Rules 2.28 (Books and Records), 9.6-E(a) (Discretion as to Customers' Accounts), 9.6-E(b) (Records of Discretionary Accounts), and 9.6-E(c) (Marking Discretionary Orders), and Section 17(a) of the Securities Exchange Act of 1934, and Rules 17a-3 and 17a-4 thereunder.

CHARGE III

Entry of Inaccurate Capacity Codes (Violations of NYSE Arca Rules 7.33-E, 11.1(b), 11.2(b), and 9.2010-E)

69. NYSE Regulation re-alleges and incorporates by reference each preceding paragraph.

70. NYSE Arca Rule 7.33-E requires that an ETP Holder User that enters a proprietary order into the NYSE Arca marketplace mark the order with the appropriate designator. Prior to March 15, 2016, the rule text stated, in part: "An ETP User that enters a proprietary order into the NYSE Arca Marketplace shall mark the order with the appropriate designator to identify the order as proprietary." On and after March 15, 2016, the rule text stated, in part: "ETP Holder Users of the NYSE Arca Marketplace shall input accurate information into the NYSE Arca Marketplace, including, but not limited to, whether the ETP Holder User is acting in a principal, agency, or riskless principal capacity for each order entered."

71. As described in detail above, WEDB and Mr. Wedbush failed to mark proprietary orders with the appropriate designator. Instead, WEDB and Mr. Wedbush entered orders for the EW Controlled Accounts with repeated blanket designations of each order as an “agency” order.

72. This conduct constitutes separate and distinct violations of NYSE Arca Rule 7.33-E by WEDB, as well as violations of NYSE Arca Rules 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade) (for conduct on or after June 30, 2011).

CHARGE IV

Improper Manual Overrides of Closing Prices without Documented Processes or Reviews (Violations of NYSE Arca Rules 11.1(b), 11.2(b), and 9.2010-E)

73. NYSE Regulation re-alleges and incorporates by reference each preceding paragraph.

74. On at least six different occasions, WEDB, at the instruction of Mr. Wedbush, changed on its internal records the official closing prices of selected equity securities, including for purposes of calculating margin.

75. Mr. Wedbush’s practice of changing the closing prices for selected equity securities was done in the absence of processes or reviews to ensure that the adjustments were not applied in a discriminatory fashion.

76. The practice is inconsistent with FINRA Rule 4210 (Margin Requirements), which defines “current market value,” for purposes of determining margin requirements, based on “the preceding day’s closing price as shown by any regularly published reporting or quotation service,” and caused inconsistent and inaccurate books and records with respect to account valuations.

77. By selectively applying manual overrides to the closing prices of securities without documented processes or independent reviews, WEDB and Mr. Wedbush violated NYSE Arca

Rules 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade) (for conduct on or after June 30, 2011).

CHARGES V - VIII

Supervisory Deficiencies Concerning Respondents' Primary Violations (Violations of NYSE Arca Rules 11.18(b), 11.18(c), 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E)

78. NYSE Regulation re-alleges and incorporates by reference each preceding paragraph.

79. NYSE Arca Rule 11.18(b) requires each ETP Holder to “establish and maintain a system to supervise the activities of its associated persons and the operations of its business.” Pursuant to NYSE Arca Rule 11.18(b), such system “must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules.”

80. NYSE Arca Rule 11.18(c) requires each ETP Holder to “establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with the NYSE Arca Rules.”

81. NYSE Arca Rule 9.1-E(d) states that “ETP Holders shall at all times have responsibility for the proper supervision and control of their registered employees”

82. NYSE Arca Rule 9.2-E(b) requires every ETP Holder to “supervise diligently all accounts accepted or carried by such firm and shall exercise diligence in supervising the business practices of its registered persons and otherwise licensed persons. An ETP Holder shall adopt appropriate procedures for the opening and the maintaining of accounts, including the maintaining of records prescribed by the Bylaws and Rules of the Exchange and by the rules and regulations of the Securities and Exchange Commission.”

83. As WEDB's President, Mr. Wedbush was ultimately responsible for the Firm's compliance with supervision requirements.

84. Respondents knew about Mr. Wedbush's trading activity and the absence of supervision, oversight, or controls relating to it, but declined to take steps to monitor or stop it, despite repeated notifications of the supervisory deficiencies. Moreover, Respondents refused to invest appropriate and sufficient resources in WEDB's internal audit and compliance staff necessary to monitor and supervise Mr. Wedbush and the EW Controlled Accounts. As a result, Mr. Wedbush continued to handle multiple personal, family, client, and proprietary accounts in the same securities at the same time, in violation of federal securities laws and Exchange rules for a period of years, and WEDB continued to permit it.

85. WEDB's supervisory systems and procedures were inadequate and were not reasonably designed for its business as it related to the EW Controlled Accounts. Among other things, WEDB's supervisory systems and procedures were inadequate and not reasonably designed to prevent Respondents' violations described in:

- a. Charge I (Improper Order Handling and Post-Execution Allocations) [**CHARGE V**];
- b. Charge II (Failure to Make and Preserve Order and Account Books and Records) [**CHARGE VI**];
- c. Charge III (Entry of Inaccurate Capacity Codes) [**CHARGE VII**]; and
- d. Charge IV (Improper Manual Overrides of Closing Prices without Documented Processes or Reviews) [**CHARGE VIII**].

86. Accordingly, Respondents violated NYSE Arca Rules 11.18 (Supervision), 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), 9.1-E(d)

(Conducting Business with the Public), 9.2-E(b) (Account Supervision), and 9.2010-E (Standards of Commercial Honor and Principles of Trade) (for conduct on or after June 30, 2011).

CHARGE IX

Failure to Establish and Maintain a Reasonable Supervisory System as to Mr. Wedbush and the EW Controlled Accounts (Violations of NYSE Arca Rules 11.18(b), 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E)

87. NYSE Regulation re-alleges and incorporates by reference each preceding paragraph.

88. Mr. Wedbush handled the EW Controlled Accounts as if he were exempt from numerous WEDB policies and procedures, as well as Exchange Act and NYSE Arca rules, and WEDB permitted the corresponding, widespread violations.

89. As described in detail above, the significant conflicts of interest and opportunities for fraud, manipulation, and customer harm in connection with the EW Controlled Accounts persisted because of systemic supervisory deficiencies that WEDB and Mr. Wedbush caused and permitted.

90. Respondents knew about Mr. Wedbush's trading activity and the absence of supervision, oversight, or controls relating to it, but declined to take steps to monitor or stop it, despite repeated notifications of the supervisory deficiencies. Moreover, Respondents have refused to invest appropriate and sufficient resources in WEDB's internal audit and compliance staff necessary to monitor and supervise Mr. Wedbush and the EW Controlled Accounts.

91. Respondents repeatedly declined to act throughout the relevant period and have failed, to this day, to take meaningful corrective measures concerning the supervision of Mr. Wedbush and the EW Controlled Accounts.

92. By failing to establish, implement, and enforce adequate supervisory systems and procedures, including WSPs, reasonably designed to supervise Mr. Wedbush and the EW Controlled Accounts to achieve compliance with the federal securities laws and Exchange rules, Respondents violated NYSE Arca Rules 11.18 (Supervision), 11.1(b) (Adherence to Law and Good Business Practice), 11.2(b) (Prohibited Acts), 9.1-E(d) (Conducting Business with the Public), 9.2-E(b) (Account Supervision), and 9.2010-E (Standards of Commercial Honor and Principles of Trade) (for conduct on or after June 30, 2011).

Relief Requested

WHEREFORE, NYSE Regulation, on behalf of NYSE Arca, Inc., respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. make specific findings that WEDB willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder;
- C. order that one or more of the remedies provided under NYSE Arca Rule 10.1 be imposed, including without limitation a suspension or bar of Mr. Wedbush and monetary remedies against WEDB and Mr. Wedbush;
- D. order that Respondent WEDB retain at its own expense one or more qualified independent consultants not unacceptable to NYSE Regulation staff to conduct a comprehensive review of the practices and supervision of Mr. Wedbush's trading activities;

- F. order that Respondents bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with NYSE Arca Rule 10.9; and
- G. grant all further relief, legal or equitable, that may be just and proper.

Dated: October 16, 2017
New York, New York

Respectfully submitted,

NYSE Regulation



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**Statement of the Exchange Regarding Allegations
In a Disciplinary Complaint Pursuant to Exchange Rule 10.17(b)(1)**

This statement of charges is a disciplinary complaint under Exchange Rules. A disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.