

NYSE ARCA, INC.

NYSE REGULATION,

Complainant,

v.

WEDBUSH SECURITIES, INC.

and

EDWARD W. WEDBUSH,

Respondents.

Proceeding No. 2016-07-01264¹

January 8, 2019

Edward W. Wedbush violated:

(i) NYSE Arca Rules 9.14-E, 11.1(b), 11.2(b), and 9.2010-E, by failing in certain instances to designate specific accounts for which orders were being entered and instead allocating trades to accounts after the fact based on his discretion and without reasonable oversight;

(ii) NYSE Arca Rules 2.28, 11.1(b), 11.2(b), and 9.2010-E, by failing in certain instances to record account names or designations until the end of the trading day, failing to identify each discretionary order as such, and failing to retain required documentation;

(iii) NYSE Arca Rules 11.1(b), 11.2(b), and 9.2010-E, by issuing instructions to override Firm internal records of closing prices of certain equity securities without processes or reviews to ensure that the adjustments were not applied in a discriminatory fashion;

(iv) NYSE Arca Rules 4.15-E(b), 11.1(b), 11.2(b), and 9.2010-E, by failing to apply and enforce Exchange margin requirements in connection with accounts he managed and traded;

(v) NYSE Arca Rules 11.18, 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E, by failing to establish and maintain supervisory systems and procedures adequate and reasonably

¹ Includes Matter No. 2018-03-00037.

designed for the Firm’s business as it related to accounts he managed, including improper order handling and post-execution allocations; not making and preserving order and account books and records; entering inaccurate capacity codes; improper manual overrides of closing prices without documented processes or reviews; and failing to comply with maintenance margin requirements; and

(vi) NYSE Arca Rules 11.18, 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E, by failing to establish, implement, and enforce adequate supervisory systems and procedures, including written supervisory procedures reasonably designed to supervise Respondent and accounts he managed to achieve compliance with the federal securities laws and Exchange rules.

Edward W. Wedbush consents to a censure and a \$900,000 fine (payable jointly and severally with Respondent Wedbush Securities, Inc.).

Appearances

For the Complainant: David A. Feldman, Esq., Ross Schwarz, Esq., and Adam J. Wasserman, Esq., NYSE Regulation.

For the Respondents: Patrick M. Smith, Esq. and Michael J. Diver, Esq., Katten Muchin Rosenman LLP, and John Erikson, Esq., Wedbush Securities, Inc.

DECISION

On October 16, 2017, NYSE Regulation filed a Statement of Charges on behalf of NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) naming Edward W. Wedbush and Wedbush Securities, Inc. as Respondents. In order to resolve the matter, the Exchange entered into an Offer of Settlement and Consent with each Respondent. By stipulation of the parties, the Statement of Charges is amended to conform to the agreed upon terms of each Respondent’s Offer of Settlement and Consent. This Decision resolves the claims against Edward W. Wedbush. Edward W. Wedbush and the Exchange entered into the Offer of Settlement and Consent for the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Offer.² The Hearing Officer accepts the Offer of Settlement and Consent, and issues this Decision in accordance with NYSE Arca rules.³

² FINRA’s Office of Hearing Officers reviewed the Offer of Settlement and Consent under the terms of a Regulatory Services Agreement (as amended) among NYSE Group, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC (fka NYSE MKT LLC), NYSE National, Inc., and FINRA.

³ The facts, allegations, and conclusions contained in this Decision were taken from a Proposed Decision submitted on behalf of Complainant. *See* NYSE Arca Rule 10.6(e)(3)(C).

FINDINGS OF FACTS AND VIOLATIONS

Background and Jurisdiction

1. Wedbush Securities Inc. is headquartered in Los Angeles, California, and has been registered with the Exchange as an Equity Trading Permit (ETP) Holder since 2004, and continues to be subject to NYSE Arca jurisdiction. The Firm employs over 400 registered representatives. Wedbush Securities has been registered with FINRA since 1955, and is also registered with multiple other equities and options exchanges.
2. Edward W. Wedbush is the founder of Wedbush Securities, a firm he co-founded in 1955. At all times relevant to this Decision, Mr. Wedbush was the president of Wedbush Securities, and also served as a director of the Firm and the Chairman of the Board of Directors of the Firm's parent company, Wedbush, Inc.
3. NYSE Regulation, as well as FINRA's Department of Market Regulation ("FINRA Market Regulation") on behalf of NYSE Regulation, conducted an investigation of Wedbush Securities concerning potential violations with respect to: (i) order handling and post-execution allocation of trades; (ii) order and account books and records; (iii) trade mismarking; (iv) manual pricing overrides of the closing prices of certain Exchange-listed securities on Wedbush Securities' internal records; and (v) supervision of trading activity by Mr. Wedbush and related supervisory issues.

Overview

4. In addition to serving as the president of Wedbush Securities, Mr. Wedbush spent several hours each trading day actively managing and trading in a number of accounts held by approximately 20 client relationships, including multiple discretionary customer accounts over which he had power of attorney (including accounts for relatives, friends, and Firm employees), as well as personal and proprietary accounts for affiliates of Wedbush Securities and Wedbush, Inc., the Firm's parent company (of which Mr. Wedbush was also the largest shareholder) (collectively, the "EW Controlled Accounts").
5. Despite Mr. Wedbush's active trading in the EW Controlled Accounts, Respondents failed to implement adequate processes to monitor or supervise Mr. Wedbush's order entry, trade executions, or trade allocations in the EW Controlled Accounts.
6. The absence of adequate monitoring or supervision of his trading activities allowed Mr. Wedbush to handle the EW Controlled Accounts in a manner that was not permitted for other traders at the Firm.
7. Mr. Wedbush's trading violated numerous Securities Exchange Act of 1934 ("Exchange Act") and NYSE Arca rules, including:
 - Exchange Act and NYSE Arca rules regarding account designation;

- Exchange Act and NYSE Arca rules requiring firms to make and retain books and records;
 - NYSE Arca rules regarding order marking;
 - Rules relating to price adjustments on equity securities without formal processes or review; and
 - Rules relating to margin requirements.
8. Respondents' violations resulted, in large part, from the Firm's failure over a period of years to (i) 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, and (ii) devote the resources required to supervise and monitor Mr. Wedbush's trading in the EW Controlled Accounts.
9. In addition to the above violations, Wedbush Securities, for more than three years, also failed to implement adequate internal controls, including a system of follow-up and review, reasonably designed to detect and prevent potentially manipulative activity at the Firm more generally, including but not limited to wash sales, marking the open, and marking the close.

Violations

Violative Trading in the EW Controlled Accounts

10. At all relevant times, Mr. Wedbush served as the authorized trader for the EW Controlled Accounts. Mr. Wedbush managed many of the accounts for over 40 years in the manner described herein. Mr. Wedbush held limited power of attorney over accounts for his wife, sister, brother, other relatives, and friends, as well as a Wedbush Securities director, a Firm employee, and the spouse of a second employee.
11. In handling the EW Controlled Accounts, Mr. Wedbush worked with a Wedbush Securities 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.
12. Traders at Wedbush Securities used standard systems that routed orders to multiple exchanges, including the Exchange. However, until approximately late 2016, Mr. Wedbush and Employee A used a separate order management system (the "Platform"), not used by other Wedbush Securities traders. The Platform was used for direct entry of orders to NYSE Arca. Unlike the systems used by other Wedbush Securities 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.

13. Thus, orders for the EW Controlled Accounts were not assigned to any account by the Platform 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 these orders was virtually always marked “agency.” After the close of trading, the Platform aggregated the shares acquired or sold and conducted a volume-weighted average price calculation. Mr. Wedbush then instructed Employee A to allocate the shares to particular EW Controlled Accounts using the average price calculation.
14. For example, on September 15, 2016, Mr. Wedbush purchased an aggregate of 400 shares of Company Z at a range of prices between \$15.86 and \$16.16. That same day, after the purchases were made, Mr. Wedbush directed the shares to be allocated to two customer accounts (200 shares each) at the weighted average price per share of \$15.9875. Shares of Company Z purchased on September 15, 2016 were not allocated to any of the other EW Controlled Accounts.

Account	Shares	Price
Customer A	200	\$15.9875
Customer B	200	\$15.9875

15. “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. As described below, Mr. Wedbush, for most of the period from January 1, 2010 through March 31, 2018 (the “Relevant Period”), handled the EW Controlled Accounts outside of the Firm’s advisory business, and his method for determining the allocations was not documented, approved, or supervised. There was no independent mechanism at the Firm to assess the appropriateness of the allocations; therefore, even if allocations were effected in a fair and equitable manner during the Relevant Period as Mr. Wedbush contended, the practice violated Exchange rules.
16. Respondents’ practice of allocating trades in the EW Controlled Accounts also violated the Firm’s own WSPs: 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 the orders came from a discretionary account, a notation whether discretion was

exercised or not exercised. This WSP was not followed with respect to orders entered on behalf of the EW Controlled Accounts.

17. The Firm's WSPs also provided that each order, prior to execution, must include the name or designation on the order. Wedbush Securities 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 over the course of years.
18. In November 2015, the Firm began migrating some, but not all, of the EW Controlled Accounts to an investment advisory platform. Beginning in June 2016, Mr. Wedbush and Employee A began using a new order management system, transitioning from using the Platform. Throughout this time period, however, Mr. Wedbush and Employee A continued to route orders solely to NYSE Arca and to allocate trades to accounts after execution, with inadequate independent processes to assess the appropriateness of the allocations.
19. Respondents' conduct in connection with the EW Controlled Accounts violated numerous NYSE Arca and Exchange Act Rules during the period January 1, 2010 through March 31, 2018 (the "Relevant Period").
20. First, NYSE Arca Rule 9.14-E (Account Designation)⁴ 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.
21. 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 (without reasonable oversight), Wedbush Securities 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).⁵

⁴ Prior to August 17, 2017, NYSE Arca Rule 9.14-E was denominated NYSE Arca Equities Rule 9.14. 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. The Relevant Period identified in this Decision (January 1, 2010 through March 31, 2018) encompasses violations of the prior "NYSE Arca Equities" rules (during the period through August 16, 2017) and the current "NYSE Arca" rules (during the period August 17, 2017 through March 31, 2018). References in this Decision to the current NYSE Arca rules are intended to include the prior, equivalent NYSE Arca Equities rules.

⁵ Prior to August 17, 2017, 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).

22. Second, NYSE Arca and Exchange Act rules, including NYSE Arca Rule 2.28 (Books and Records)⁶ 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.
23. By failing to record account designations until the end of the trading day in connection with the EW Controlled Accounts, Wedbush Securities 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 Wedbush Securities violated Section 17(a) of the Exchange Act, and Rules 17a-3 and 17a-4 thereunder.
24. 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 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).⁷ Wedbush Securities 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.
25. Third, NYSE Arca Rule 7.33-E (ETP Holder Users)⁸ 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.
26. During the Relevant Period, Mr. Wedbush and Employee A entered tens of thousands of orders for the EW Controlled Accounts. During the period January 1, 2010 through October 13, 2016, 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 the trades were proprietary trades. By doing so, Wedbush Securities violated NYSE Arca Rule 7.33-E, as well as NYSE Arca Rules 11.1(b) (Adherence to

⁶ Prior to August 17, 2017, NYSE Arca Rule 2.28 was denominated NYSE Arca Equities Rule 2.24 (ETP Books and Records).

⁷ Prior to August 17, 2017, 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).

⁸ Prior to August 17, 2017, NYSE Arca Rule 7.33-E was denominated NYSE Arca Equities Rule 7.33.

Law and Good Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).

27. Fourth, at the instruction of Mr. Wedbush, Wedbush Securities, on several different occasions, overrode on its internal records the exchange closing price of certain equity securities (including Company A, Company B, Company C, and Company D stock), to reflect price changes that occurred in active trading after the close of the exchange. Although Mr. Wedbush asserted that such price updates were effected so that the risk calculations of the Firm and Firm clients would immediately reflect after-hours trading, these changes were 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.
28. These price overrides remained in effect between post-close and the open of the next trading day, and, during that period, impacted all accounts that held long and short positions in the subject securities for buying power and cash available calculation purposes.
29. By applying manual overrides on its internal records to the exchange closing prices of securities without documented processes or independent reviews, Wedbush Securities 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).

Lack of Reasonable Oversight, Supervisory Systems, and Written Supervisory Procedures

30. As discussed above, Mr. Wedbush's trading in the EW Controlled Accounts resulted in thousands of violations of NYSE Arca and Exchange Act rules over the course of years.
31. 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 in violation of numerous NYSE Arca rules.
32. Respondents never designated a supervisor who was responsible for reviewing the EW Controlled Accounts for potential violations of NYSE Arca rules or securities laws. Mr. Wedbush's trades were subject only to minimal monitoring, such as with respect to securities on the Firm's restricted list. Otherwise, Mr. Wedbush was permitted to purportedly "self-monitor."
33. 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. Employee A could not adequately serve as Mr. Wedbush’s “designated supervisor” because he reported to Mr. Wedbush.

34. 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.
35. The Firm’s co-Chief Compliance Officer (the “co-CCO”), within months of his being hired, raised concerns to the Audit Committee of the Firm’s Board of Directors (the “Audit Committee”) about the lack of reasonable supervision and oversight of Mr. Wedbush’s trading, including that nobody was supervising Mr. Wedbush’s trading and that, as a direct report of Mr. Wedbush, the co-CCO was not in a position to do so.
36. 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 Wedbush Securities had other options available for supervising Mr. Wedbush’s trading, the Firm did not invest in the resources necessary to do so. For example, the Audit Committee had a staff of personnel who did internal audit work and reported to the Audit Committee’s Chair. Yet, internal audit never reviewed Mr. Wedbush’s trading, and was not provided with sufficient resources to do so. The Firm also failed to hire a third party to perform a review.
37. Even after being notified on multiple occasions, since at least 2012, that FINRA Market Regulation (and, subsequently, NYSE Regulation) were investigating the lack of reasonable supervision, oversight, or controls relating to the EW Controlled Accounts, Respondents repeatedly failed to establish a system of oversight concerning trading in the EW Controlled Accounts.
38. 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 deficiencies described in paragraphs 10-29 above.
39. 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).⁹

Margin Compliance

40. During the Relevant Period, Mr. Wedbush and the Firm failed to abide by margin regulations in connection with accounts controlled by Mr. Wedbush, and did not enforce margin calls in Mr. Wedbush's accounts, in violation of NYSE Arca Rule 4-E.
41. NYSE Arca Rule 4.15-E(b) (Maintenance Margin Rule) sets forth the requirements for margin which must be maintained in margin accounts of customers.¹⁰ The rule is designed to prevent the excessive use of credit by broker-dealers.
42. Throughout the Relevant Period, the Firm's customers were subject to these Exchange maintenance margin requirements, and also subject to more stringent "house" requirements established by the Firm.¹¹ When a customer's account failed to meet these Exchange or house maintenance requirements, the Firm, in accordance with its policies and procedures, issued a margin call, requiring the customer to satisfy the call by selling securities in the account (or buying securities to cover short positions), sending money to the account, or depositing fully paid marginable securities into the account. In instances where a customer failed to satisfy a margin call, the Firm's credit department sold securities (or bought securities to cover a short position) in order to get the relevant account above maintenance margin requirements.
43. The Firm's practices were different for a number of accounts owned by Mr. Wedbush and/or his spouse, as well as a Wedbush, Inc. deferred compensation account for the benefit of Mr. Wedbush (collectively, the "personal EW Accounts"). Throughout the

⁹ Prior to August 17, 2017, 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).

¹⁰ Prior to August 17, 2017, NYSE Arca Rule 4.15-E(b) was denominated NYSE Arca Equities Rule 4.15(b). The rule provides that the margin which must be maintained in margin accounts of customers, whether ETP Holders, Allied Persons thereof, or non ETP Holders, shall be as follows:

- (a) 25% of the market value of all securities "long" in the account; plus
- (b) \$2.50 per share or 100% of the market value, in cash, whichever amount is greater, of each stock "short" in the account selling at less than \$5.00 per share; plus
- (c) \$5.00 per share or 30% of the market value, in cash, whichever amount is greater, of each stock "short" in the account selling at \$5.00 per share or above; plus
- (d) 5% of the principal amount or 30% of the market value, in cash, whichever amount is greater, of each bond "short" in the account.
- (e) In the case of securities listed pursuant to Rule 5.2-E, 100% of the market value, in cash, of each security held "long" in the account.

¹¹ The Firm's "house" requirements for maintenance margin generally included 30% of the market value for most "long" positions and 35% for most "short" positions.

Relevant Period, a number of these personal EW Accounts established substantial positions in equity securities, including positions in Company A, Company B, Company C, and Company D, referenced above in paragraph 27.

44. As described below, until March 2018, although the Firm's credit department performed and monitored calculations as to whether the personal EW Accounts complied with Exchange margin requirements, the Firm did not enforce margin calls in the personal EW Accounts when the accounts failed to meet maintenance margin requirements. Nor was Mr. Wedbush required to bring his accounts within margin compliance by selling securities, buying securities to cover short positions, sending money, or depositing fully paid marginable securities into the accounts.
45. Before 2018, when the personal EW Accounts fell into a margin deficit, rather than depositing additional equity or closing open positions, Mr. Wedbush, without adequate oversight or authorization from anyone else at the Firm, directed Wedbush Securities staff to include or exclude certain personal EW Accounts from combined account calculations for purposes of determining margin deficit or excess—with no documented processes to establish when an account was to be included or excluded from the relevant calculation.
46. Even with the benefit of the combined equity as calculated for the personal EW Accounts, the personal EW Accounts fell below maintenance margin requirements in November 2017 and again in December 2017. Yet, the Firm did not enforce margin calls and Mr. Wedbush did not resolve the margin deficit by selling securities, buying securities to cover short positions, sending money, or depositing fully paid marginable securities into the accounts.
47. In December 2017, the margin deficit in the personal EW Accounts grew significantly to over \$4.5 million. The Firm's credit department provided the margin calculations to Mr. Wedbush and the manager of the Firm's credit department discussed the calculations with Mr. Wedbush. These calculations consistently reflected substantial margin deficits that should have resulted in margin calls in accordance with Exchange rules and the Firm's stated policies and procedures. However, over the next two months, Mr. Wedbush liquidated an insufficient number of positions to resolve the margin deficit.
48. In January 2018, as the margin deficit for the personal EW Accounts grew to over \$23 million following adverse market moves, regulators specifically raised Mr. Wedbush's large margin deficit in communications with the Firm, including during a conference call with FINRA on or about January 29, 2018. In response, the Firm discussed with FINRA alternative methods of addressing the margin deficit.
49. Throughout February 2018, as the Firm continued to assess alternative methods of addressing the margin deficit, only an insufficient portion of the short positions in the personal EW Accounts were reduced, as Mr. Wedbush liquidated positions that met only

a portion of the margin call and failed to resolve the entire margin deficit. As a result, at the end of February 2018, the margin deficit across the combined personal EW Accounts remained over \$18 million. On or about March 1, 2018, after further discussions with Firm personnel, FINRA specifically instructed the Firm that the margin deficit needed to be addressed by Friday, March 2, 2018.

50. On Friday, March 2, 2018, the Firm prepared to complete trades in the personal EW Accounts in order to satisfy the margin deficit. Mr. Wedbush, however, objected to having others liquidate positions in his accounts. In light of statements by Mr. Wedbush regarding authority to trade in the EW Controlled Accounts, a senior manager declined to initiate the trades required to bring the personal EW Accounts into compliance with maintenance margin requirements, and instead resigned his position as it related to the credit department.
51. After this resignation, the Firm's Chief Risk Officer and Chief Administrative Officer, over the next two trading days, directed that liquidating trades be executed in the personal EW Accounts in order to resolve the margin deficit. After trades were executed in the personal EW Accounts to address the remaining margin deficit, Mr. Wedbush sought to discipline Firm executives who had been involved in liquidating his positions. Ultimately, however, no final disciplinary action was taken against those executives.
52. By failing to require compliance with Exchange margin requirements in the personal EW Accounts, Wedbush Securities and Mr. Wedbush repeatedly violated NYSE Arca Rule 4.15-E(b) (Maintenance Margin Rule), 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 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-E¹²)

53. 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."
54. 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.
55. 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

¹² NYSE Arca Equities Rule 2010, the predecessor to NYSE Arca Rule 9.2010-E, became effective on June 30, 2011.

shall be considered conduct or proceedings inconsistent with just and equitable principles of trade.”

56. 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.
57. As described in detail above, Wedbush Securities and Mr. Wedbush handled orders and allocations for the EW Controlled Accounts in a manner that resulted in repeated violations of the federal securities laws and Exchange rules, as well as various Firm policies and procedures.
58. 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.
59. By failing to record account names or designations prior to trade execution, Wedbush Securities and Mr. Wedbush violated NYSE Arca Rule 9.14-E. In addition, Wedbush Securities 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)

60. 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.
61. 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.”
62. 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.”
63. 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.
64. 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, Wedbush Securities 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 Wedbush Securities violated Section 17(a) of the Securities Exchange Act of 1934, and Rules 17a-3 and 17a-4 thereunder.
65. Additionally, by failing to create and maintain complete and accurate discretionary account documents for the EW Controlled Accounts, Wedbush Securities 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)

66. 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.”
67. As described in detail above, Wedbush Securities and Mr. Wedbush failed to mark proprietary orders with the appropriate designator. Instead, Wedbush Securities and Mr. Wedbush entered orders for the EW Controlled Accounts with repeated blanket designations of each order as an “agency” order.
68. This conduct constitutes separate and distinct violations of NYSE Arca Rule 7.33-E by Wedbush Securities, 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)

69. On several occasions during the Relevant Period, Wedbush Securities, at the instruction of Mr. Wedbush, overrode on its internal records the exchange closing prices of selected equity securities, reflecting price changes after the closing of exchange trading, including for purposes of calculating margin.
70. Mr. Wedbush’s practice of changing the exchange 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.
71. 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.

72. By selectively applying manual overrides to the exchange closing prices of securities without documented processes or independent reviews, Wedbush Securities 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).

Charge V

*Failure to Comply with Maintenance Margin Requirements
(Violations of NYSE Arca Rules 4.15-E(b), 11.1(b), 11.2(b), and 9.2010-E¹³)*

73. NYSE Arca Rule 4.15-E(b) provides that the margin which must be maintained in margin accounts of customers, whether ETP Holders, Allied Persons thereof, or non ETP holders, shall be as follows:
- a. 25% of the market value of all securities “long” in the account; plus
 - b. \$2.50 per share or 100% of the market value, in cash, whichever amount is greater, of each stock “short” in the account selling at less than \$5.00 per share; plus
 - c. \$5.00 per share or 30% of the market value, in cash, whichever amount is greater, of each stock “short” in the account selling at \$5.00 per share or above; plus
 - d. 5% of the principal amount or 30% of the market value, in cash, whichever amount is greater, of each bond “short” in the account.
 - e. In the case of securities listed pursuant to Rule 5.2-E, 100% of the market value, in cash, of each security held “long” in the account.
74. As described in detail above, Wedbush Securities and Mr. Wedbush repeatedly failed to apply these margin requirements to the personal EW Accounts, even as the margin deficit in the personal EW Accounts grew, ultimately into the tens of millions of dollars.
75. By failing to apply and enforce Exchange margin requirements in the personal EW Accounts, Wedbush Securities and Mr. Wedbush violated NYSE Arca Rule 4.15-E(b). In addition, Wedbush Securities 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

¹³ NYSE Arca Equities Rule 2010, the predecessor to NYSE Arca Rule 9.2010-E, became effective on June 30, 2011.

Business Practice), 11.2(b) (Prohibited Acts), and 9.2010-E (Standards of Commercial Honor and Principles of Trade).

Charges VI–X

*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)*

76. 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.”
77. 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.”
78. 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”
79. 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.”
80. As president of Wedbush Securities, Mr. Wedbush was ultimately responsible for the Firm’s compliance with supervision requirements.
81. Despite repeated notifications of the supervisory deficiencies, Respondents failed to improve the Firm’s supervision or invest appropriate and sufficient resources in the Firm’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, and repeatedly failed to comply with maintenance margin requirements, in violation of federal securities laws and Exchange rules for a period of years, and the Firm continued to permit it.
82. The Firm’s supervisory systems and procedures were inadequate and were not reasonably designed for its business as it related to the EW Controlled Accounts and were inadequate and not reasonably designed to prevent Respondents’ violations described in:

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

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)

84. As described in detail above, Respondents handled the EW Controlled Accounts in a manner without oversight for conflicts of interest, fraud, manipulation, or customer harm. Despite repeated notifications of the supervisory deficiencies, Respondents failed to invest appropriate and sufficient resources in the Firm's internal audit and compliance staff, and failed to take other steps to monitor and supervise Mr. Wedbush's trading in the EW Controlled Accounts.
85. 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).

Other Factors Considered

86. In determining to resolve the matter on the basis set forth herein, NYSE Regulation Enforcement considered and relied upon the Firm's undertaking to address the

deficiencies identified in the Firm's Offer of Settlement and recent changes to the Firm's leadership and corporate governance, including (i) the age (86) and health of Mr. Wedbush and the appointment of Richard Jablonski and Gary Wedbush as both co-presidents of Wedbush Securities and members of the Firm's Board of Directors (succeeding Mr. Wedbush in these positions); (ii) the appointment of Robert Fitzsimmons as executive vice president of Wedbush Securities; (iii) the appointment of Danny Nadalalicea as Chief Information Officer of Wedbush Securities; (iv) the appointment of Harlan Thompson as a member of the Firm's Board of Directors and Chair of the Audit Committee; (v) Mr. Wedbush's withdrawal of his registrations with NYSE Arca and affiliated exchanges; and (vi) the reorganization of the Firm's retail credit function.

ORDER

Edward W. Wedbush violated: (i) NYSE Arca Rules 9.14-E, 11.1(b), 11.2(b), and 9.2010-E, by failing in certain instances to designate specific accounts for which orders were being entered and instead allocating trades to accounts after the fact based on his discretion and without reasonable oversight; (ii) NYSE Arca Rules 2.28, 11.1(b), 11.2(b), and 9.2010-E, by failing in certain instances to record account names or designations until the end of the trading day, failing to identify each discretionary order as such, and failing to retain required documentation; (iii) NYSE Arca Rules 11.1(b), 11.2(b), and 9.2010-E, by issuing instructions to override Firm internal records of closing prices of certain equity securities without processes or reviews to ensure that the adjustments were not applied in a discriminatory fashion; (iv) NYSE Arca Rules 4.15-E(b), 11.1(b), 11.2(b), and 9.2010-E, by failing to apply and enforce Exchange margin requirements in connection with accounts he managed and traded; (v) NYSE Arca Rules 11.18, 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E, by failing to establish and maintain supervisory systems and procedures adequate and reasonably designed for the Firm's business as it related to accounts he managed, including improper order handling and post-execution allocations; not making and preserving order and account books and records; entering inaccurate capacity codes; improper manual overrides of closing prices without documented processes or reviews; and failing to comply with maintenance margin requirements; and (vi) NYSE Arca Rules 11.18, 11.1(b), 11.2(b), 9.1-E(d), 9.2-E(b), and 9.2010-E, by failing to establish, implement, and enforce adequate supervisory systems and procedures, including written supervisory procedures reasonably designed to supervise Mr. Wedbush and accounts he managed to achieve compliance with the federal securities laws and Exchange rules.

SANCTIONS

Edward W. Wedbush is censured and fined \$900,000. The fine is payable jointly and severally with Wedbush Securities, Inc.¹⁴

These sanctions are effective immediately.



David Williams
Hearing Officer

Copies to:

Charles LaChausee, Esq. (via first-class mail and email)

Leandro Palencia, Esq. (via email)

Michael Diver, Esq. (via email)

Patrick M. Smith, Esq. (via email)

David A. Feldman, Esq. (via email)

Daniel J. Northrop, Esq. (via email)

Adam J. Wasserman, Esq. (via email)

Ross A. Schwarz, Esq. (via email)

¹⁴ As set forth in the Wedbush Securities, Inc. Offer of Settlement.