FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. WEDBUSH SECURITIES, INC. (CRD No. 877), and EDWARD WILLIAM WEDBUSH (CRD No. 461221), Respondents.	Disciplinary Proceeding No. 20070094044 Hearing Officer – LBB EXTENDED HEARING PANEL DECISION Dated: August 2, 2012

Respondent Wedbush Securities, Inc. is fined $300,000 for reporting failures with respect to Forms U4 and U5, NYSE Forms RE-3, and NASD Rule 3070; and for failure to supervise its registration reporting. Respondent Edward William Wedbush is fined $25,000 and suspended from all supervisory activities, other than the supervision of trading and order entry, for 31 days, for failure to supervise the Firm's registration filings.

Appearances

Danielle Schanz, Esq., Senior Litigation Counsel, and Keith A. Alt, Esq., Principal Counsel, New York, New York, for the Department of Enforcement.

John L. Erikson, Jr., Esq., Los Angeles, California, for Respondents.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on October 4, 2010. Enforcement filed an Amended Complaint on January 11, 2011, and a Second Amended Complaint on June 20, 2011, each time reducing the number of allegedly violative transactions, but not otherwise changing the causes of action. The First Cause of Action charges Wedbush Securities, Inc. ("Wedbush Securities" or the "Firm") with failing to file, late filing, and filing of inaccurate Forms RE-3, in violation of NYSE Rule 351(a), and

NASD Rule 2110. The Second Cause of Action charges the Firm with failing to file, late filing, and filing of inaccurate Forms U4 and U5, in violation of NASD's and FINRA's By-Laws, NASD Rule 2110, and FINRA Rule 2010. The Third Cause of Action charges the Firm with failing to file, late filing, and filing of inaccurate statistical information, in violation of NYSE Rule 351(d), NASD Rule 3070(c), NASD Rule 2110, and FINRA Rule 2010. The Fourth Cause of Action charges the Firm with failing to supervise registration filings, in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010. The Fifth Cause of Action charges Edward William Wedbush ("Mr. Wedbush"), the Firm's president, with failing to supervise registration filings, in violation of NASD Rules 2010 and 2110, and FINRA Rule 2010.[1]

A nine-day hearing was held in September 2011 and February 2012, before an Extended Hearing Panel composed of one current and one former member of the District 3 Committee, and a Hearing Officer.

Summary

Despite repeated regulatory warnings, Wedbush Securities filed regulatory reports late, filed inaccurate reports, and failed to file reports from January 2005 until July 2010. Wedbush Securities violated NYSE Rule 351(a) and NASD Rule 2110, as charged in the First Cause of Action, by failing to file, late filing, and filing of the 37 inaccurate Forms RE-3 as to which the

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[1] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision relies on the NASD, NYSE, and FINRA Rules that were in effect at the time of each alleged violation. The applicable rules are available at www.finra.org/rules.

parties reached stipulations.[2] The Firm violated NASD's and FINRA's By-Laws, NASD Rule 2110, and FINRA Rule 2010, as charged in the Second Cause of Action, by failing to file, late filing, and filing inaccurate Forms U4 and U5. In addition to the 45 Form U4 and U5 violations as to which there were stipulations, the Extended Hearing Panel finds that the Firm committed 39 reporting violations for reporting failures for which there were no stipulations. The Firm violated NYSE Rule 351(d), NASD Rule 3070(c), NASD Rule 2110, and FINRA Rule 2010, as charged in the Third Cause of Action, by failing to file, late filing, and filing inaccurate reports, with respect to the four statistical reports for which there were stipulations, and three additional reports for which there were no stipulations.

The persistence of the reporting problems over several years is sufficient to establish that supervision of the reporting process was inadequate. There were specific problems. For example, the Firm identified internal communications problems in its regulatory reporting process. By failing to supervise this important function, the Firm violated NASD Rules 3010 and 2110, and FINRA Rule 2010, as charged in the Fourth Cause of Action.

The Extended Hearing Panel finds that Mr. Wedbush failed to adequately supervise registration filings from August 2006 until July 2010, both as head of the compliance department for about a year beginning in August 2006, and as president of the Firm thereafter, in violation of NASD Rules 2010 and 2110, and FINRA Rule 2010, as charged in the Fifth Cause of Action.

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[2] FINRA has jurisdiction to enforce NYSE Rule 351(a). *See* Securities and Exchange Commission, Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the National Association of Securities Dealers, Inc. New York Stock Exchange LLC, and NYSE Regulation, Inc., Exchange Act Rel. No. 56148, at 4-5, 8-9 (July 26, 2007).

Facts

I. Respondents

Mr. Wedbush and one other person started Wedbush Securities in 1955. The Firm now has approximately 900 employees. Tr. 984, 1433; CX-9.[3] The Firm was registered with FINRA in 1955, and became registered with the NYSE in the early 1970s. Tr. 1032. It has four divisions, each with an executive vice president in charge of the division. Tr. 978. It has grown substantially since 2006. Tr. 984.

Mr. Wedbush entered the securities business in 1955, when he formed the Firm. Tr. 1032; CX-9. He is registered with Wedbush Securities, and serves as the Firm's president. CX-9; Tr. 973-974.

II. The Business Conduct Department

A. Management and Organization of the Department

The Firm's compliance department is known as the Business Conduct Department. Tr. 975-976. Mr. Wedbush became manager of the Business Conduct Department and the Firm's chief compliance officer ("CCO") in August 2006. In July 2007, Mr. Wedbush became the co-CCO, with Vincent Moy, in addition to continuing as manager of the Business Conduct Department, and served in that capacity until October 1, 2007. CX-206, CX-3; Tr. 819, 969-971, 1500-1501.[4] While Mr. Wedbush was manager of the Business Conduct Department, the Department's supervisors reported directly to Mr. Wedbush. Tr. 971, 975, 988. At the time, there were approximately eight to ten people in the department. Tr. 975.

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[3] References to the exhibits provided by Enforcement are designated as "CX-___." References to the exhibits provided by Respondent are designated as "RX-___." References to the hearing transcript are designated as "Tr. ___."

[4] The NYSE did not approve Mr. Wedbush's application to be the CCO immediately, so there was a period during which the identity of the "official" CCO was unclear, at least with respect to the NYSE. Tr. 819, 969-971.

When Mr. Wedbush was manager of the Business Conduct Department, he decided that there should be Business Conduct Department personnel in the Firm's operating divisions. As a result, there have been Business Conduct Department personnel in three of the Firm's operating divisions since about 2007. Tr. 1536-1540, 1542; RX-MM.

Eric Segall replaced Mr. Wedbush as co-CCO and manager of the Business Conduct Department in October 2007. Tr. 801, 927, 971, 988; CX-15A. Segall has been the manager of the Business Conduct Department, a senior vice president, and co-CCO since he was hired in October 2007. CX-6; Tr. 801, 988-989. Segall has always reported directly to Mr. Wedbush. Tr. 810-811, 977, 1116-1117, 1537.

B. The Firm's Procedures for Regulatory Filings

At Wedbush Securities, compliance and supervision are two separate functions. Various managers are in charge of supervision. The Firm has four divisions, headed by executive vice presidents. Tr. 887-888. The Firm relies on branch managers to get forms signed and to approve them. Tr. 1126. Although the Business Conduct Department makes the Firm's regulatory filings, its role is largely administrative. The Business Conduct Department relies very heavily on the cooperation of the Firm's registered representatives and executives to provide documents and information required for timely regulatory filings. Tr. 1558-1559. The Business Conduct Department has had no authority to suspend or terminate a representative's employment with Wedbush Securities. Tr. 868-880, 887-888.

When the Business Conduct Department is notified of a reportable event, it produces a draft Form U4 or U5. A Form U4 is supposed to be signed by the registered representative and the manager. If a Form U5 is required, the manager is supposed to sign. The Business Conduct Department files the signed forms when it receives them. Tr. 856, 1117-1120, 1126, 1351. For

an event that was reportable on a Rule 3070 or RE-3 report (or currently a Rule 4530 report), the representative is not required to sign, so the Business Conduct Department completes the report on CRD. If more information is required, the Business Conduct Department contacts the appropriate person or department. Tr. 1117-1118.

The Business Conduct Department was responsible only for getting the draft Forms U4 to the registered representative, notifying the representative's manager of the event, and then filing the signed reports. Segall emphasized that the Business Conduct Department could only file reports when it received the information from the business units. Problems in making timely filings often were the result of the failure of other units to provide the information or documentation to the Business Conduct Department punctually. There were very few instances where the Business Conduct Department failed to file reports or documentation when it had received the information or documentation. Tr. 863-864. The Business Conduct Department relies on the four executive vice presidents who run the Firm's divisions, and Human Resources Department, to ensure that the Business Conduct Department receives information for regulatory filings. "And if they don't supply information, then the [Business Conduct Department] is not in a position to make a filing." Tr. 863-864, 978. Mr. Wedbush attributed 100% of the Form U4 and U5 filing issues raised in the Complaint to management in the Firm's divisions, from branch managers up to the executive vice presidents, but not to the Business Conduct Department. Tr. 1559, 1561-1562.

III. NYSE and FINRA Notices of Regulatory Reporting Deficiencies

Wedbush Securities received several notifications about regulatory reporting problems over the years, up to and after the filing of the Complaint on October 4, 2010. While the problems were not ignored, they were not fixed. In its responses to the regulators' criticisms, the

Firm offered many of the same excuses and commitments several times over the years, yet there was no meaningful improvement in compliance with regulatory reporting requirements at any time prior to the filing of the Complaint, or even in the months immediately following the filing.

A number of the regulatory reporting problems were brought to the Firm's attention in examination exit meetings and examination reports. Mr. Wedbush required all the senior executives to attend exit meetings to ensure that the Firm's management would follow up on the findings of the examinations. Tr. 1599, 1740.

On February 4, 2002, Wedbush Securities senior executives attended an exit meeting with NYSE Member Regulation staff after an NYSE sales practice examination. In the meeting, and in the March 21, 2002, examination report, NYSE staff identified several reporting problems, citing NYSE Rule 351(a)(8).[5] The report noted late reporting of two customer complaints and inaccurate reporting of two customer complaints. It also noted that a complaint had been reported twice, one was reported with an incorrect problem code, and there was one instance of failure to amend a Form U4. CX-154. The Firm's response to the examination report asserted that the problems related to its logging procedures, and that it would review its procedures. CX-155.

NYSE staff, in an examination conducted jointly with NASD staff, found continued reporting problems in an examination in 2006, which NYSE staff discussed with senior Wedbush executives in an exit meeting on October 31, 2006, and identified in an examination report of December 29, 2006. CX-156. The report stated that the Firm was not in complete compliance

[5] NYSE Rule 351(a)(8) required NYSE member firms to file prompt reports concerning settlements for more than $15,000 of claims by customers against registered representatives.

with NYSE Rule 351(a) and NYSE Information Memo 06-11.[6] The examiners noted that the Firm failed to file Forms RE-3 for 16 customer litigations and arbitrations settled during the third quarter of 2005 through the second quarter of 2006, for amounts ranging from $22,500 to $1,400,000. According to the report, the resolution of the issue was that "Mr. Edward Wedbush, chief executive officer, stated that the Business Conduct Department will report all settlements to the Exchange to comply with the rule requirement." Mr. Wedbush submitted the Firm's response to the examination report, stating that the managers of the Business Conduct Department were unaware of the requirement to file a Form RE-3 under NYSE Rule 351(a), and that the Firm had submitted the 16 filings. Mr. Wedbush noted that the Business Conduct Department currently reported to him, as the acting CCO. CX-157.

Wedbush Securities submitted a Letter of Acceptance, Waiver and Consent ("AWC") to NASD on March 20, 2007, resolving allegations of late filings of Forms U5 and supervisory violations for failing to enforce procedures on the preparation and filing of Forms U5. The Firm was censured and fined $18,000. Mr. Wedbush signed the AWC. CX-158.

The Firm received a letter from the Division of Enforcement of NYSE Regulation, dated July 20, 2007, informing the Firm that NYSE was opening an investigation of the Firm's failure to file Forms RE-3, as reported in the December 29, 2006, report of examination. CX-159.

On July 24, 2008, a FINRA examiner sent an e-mail to the Firm's co-CCO, asking the Firm to explain why 19 Forms U4 and U5 filings had been late. The examiner also asked for other documentation relating to Form U4 and U5 filings. The Firm's response noted that many of the unreported items pre-dated additional training that the Firm had instituted with respect to the Business Conduct Department and Legal Department staffs, and also pre-dated Segall's

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[6] NYSE Rule 351(a)(1) Guidance On Reporting Requirements.

hiring as manager of the Business Conduct Department. The reasons the Firm offered for the filing failures generally related to lack of communications and to oversights by registration specialists in the Business Conduct Department. CX-160.

FINRA staff sent a Wells Notice[7] to Segall and the Firm dated December 17, 2008, advising the Firm that FINRA staff had made a preliminary determination to recommend disciplinary action against the Firm based on the deficiencies in the filing of Forms U4, U5, and RE-3. CX-161; Tr. 596-597. The Firm responded to the Wells Notice on December 30, 2008. The Firm admitted that there had been reporting problems, which it attributed to lack of communication, lack of staff experience, and lack of training. The Firm represented that the problems had been resolved. CX-162.

At an examination exit meeting on November 5, 2008, and in an examination report of December 31, 2008, FINRA examiners identified a number of reporting problems. The examination found that 19 Form U4 amendments and four Form U5 amendments were late. Mr. Wedbush and other senior executives attended the exit meeting. CX-163. The Firm responded to the examiners' findings on February 6, 2009. The response noted that many of the reporting problems pre-dated Segall's association with the Firm and represented that the problems had been addressed in additional training of the legal department and registration specialists. CX-164 at 17-18.

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[7] "If a preliminary determination to proceed with a recommendation of formal discipline is made, the staff will call the potential respondent or counsel and inform the individual or firm that FINRA intends to recommend formal disciplinary action. This is generally referred to as a Wells Call. During the Wells Call the staff informs the potential respondent of the proposed charges and the primary evidence supporting the charges. The purpose of a Wells Call is to give the potential respondent an opportunity to submit a writing, called a Wells Submission, which discusses the facts and applicable law and explains why formal charges are not appropriate. The Wells Call is followed with a letter confirming that the Wells Call has been made (Wells Notice)." Reg. Notice 09-17 (March 2009).

In an e-mail to Segall dated June 3, 2009, a FINRA examiner asked about the Firm's failure to amend a Form U4 or submit a Rule 3070 filing for one of the Firm's registered representatives reporting the filing of a statement of claim in an arbitration against the representative. CX-126.

On June 10, 2009, FINRA staff sent a letter to Mr. Wedbush concerning FINRA's 2008 examination. The letter informed Mr. Wedbush that the examiners were referring the results of the examination to Enforcement for its review with respect to deficiencies in the Firm's filing practices for Form U4 and U5 amendments. CX-165.

The Firm received an exit meeting report dated September 17, 2009, for FINRA's 2009 cycle examination. The report included exceptions for reporting under NASD Rule 3070 and NYSE Rule 351(d) for statistical reporting, reporting of two customer complaints, and for failing to update a Form U5 to report the filing of an arbitration. The exit meeting report noted that Mr. Wedbush and other Wedbush Securities executives attended the meeting. CX-166; Tr. 603, 1021. The same exceptions were reported in the examination report dated January 13, 2010. The report also noted that the examiners had referred the items to Enforcement. CX-167.

FINRA sent a letter to the Firm on March 5, 2010, concerning a customer complaint about a Wedbush Securities registered representative. The letter requested an explanation of the failure to amend the representative's Form U4 to reflect the settlement with the customer. CX-111.

Discussion

I. First Cause of Action: Wedbush Securities Violated NYSE Rule 351(a) and NASD Rule 2110 by Failing to File, Late Filing, and Filing Inaccurate NYSE Forms RE-3

The First Cause of Action charges the Firm with failing to file, late filing, and the filing of inaccurate NYSE Forms RE-3 from January 2005 until July 2007. Form RE-3 was a NYSE

form for the reporting of matters required by NYSE Rule 351(a) to be reported to the NYSE.[8] NYSE Rule 351(a) required each member organization to report ten categories of events to NYSE within thirty days of the occurrence of the reportable event.[9] The reporting requirements that are relevant to this proceeding were the requirements to file a Form RE-3 whenever the member, or any registered or non-registered employee associated with such member:

> (7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgment, award, or settlement for an amount exceeding $15,000...;
>
> (8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding $15,000....[10]

The Form RE-3 filings were an important tool for NYSE Enforcement.[11]

Respondents stipulated to the violations alleged in the Complaint with respect to the failure to file, late filing, and filing of inaccurate Forms RE-3. Thirty-three Forms RE-3 were filed late; one was inaccurate; and three were never filed.[12] Two were three weeks late, one was nearly three years late, and most were filed more than two months late. CX-14A. The Extended Hearing Panel finds that Wedbush Securities violated NYSE Rule 351(a) and NASD Rule 2110 by failing to file, late filing, and the filing inaccurate NYSE Forms RE-3.

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[8] NYSE Rule 351 was incorporated into the FINRA Rulebook at the time NASD consolidated with the member regulation and enforcement functions of NYSE Regulation. *See* FINRA Information Notice, March 12, 2008 (available on FINRA website). NASD Rule 351 and NASD Rule 3070 were superseded in July 1, 2011, by consolidated FINRA Rule 4530. *See* Reg. Notice 11-06.

[9] The text of the Rule required prompt reporting. In NYSE Information Memo 90-17, dated April 30, 1990, and distributed to all New York Stock Exchange member organizations, the NYSE defined "prompt" filing as occurring within 30 days of the reportable event. *See* CX-183 at 21.

[10] *See* retired NYSE Rule 351(a), available on the FINRA website.

[11] NYSE Inf. Memo 03-55 Dec. 16, 2003, CX-183 at 47; Tr. 445.

[12] Stipulation No. 1; CX-14A.

II. Second Cause of Action: Wedbush Securities Violated NASD and FINRA By-Laws Article V, Section 2(c), NASD Rule 2110, and FINRA Rule 2010, by Failing to File, Late Filing, and Filing of Inaccurate Forms U4 and U5

The Second Cause of Action charges the Firm with failing to file, late filing, and the filing of inaccurate Forms U4 and U5 from May 2005 until July 2010, in violation of NASD and FINRA By-Laws Article V, Section 2(c),[13] NASD Rule 2110, and FINRA Rule 2010. The parties have stipulated to 45 Form U4 and 26 Form U5 violations. There are additional alleged violations to which the parties did not stipulate. The Extended Hearing Panel finds that the Firm violated FINRA's Rules and By-Laws with respect to 39 additional Form U4 and U5 filings that were late, inaccurate, or never filed.

A. Legal Principles Relevant to Alleged Form U4 and U5 Violations

FINRA uses the Form U4 to screen applicants and monitor their fitness for registration within the securities industry.[14] The information on the Form U4 is also important to FINRA member firms that are evaluating whether to hire an employment applicant.[15] Disclosures from the Form U4 are available to the public through FINRA's BrokerCheck, and may be important in an investor's choice of a broker.[16]

FINRA's disclosure and reporting requirements for the Form U5 are "designed to assist FINRA in deciding what activities to investigate."[17] The Form U5 "serves as a warning

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[13] This section of NASD's By-Laws was superseded by FINRA's By-Laws. The language is identical in the NASD and FINRA By-Laws.

[14] *See Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008).

[15] *Dep't of Enforcement v. Tucker*, No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *5-6 (N.A.C. Oct. 4, 2011).

[16] *Dep't of Enforcement v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *40-41 (N.A.C. July 28, 2011); *Dep't of Enforcement v. Tucker*, 2011 FINRA Discip. LEXIS 66, at *5-6; see also Tr. 40-41.

[17] *Dep't of Enforcement v. McCrudden*, No. 2007008358101, 2010 FINRA Discip. LEXIS 25, at *19 (N.A.C. Oct. 15, 2010).

mechanism to member firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ an individual with a suspect history."[18]

Article V, Section 2(c) of the NASD and FINRA By-Laws requires members to keep Forms U4 current. Amendments must be filed not more than 30 days after a member learns of facts or circumstances giving rise to the amendment. The same requirement is imposed by Article V, Section 3(b) with respect to Form U5. FINRA Rule 2010 and NASD 2110, and IM-1000-1 also require the filings to be accurate.[19]

Filing a misleading Form U4 or U5, or failing to file a timely amendment to a Form U4 or U5 when required, violates the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under NASD Rule 2110 and FINRA Rule 2010.[20]

B. Stipulated Form U4 and U5 Reporting Violations

The parties stipulated that Wedbush Securities committed violations with respect to 45 Form U4 and 26 Form U5 amendments. Most of the stipulated violative filings were late, one was never filed, and several were inaccurate.[21] The late and never-filed reports related to a variety of events, including the receipt of reportable customer complaints, the settlement of customer complaints, the filing of arbitrations and civil litigation, the settlement of arbitration claims and civil litigation, and an arbitration award. Some late reports were a few days late, while others were late by months, or even years. The inaccuracies included two Form U5

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[18] *Dep't of Enforcement v. McCrudden,* at *20 (citing *Henry Irvin Judy, Jr.*, Exchange Act Rel. No. 38418, 1997 SEC LEXIS 622, at *11-12 (Mar. 19, 1997)).

[19] *Dep't of Enforcement v. Tucker*, 2011 FINRA Discip. LEXIS 66, at *5-6.

[20] *See Jason A. Craig*, 2008 SEC LEXIS 2844, at *8; *Mathis v. SEC*, 671 F.3d 210, 212 (2d Cir. 2012); *Dep't of Enforcement v. Fox & Co.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *34-35 (N.A.C. Feb. 24, 2005).

[21] Stipulation No. 1, Stipulations filed on September 22, 2011. Tr. 826; CX-14A.

amendments that reported a registered representative was a respondent in an arbitration;[22] three Form U4 amendments that reported the wrong dates of reportable events,[23] and two that reported registered representatives were not named as a respondent in arbitrations.[24]

C. Disputed Form U4 and U5 Reporting Violations

There were a number of disputed violations. The disputes generally concerned such issues as whether Respondents were responsible for the failure of the registered representatives to sign the forms, or when Respondents had sufficient information to permit filings.

Arbitration Against J. Rubenstein and Debbie Saleh[25]

In July 2008, the G family filed an arbitration statement of claim against Wedbush Securities, Wedbush Securities registered representatives Debbie Saleh and Joseph Rubenstein, and their previous firm. FINRA served the statement of claim on the arbitration respondents by letter of July 8, 2008, and Saleh and Rubenstein had received the statement of claim by July 15, 2008. The statement of claim alleged that Saleh had defrauded the claimants in their securities transactions while she was their registered representative, and that Rubenstein "conspired with and/or assisted Saleh." The statement of claim requested damages in excess of $850,000. CX-93. Wedbush Securities filed an amended Form U4 for Saleh on August 27, 2008, reporting that she had received the statement of claim on July 15, 2008. CX-94. Wedbush Securities filed an amended Form U4 for Rubenstein on February 22, 2010, reporting both the filing of the statement of claim and a settlement for $180,000. CX-96. The

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[22] CX-14A, Item 7. CX-14A is a summary table, prepared by the Enforcement, which sets forth the essential information relating to the alleged reporting violations. Many of the items in CX-14A contain multiple alleged violations relating to the same or related allegedly reportable event.

[23] CX-14A, Items 14, 18, 76.

[24] CX-14A, Items 53, 68.

[25] CX-14A, Item 62.

settlement agreement, dated May 7, 2009, provided a full release for Rubenstein, but released Saleh only for acts she committed while she was at Wedbush Securities, and not for her acts at her previous firm. Rubenstein's Form U4 incorrectly reported that the matter had been settled on March 16, 2009. CX-95, CX-96. At the time of the settlement, Saleh had left Wedbush Securities. Wedbush Securities has never amended her Form U5 to reflect the settlement. CX-97; Tr. 96-97.

Using the event date reported by the Firm on the Form U4 amendments, the filing of the arbitration claim was reported 557 days late for Rubenstein and 13 days late for Saleh. Using the event date of the May 7, 2009, settlement, the Rubenstein settlement was reported 259 days late.

Respondents contend that the settlement of the arbitration against Debbie Saleh was not reportable on her Form U5 because the settlement did not result in a complete dismissal of all claims against her, but only those based on her actions while at Wedbush Securities.

Form U5, question 7E, requires a firm to amend a registered representative's Form U5 to report the following information:

> In connection with events that occurred while the individual was employed by or associated with your *firm*, was the individual named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that the individual was *involved* in one or more *sales practice violations* and which ... [w]as settled prior to 05/18/2009, for an amount of $10,000 or more....[26]

The question requires the Firm to report the settlement of the claim against Saleh for her alleged actions while at Wedbush Securities. The settlement was "in connection with events that occurred while [Saleh] was employed by or associated with" Wedbush Securities, and she was "named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration which alleged that [she] was *involved* in one or more *sales practice violations*...."

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[26] Emphasis in the original Form U5.

The Extended Hearing Panel finds that Enforcement has established that all four of the violations alleged in Item 62 occurred, including the failure to report Saleh's settlement.

Customer Complaint Against Thomas Brough[27]

In August 2009, an attorney for a customer of the Firm sent a written complaint to Wedbush Securities, alleging that representative Thomas Brough had engaged in unsuitable trading on behalf of the customer and had failed to disclose substantial risks associated with his trading strategy. The letter demanded restitution of $68,097. The letter was dated August 4, 2009, but there is no date stamp or other direct evidence of the date of receipt. CX-75. According to the Firm's practice, correspondence should have been date-stamped when received. Tr. 1392. A Wedbush Securities branch manager responded by letter dated August 21, 2009, thanking the attorney for her letter of August 4. CX-76.

Wedbush Securities filed an amendment to Brough's Form U4 on September 18, 2009, reporting that the complaint letter was received on August 21, 2009. CX-77. Enforcement uses August 4, the date of the letter, as the date of the event triggering the filing requirement, and contends that the amendment was due on September 3, 2009, and therefore was filed 15 days late, and inaccurately reported the event date as August 21, 2009. Respondents contend that the reported date was correct, and the report was therefore not late.

The Extended Hearing Panel finds that the Form U4 amendment was filed late, but does not make a finding of the precise number of days late. It is unlikely that the letter would have been dated August 4 and not received until August 21, and also unlikely that the branch manager would have acknowledged the complaint letter without noting that it was not delivered until 17 days after the date of the letter, or that he would have sent a response on the date he received the

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[27] CX-14A, Item 56.

letter without noting his immediate response. In the absence of a contemporaneous record of the date of receipt, the Extended Hearing Panel finds only that the complaint was received a few days after August 4, and that the event date is inaccurately reported, rendering the filing of the amendment to Brough's Form U4 late.

Karen Mendez Discharge by Previous Employer[28]

On August 28, 2007, Karen Mendez submitted a pre-hiring clearance form to Wedbush Securities in connection with her application for employment as a registered representative, disclosing that her previous employer, UBS, had alleged that she had a compliance problem, stating, "I am only aware of such a 'problem' as it relates to the accusation & termination by UBS." RX-D. On September 12, 2007, UBS filed a Form U5 reporting that her employment had been terminated for violating firm policy by completing client information on a new account form after the documents had been signed by the clients. CX-32.

On September 20, 2007, Wedbush Securities filed a Relicense Form U4 for Mendez.[29] Question 14J on the Form U4 asked, in part, if the applicant had been discharged by a previous employer after violating industry standards of conduct. Wedbush Securities did not disclose the discharge because Mendez wanted to challenge the Form U5 filing by her prior firm. CX-31; Tr. 1187-1188.

On September 20, 2007, and October 24, 2007, FINRA staff sent disclosure letters by e-mail to Wedbush Securities concerning the failure of the Form U4 to disclose Mendez's discharge from her previous employer. CX-33, CX-34.[30] The Firm filed an amended Form U4

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[28] CX-14A, Item 26.

[29] "Relicense Form U4" refers to the filing required when a registered person changes member firms.

[30] Staff sends disclosure letters to members by e-mail, to inform the member that a filing might be required. Tr. 117-118.

for Mendez on October 29, 2007, disclosing that she had been discharged by her previous firm. CX-35.

The representative's intent to dispute the basis for the filing of the Form U5 by her prior firm is not a defense, and does not stay the Firm's filing deadline. The Extended Hearing Panel finds that the Firm violated NASD and FINRA's Rules and By-Laws by the late filing of the disclosure for Karen Mendez.

Arbitration Claims Against Registered Representative Stanley Brooks[31]

After leaving Brookstreet Securities, Stanley Brooks became employed with Wedbush Securities in mid-2007, although he never did any business while at Wedbush Securities because he never received state licenses. Tr. 1232-1233. Wedbush Securities filed a Form U4 amendment for Brooks on February 22, 2008, reporting that Brooks had been named as a respondent in 11 arbitrations asserting sales practice violations and claiming damages in excess of $15,000 in each matter. The Form U4 described the allegations against Brooks as "Control Person" with no further explanation. In response to the Form U4 question on the date of service of the arbitration, Wedbush reported that the "approximate date of receipt" of the arbitration claims was January 15, 2008. CX-48; Tr. 1150-1153.[32]

When Wedbush Securities learned of the arbitrations, Brooks told the Firm that he did not think the arbitrations were reportable because, in his opinion, he was named as a respondent solely in his capacity as president of Brookstreet. Brooks provided the statements of claim to Wedbush Securities. Segall reviewed the statements of claim in mid-February and determined that they were reportable on Brooks's Form U4. Tr. 1150-1153.

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[31] CX-14A, Item 32.

[32] The earliest Form U4 was filed in April 2006. There was another Form U4 filed in May 2007. The rest were filed between November 21, 2007, and January 14, 2008. CX-14A.

Respondents argue that the arbitrations were not reportable by Wedbush Securities until the Firm had reviewed the statements of claim to determine that they were reportable. Neither FINRA's Rules nor its By-Laws provide for an extension of the deadlines while a firm reviews the information in its possession. Using the date reported by the Firm as the approximate date of receipt, the filings were eight days late, and constitute violations.[33]

David R. Weiss Criminal Conviction[34]

On January 2, 2009, Wedbush Securities filed a Relicense Form U4 for registered representative David Weiss. There were no disclosures. CX-88. FINRA sent disclosure letters to Wedbush Securities on January 12, 2009, June 17, 2009, and November 24, 2009, informing the Firm that Weiss had an arrest record that might require disclosure on his Form U4. CX-89-91.[35] Wedbush Securities filed a Form U4 amendment for Weiss on January 27, 2010, reporting that in 1995, Weiss had been charged with misdemeanor burglary and pled "No Contest." CX-92.

Wedbush Securities did not report the matter promptly because it took some time to determine if the matter was reportable, and once the Firm determined that it was reportable, to obtain Weiss's signature on the amendment to his Form U4. Tr. 1222-1224. Enforcement

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[33] Enforcement expressly did not attribute the knowledge of the Firm's registered representatives to the Firm. Tr. 1903-1905. In fact, there is ample precedent for attributing the conduct of a firm's registered representatives to the firm. *See*, e.g., *vFinance Investments, Inc.*, Exchange Act Rel. No. 62448, 2010 SEC LEXIS 2216, at *36 (July 2, 2010) ("'[i]t is well-established that a firm may be held accountable for the misconduct of its associated persons because it is through such persons that a firm acts.'") (citation omitted); *SIG Specialists, Inc.*, Exchange Act Rel. No. 51867 2005 SEC LEXIS 1428, at *31 (June 17, 2005) (same); *Dep't of Market Reg. v. Yankee Financial Group, Inc.*, No. CMS030182, 2006 NASD Discip. LEXIS 21, at *59-61 (Aug. 4, 2006), *aff'd sub nom. Richard F. Kresge*, Exchange Act Rel. No. 55,988, 2007 SEC LEXIS 1407 (June 29, 2007).

[34] Item 61, CX-14A.

[35] When a person associates with a new firm, FINRA sends fingerprints to the U.S. Department of Justice to obtain a "rap sheet." The new firm can submit fingerprints in advance of hiring, and also has access to the FBI rap sheet. Tr. 141-143, 404-405.

contends that the amendment was 350 days late, calculated from the date of the first disclosure letter. Tr. 146; CX-14A, CX-89.

Respondents did not explain what steps were taken to determine the nature of the charge or conviction. At a minimum, the Firm should have obtained the information from Weiss, who must have known the nature of the conviction, or if not, had a duty to find out.[36] Furthermore, the alleged lack of information explains only part of the lateness, and the delay in obtaining Weiss's signature on the Form U4 does not excuse the late filing. The Extended Hearing Panel finds that the amendment to Weiss's Form U4 was filed late, in violation of FINRA's By-Laws and Rules.

Feng Shen, Settlement of Customer Complaint[37]

On July 31, 2009, registered representative Feng Shen's previous employer, Merrill Lynch, filed an amendment to her Form U5, reporting the settlement of a customer complaint alleging misrepresentations in the sale of auction rate securities, for $600,000. CX-68. In the Relicense Form U4 that Wedbush Securities filed for Feng Shen on September 29, 2009, it reported that the customer complaint was still pending. CX-69. FINRA sent a disclosure letter to the Firm on September 29, 2009, informing it that updated information had been received with respect to the customer complaint. CX-70. The Firm submitted an amended Form U4 the next day, reporting the settlement. CX-71. Enforcement contends that the filing was one day late because it was inaccurate when it was first submitted. Tr. 151-153, 353-354; CX-14A. Respondents challenge Enforcement's contention that the filing was late because they find it

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[36] If Weiss had any doubt about the nature of the offense or the disposition of the matter, it was his duty to determine whether the information he was providing on Form U4 was complete and accurate. *Jason A. Craig*, 2008 SEC LEXIS 2844, at *14.

[37] CX-14A, Item 54.

"pretty shocking" that a filing can be considered one day late because a representative gave the firm the wrong information. Tr. 1218.

The employee's failure to provide inaccurate information does not excuse the Firm's lack of diligence in completing the Relicense Form U4. The accurate information was available on the representative's Form U5. The Extended Hearing Panel finds that the Firm filed the Relicense Form U4 one day late because the original was inaccurate, violating FINRA's Rules and By-Laws.[38]

Mr. Wedbush, Corsair Capital Partners L.P. Litigation[39]

On March 15, 1999, Corsair Capital Partners, L.P., and Alternative Investments, L.P., filed a complaint in a federal court in California, alleging that Wedbush Securities, Mr. Wedbush, others at the Firm, a correspondent firm for which Wedbush Securities cleared, and a representative at the correspondent firm, had engaged in a market manipulation scheme and other fraudulent practices, in violation of the federal securities laws and California law. In addition to monetary relief, the prayer for relief sought "equitable and/or injunctive relief as permitted by law." CX-25. Mr. Wedbush amended his Form U4 on December 17, 1999, to disclose the matter. CX-26.[40] On May 26, 2000, a judgment was issued by the trial court in favor of the plaintiffs awarding damages, but not injunctive relief. CX-27. On December 19, 2001, the

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[38] "With respect to Initial, Dual or Relicense U4 filings and the Initial Form U5 filing, the individual and/or firm attests to the accuracy and completeness of the form when signing the appropriate signatory section of the Form U4 and/or Form U5, prior to the filing being submitted to CRD. Therefore, any disclosure events that should have been reported on the Initial, Dual or Relicense U4 or the Initial Form U5 will be considered late when subsequently reported on a Form U4 Amendment or Form U5 Amendment filing." CRD Frequently Asked Questions, available on the FINRA website at: www.finra.org/Industry/Compliance/Registration/CRD/UserSupport/P005225.

[39] CX-14A, Item 25.

[40] The Extended Hearing Panel makes no finding as to the timeliness of the filing of the amendment, as the Complaint does not charge that this filing was not timely.

Court of Appeals for the Ninth Circuit reversed the district court's judgment and remanded the case. CX-28.[41]

The Firm entered into a settlement agreement with the plaintiffs on February 28, 2002, requiring the Firm to pay $234,684 to settle the claims. The plaintiffs released all claims against the Firm's officers, directors, employees, and others. The release did not expressly identify specific officers, directors, or employees who were released, and in particular, did not mention Mr. Wedbush by name. Pursuant to the settlement agreement, the action was dismissed on March 5, 2002. CX-29; CX-221.

The Firm filed an amended Form U4 for Mr. Wedbush on October 2, 2007, signed by Mr. Wedbush on September 30, reporting that the matter was resolved on approximately March 15, 1999. According to the Form U4, "The matter was resolved is [sic] a court trial including the 9th Circuit appeal court and Mr. W was found not guilty." The resolution of the matter was reported as "other" rather than "dismissed." CX-30, CX-30A.

Enforcement has proven all four violations. Wedbush Securities filed Mr. Wedbush's Form U4 amendment 2,007 days late; the Form U4 inaccurately stated that the resolution date was March 15, 1999, when it was actually March 5, 2002, the date of dismissal; the Form U4 inaccurately stated that the resolution was "other" rather than "dismissed;" and the form inaccurately stated that Mr. Wedbush was found "not guilty," when there was never a finding that he was not liable.

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[41] The Complaint does not charge that any failure to report the trial court's judgment or the Ninth Circuit's reversal were reportable events.

Wells Notice to Mr. Wedbush[42]

By letter of June 22, 2010, FINRA advised Segall, as the Firm's CCO and manager of the Business Conduct Department, that Enforcement had made a preliminary determination to recommend disciplinary action against the Firm for failures related to its regulatory filings, and against Mr. Wedbush for failure to supervise the Firm's regulatory filings.[43] The Wells Notice advised Segall of Mr. Wedbush's obligation to update his Form U4, and that Mr. Wedbush and the Firm could make Wells submissions by July 9, 2010. CX-142. Segall told Mr. Wedbush that he had to update his Form U4 to report the receipt of the Wells Notice, but Mr. Wedbush told Segall that he did not understand why since there was just an investigation. Mr. Wedbush told Segall that he wanted to send a letter to Enforcement, and that Segall should not file an amendment to Mr. Wedbush's Form U4 until he had received a response. Tr. 882, 1179-1180, 1227-1228.

Mr. Wedbush responded to the Wells Notice on July 23, 2010, noting that he had been "manager of the business conduct department for a brief period of time so that [he] could assess the need of resources for business conduct responsibilities going forward," and asked for an explanation of the need to update his Form U4. CX-143. Enforcement responded to Segall by letter of August 3, 2010, providing its rationale for the obligation to file an amendment to Mr. Wedbush's Form U4. CX-145; Tr. 884. Mr. Wedbush sent a letter to Enforcement on August 13, 2010, asserting that he had not received a response to his July 23, 2010, letter, and stating that disclosing the Wells Notice on his Form U4 would harm his reputation. CX-146. On August 20, 2010, the Firm filed an amendment to Mr. Wedbush's Form U4, disclosing the

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[42] CX-14A, Item 81.

[43] Segall represented Mr. Wedbush in Enforcement's investigation. Tr. 884.

receipt of the Wells Notice. CX-147, CX-147A. Enforcement contends that the filing was due by July 22, 2010, and was 29 days late. CX-14A. At the hearing, Segall conceded that the filing was late. Tr. 883.

Mr. Wedbush's letters to Enforcement did not stay the filing requirement for amending Mr. Wedbush's Form U4. Wedbush Securities violated FINRA's Rules and By-Laws by filing the Form U4 amendment 29 days late.

Wells Notice to Betty Lynn Saleh[44]

FINRA sent a Wells Notice to Wedbush Securities registered representative Betty Lynn Saleh on June 23, 2008, informing her that Enforcement had made a preliminary determination to recommend disciplinary action against her for a variety of alleged violations, including fraud, unsuitable recommendations, and unauthorized trading. A copy of the notice was sent to Segall and the Firm. CX-64. The Firm updated Saleh's Form U4 on September 12, 2008. CX-65. Enforcement contends that the update was 51 days late. CX-14A. Respondents agree that the filing was late, but Segall explained that the filing was late because Saleh was late in returning the signed Form U4 to the Business Conduct Department, because she and the Business Conduct Department did not agree on the language for the amendment. Tr. 877-878, 1200-1201. The failure of the Firm's registered representative to sign the form is not a defense, but evidence of inadequate supervision by the Firm. Wedbush Securities violated FINRA's Rules and By-Laws by filing the amendment 51 days late.

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[44] CX-14A, Item 47.

Daniel Hughes Criminal Charge[45]

On February 23, 2007, Wedbush Securities filed a Relicense Form U4 on behalf of registered representative Daniel Hughes. The Form U4 did not have any disclosures for criminal matters. CX-17. On March 6, 2007, FINRA sent a disclosure letter to the Firm, notifying it that Hughes had an arrest record from February 22, 2002, informing the Firm that a Form U4 amendment would be required if the arrest resulted in the filing of formal charges, and requesting documents relating to the criminal charge. CX-18. The Firm responded on March 16, providing documents showing that Hughes had been charged with assault and theft, and that the charges had been dismissed after Hughes attended a diversion program. CX-19. On March 23, FINRA sent a disclosure letter to the Firm, informing it that the theft charge was reportable even though the charge had been dismissed, and requesting additional documentation concerning whether theft was charged as a misdemeanor or a felony. CX-20. The Firm sent additional documentation to FINRA on April 2, showing that the theft charge had been a misdemeanor. CX-21. FINRA sent another disclosure letter to the Firm on April 19, 2007, informing the Firm that it should amend the response to Form U4 question 14(B)(1)(B) to a "yes" to disclose the criminal charge, and provide details on a disclosure reporting page. CX-22. On May 16, 2007, FINRA sent another disclosure letter to the Firm, notifying it that Hughes's Form U4 must be amended, and requesting an additional document. CX-23. The amended Form U4 was filed on July 26, 2007. CX-24.

Respondents contend that the Firm was not required to file at that time because it was trying to learn if the arrest had led to the filing of criminal charges. Tr. 1185. Respondents also contend that the filing was late because Hughes did not sign his amended Form U4. Tr. 1260.

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[45] CX-14A, Item 24.

Wedbush Securities clearly knew by April 19, 2007, that the arrest had led to a misdemeanor theft charge. In fact, Hughes informed the Firm on March 16, 2007, that he had been charged with theft, and records of the charge and disposition obtained by the Firm before April 19 show that he had been charged. CX-19; CX-21. Wedbush Securities violated FINRA's Rules and By-Laws by filing the updated Form U4 at least 66 days late.

David Edwardes Arbitration Settlement[46]

Wedbush Securities filed a Relicense Form U4 on behalf of David Edwardes on July 5, 2007, disclosing a pending arbitration by customer EK against Edwardes, PFS Investments (his former firm), and another firm. CX-40. Wedbush Securities filed an amended Form U4 for Edwardes on December 7, 2007, reporting that the arbitration was no longer pending, and that EK and Edwardes had signed mutual general releases on July 9, 2007, without payment by Edwardes. CX-41.

PFS Investments filed an amended Form U5 for Edwardes on December 21, 2007, reporting that on May 7, 2007, it had settled the arbitration for $90,000. CX-42. FINRA sent a disclosure letter to Wedbush Securities on December 21, 2007, informing the Firm of the need to amend Edwardes's Form U4 to reflect information reported on the amended Form U5. CX-43. Wedbush Securities amended Edwardes's Form U4 on January 25, 2007. CX-44.

Wedbush Securities disputes its culpability for this filing because it filed the amended Form U4 the day after it received the signed disclosure from Edwardes. Tr. 373, 1188-1189. In addition, Wedbush Securities contends that the filing was not late because it received the disclosure letter on Saturday, December 22, 2007, and might not have seen it until after Christmas. RX-HH; Tr. 1189.

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[46] CX-14A, Item 28.

As noted earlier, the failure of the representative to return a signed form to the Business Conduct Department is not a defense. It is also not a defense that the Firm might have overlooked the disclosure letter until after the holidays. The Extended Hearing Panel finds that the disclosure for Edwardes was four days late. By filing the disclosure late, the Firm violated FINRA's Rules and By-Laws.

Jonathan Sheinkop, Two Customer Complaints[47]

The Firm filed a Form U4 amendment for registered representative Jonathan Scheinkop on January 10, 2008, reporting two customer complaints concerning matters that occurred while Sheinkop had been at Brookstreet Securities. According to the amendment, the customer complaints had been received on November 28, 2007. Both alleged unauthorized trading and unsuitability. One sought $550,000 in compensatory damages, and the other sought $700,000. CX-45, CX-46. Sheinkop signed the amendment on December 5, 2007, but his manager did not sign until January 10, 2008. RX-J. The manager's failure to sign the Form U4 amendment is not a defense, but a supervisory failure. Accepting the dates set forth in the amendment, the filings were both 13 days late.

Debbie Saleh, Customer Complaint[48]

On December 17, 2007, Wells Fargo Advisors LLC filed a Form U5 amendment for Wedbush Securities registered representative Debbie Saleh, disclosing the receipt of a customer complaint on December 17, 2007. According to the Form U5, the customer asserted that while at Wells Fargo, Saleh had made excessive annuity switches. The customer sought compensatory damages of $30,685. CX-248. FINRA sent a disclosure letter to Wedbush Securities on

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[47] CX-14A, Item 30.

[48] CX-14A, Item 31.

December 17, advising the Firm of the filing of the amended Form U5, and informing the Firm that Saleh's Form U4 should be amended. CX-249. Wedbush Securities filed the amended Form U4 on Feb. 1, 2008. CX-250. Respondent asserts that the filing was not late because the Firm filed the amendment as soon as Saleh signed it, which, as noted above, is not a defense.

The Extended Hearing Panel finds that Wedbush Securities violated FINRA's Rules and By-Laws by filing the amendment 16 days late.

Debbie Saleh, Settlement of Customer Complaint[49]

Wells Fargo filed an amendment to Debbie Saleh's Form U5 on March 14, 2008, reporting that on February 15, 2008, a customer complaint for unauthorized trading had been settled for $60,000. CX-58. FINRA sent a disclosure letter to the Firm on March 17, 2008, informing the Firm of the obligation to amend the response to question 14I(2) on Saleh's Form U4 to disclose the settlement. CX-59. The Firm filed the amended Form U4 on April 29, 2008. CX-60.

Enforcement contends that the filing was 15 days late, calculated from the date of the filing of the Form U5, the date on which the Firm would have received an automatic e-mail notification when the amended Form U5 was filed.[50] CX-14A; Tr. 378-379. The Firm contends it filed the amendment to Saleh's amended Form U4 immediately upon receiving a signed copy from Saleh, and that the lateness was caused by her failure to submit the signed form to the Business Conduct Department.

The Extended Hearing Panel finds that the amendment was 15 days late, based on the testimony that Respondent would have received an automatic notification of the filing of the

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[49] CX-14A, Item 45.

[50] Neither party offered a copy of the e-mail notification at the hearing.

amended Form U5. Measured from the date of the disclosure letter, which is in the record, the filing was still 12 days late. By filing the disclosure late, the Firm violated FINRA's Rules and By-Laws.

Debbie Saleh, Two Wells Notices[51]

The Firm was late in reporting two Wells Notices that FINRA sent to Debbie Saleh. FINRA sent a Wells Notice to Saleh on June 23, 2008, with a copy to Segall, informing Saleh that the staff had made a preliminary determination to recommend the institution of disciplinary action against her for a variety of alleged violations, including unauthorized and unsuitable trades. CX-61. FINRA sent another Wells Notice to Saleh and Segall on July 16, 2008, informing them that the staff had made a preliminary determination to recommend the institution of disciplinary action against Saleh with respect to similar alleged violations, but different customers. CX-62. Wedbush Securities amended Saleh's Form U4 on August 27, 2008, to disclose the two Wells Notices. CX-63.

The Firm contends that the filing was not late because the Firm filed the amendments when it received a signed copy of the Form U4 amendment from Saleh, after going back and forth with her on the wording. Tr. 868, 1197-1198. The Extended Hearing Panel finds that the filing of the disclosure of the first Wells Notice was 35 days late, and the reporting of the second Wells Notice was 12 days late. By its late filing of the amendments to Saleh's Form U4, the Firm violated FINRA's Rules and By-Laws.

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[51] CX-14A, Item 46.

Joseph Ashwill AWC[52]

On September 30, 2009, FINRA sent a Notice of Acceptance of Acceptance, Waiver and Consent to Wedbush Securities registered representative Joseph Ashwill. In the AWC, Ashwill agreed to a fine and suspension. CX-84. FINRA staff filed a Form U6 reporting the AWC on October 1, 2009. CX-85. On October 2, 2009, FINRA sent a disclosure letter to the Firm, advising it of the filing of the Form U6, and of the obligation to amend Ashwill's Form U4 to disclose the regulatory action. CX-86. The Firm filed the amended Form U4 on November 20, 2009. CX-87.

Wedbush Securities contends the filing was not late because it filed the amendment soon after Ashwill signed the Form U4. The Extended Hearing Panel finds that the amendment was filed at least 19 days late, using the date of the disclosure letter as the date on which the Firm received notice. By its late filing, the Firm violated FINRA's Rules and By-Laws.

Robert Baker, Customer Complaint[53]

Customer TM sent a letter to Wedbush Securities registered representative Robert Baker, dated March 18, 2009, claiming that Baker had made unauthorized trades. TM claimed that he had no experience in options trading and did not understand it. He noted that many options that Baker had purchased for the account had expired worthless. The letter noted that options on one stock were about to expire, that the price was now above the "strike price," and asked if the customer needed to take action. The customer also noted a lack of communication from Baker.

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[52] CX-14A, Item 58.

[53] CX-14A, Item 36. Enforcement contends that there were two violations with respect to customer TM's complaint letter – failure to amend Baker's Form U5 to report the complaint, and failure to disclose the complaint in the Firm's Rule 3070 report. The alleged Rule 3070 violation is discussed below.

The letter did not state any specific amount of alleged damages or specifically request compensation. CX-222.

On March 12, 2010, after Baker had left the Firm, it filed an amendment to Baker's Form U5, disclosing the receipt of TM's letter of March 18, 2009. The amended Form U5 noted that the exact amount of the customer's claim was undetermined, but listed the amount at $5,000, an amount that required reporting. CX-224.

Respondents assert that the late filing was caused by an office manager's decision that the March 18 letter was not a complaint. Tr. 1192-1193. The manager's erroneous decision is not a defense. The Firm violated FINRA's Rules and By-Laws by filing the disclosure 329 days late.

Sean Rodriguez, Customer Complaint and Settlement[54]

By letter of November 17, 2008, a law firm wrote to Segall, as the Firm's CCO, on behalf of a customer of Wedbush Securities representative Sean Rodriguez, saying that there were heavy losses in the customer's account, and that there appeared to be very heavy trading in the account without authorization by the customer for the individual transactions. The letter asked for any written discretionary authorization that the Firm contended was given with respect to the account, and evidence of compliance department review. CX-107.

On January 29, 2009, the law firm sent an e-mail to the Firm, attaching a draft arbitration statement of claim for unauthorized trading against Rodriguez and the Firm, claiming damages in excess of $500,000. The draft included claims for unauthorized trading, unsuitability, misrepresentation, and other claims. The attorney's e-mail stated that it was a confidential settlement communication. CX-108. Wedbush Securities and the customer entered into a settlement on March 26, 2009. The mutual release did not mention Rodriguez, but the customer

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[54] CX-14A, Item 80.

released all Wedbush Securities agents and representatives. The Firm agreed to pay the customer $312,500. CX-109.

The Firm did not amend Rodriguez's Form U4 or U5 to disclose the letters or the settlement. CX-14A. Respondents content that the letters were not reportable because they were not complaints, and that the settlement was not reportable because Rodriguez was not mentioned in the settlement agreement, and because Rodriguez threatened to sue the Firm if it amended his Form U4. Respondents also argue that the settlement was not reportable because the settlement demand was marked as confidential. CX-111, CX-113 at 10; Tr. 1144, 1235, 1311.

The Extended Hearing Panel finds that the letters were complaints that should have been reported. Because the letters were complaints, the settlement also should have been reported. The statement by the customer's attorney that the settlement was confidential does not relieve a registered representative, or a firm, of the obligation to report the settlement to FINRA.[55] By failing to disclose the letters and the settlement, the Firm violated FINRA's Rules and By-Laws.

III. Third Cause of Action: Wedbush Securities Violated NYSE Rule 351(d), NASD Rule 3070(c), NASD Rule 2110, and FINRA Rule 2010, by Failing to File, Late Filing, and Filing of Inaccurate Statistical Information

The Third Cause of Action charges Wedbush Securities with failing to file, late filing, and filing of inaccurate statistical information from July 2008 until July 2009, in violation of NASD Rule 3070(c) and its NYSE counterpart, NYSE Rule 351(d).[56] NASD Rule 3070(c) required a FINRA member firm to file quarterly reports with FINRA, providing statistical and summary information regarding customer complaints. The requirement was intended to protect

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[55] *See* Form U4 and U5 Interpretive Questions and Answers (September 2009 version in the record as CX-175), informing members that a confidential settlement of a customer complaint must be reported.

[56] NASD Rule 3070 and NYSE Rule 351 have been superseded by FINRA Rule 4530, effective July 1, 2011. *See* Reg. Notice 11-06.

public investors by helping to identify potential sales practice violations in a timely manner.[57] Failure to report information promptly and accurately violates NASD Rules 3070 and 2110, and FINRA Rule 2010.[58]

Similarly, NYSE Rule 351(d) required NYSE members to file quarterly statistical reports regarding customer complaints. The information was required to be filed by the fifteenth calendar day of the month following the quarter's end (e.g., by April 15th for the 1st quarter).[59] Effective October 20, 2008, NASD Rule 3070(c) and NYSE Rule 351(d) were combined, and quarterly statistical filings were filed under NASD Rule 3070(c).[60] Thus, failure to file the Rule 3070 reports violated both the FINRA and NYSE Rules.

The parties stipulated that four Rule 3070 reports were filed late. The reports ranged from three months late to nearly a year late.[61] The Extended Hearing Panel finds that Wedbush Securities violated NASD Rule 3070(c), NYSE Rule 351(d), NASD Rule 2110, and FINRA Rule 2010, by the four stipulated late filings.

The parties did not stipulate that three of the allegedly late Rule 3070 filings were violations.

Robert Baker, Customer Complaint[62]

On March 18, 2009, Wedbush Securities received a complaint from customer TM concerning allegedly unauthorized trades by registered representative Robert Baker. On January 15, 2010, the Firm first reported the customer complaint. CX-223. Enforcement contends that

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[57] *Richard F. Kresge*, 2007 SEC LEXIS 1407, at *43-44.

[58] *See Dep't of Enforcement v. Fox & Co.*, 2005 NASD Discip. LEXIS 5, at *35.

[59] CX-183 at 43, NYSE Information Memo 03-39 (Sept. 19, 2003).

[60] Reg. Notice 08-40 (Aug. 2008).

[61] Stipulation No. 1; CX-14A.

[62] CX-14A, Item 36.

the complaint should have been reported on the April 15, 2009, quarterly report, and was 275 days late. CX-14A; Tr. 641-642. Respondents disputed their responsibility for the late reporting of the customer complaint against Mr. Baker because a manager had failed to forward the customer complaint to the Business Conduct Department. The manager's failure does not excuse the late filing. The Extended Hearing Panel finds that this late filing is a violation of NASD Rule 3070(c), NYSE Rule 351(d), and FINRA Rule 2010.

Bambi Holzer, Customer Complaint[63]

Enforcement contends that Wedbush Securities committed three violations with respect to complaints about registered representative Bambi Holzer by customer BE. On June 30, 2008, BE wrote to Holzer concerning "my displeasure," complaining about poor investment choices and unsuitable investments in accounts for members of his family, some of which were in trusts directed by BE. BE stated that he was moving all of his family's accounts to another firm. BE did not state a specific amount of injury or make a specific demand for compensation. CX-54.

BE sent an angry e-mail to Holzer on April 28, 2009, complaining primarily about a specific investment in a mutual fund for the benefit of BE's elderly mother. BE alleged that the investment was unsuitable both because of penalties that would be incurred if funds were withdrawn before ten years after the initial investment, and because the investment was excessively risky. BE also alleged that Holzer had failed to disclose the penalties for early withdrawals. BE noted similar complaints about other investments. CX-55.

On July 15, 2009, Wedbush Securities filed a quarterly Rule 3070 report disclosing the April 28, 2009, complaint from BE. CX-56. Enforcement contends that there are three violations: 1) the report was a year late, based on the 2008 complaint; 2) the report was

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[63] CX-14A, Item 39.

inaccurate because it identifies the complaint date as April 28, 2009; and 3) the report was inaccurate because it reports the activity period as June 30, 2008, until April 28, 2009. CX-14A.

The Extended Hearing Panel finds two violations, not three. First, the June 30, 2008 complaint was never reported. Second, the July 15, 2009 Rule 3070 filing erroneously stated that the activity took place between June 30, 2008, and April 28, 2009. It is clear from the text of the two complaints that all the activity of which BE complained occurred before June 30, 2008. CX-54, CX-55; Tr. 958-959. The Extended Hearing Panel rejects the contention that the report is wrong because it reports the date of the complaint as April 2009. There was an April 2009 complaint, and the date is therefore accurate.

Unclear Letter from Customer[64]

On June 21, 2009, Mr. Wedbush received a handwritten letter from CN, a customer of the Firm, discussing various issues relating to her divorce and the handling of her money, and asserting several times that her ex-husband's accountant had no right to have access to her account. CX-148. The Firm did not report the letter because it believed that CN was complaining about her ex-husband and his accountant, not Wedbush Securities. Tr. 1196-1197. Enforcement has not established that the letter was reportable, because the letter is not fully intelligible. The tone of the letter makes it clear that CN believed she had grievances concerning her ex-husband and his accountant, but it is not clear that she was complaining about how Wedbush Securities handled her account. The Extended Hearing Panel finds that there was no violation with respect to this customer letter.

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[64] CX-14A, Item 41.

IV. Fourth Cause of Action: Wedbush Securities Violated NASD Rule 3010, NASD Rule 2110, and FINRA Rule 2010, by Failing to Supervise the Firm's Registration Filings

The Fourth Cause of Action charges Wedbush Securities with failure to supervise registration filings from January 2005 until July 2010, in violation of NASD Conduct Rules 3010 and 2110, and FINRA Conduct Rule 2010. NASD Rule 3010(a) requires member firms to "establish and maintain" a supervisory system "that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD Rules." "'Assuring proper supervision is a critical component of broker-dealer operations.'"[65]

Under NASD Rule 3010, "Final responsibility for proper supervision shall rest with the member." "To ensure compliance with this requirement, 'red flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the securities laws.'"[66]

Despite numerous red flags, the Firm failed to act decisively to ensure that it filed accurate and timely Forms U4, U5, RE-3, and quarterly statistical reports. The Firm's senior management was alerted to reporting problems year after year in examination exit meetings, examination reports, an AWC, and Wells Notices, but the Firm continued to file late and inaccurate reports, and failed to file some reports at all. The Firm's persistent reporting failures over a period of more than five years, despite numerous red flags, is sufficient to establish that

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[65] *Midas Securities, LLC*, Exchange Act Rel. No. 66200, 2012 SEC LEXIS 199, at *46 (Jan. 20, 2012) (quoting *Ronald Pellegrino*, Exchange Act Rel. No. 59125 (Dec. 19, 2008), 94 SEC Docket 12628, 12641).

[66] *Midas Securities, LLC*, 2012 SEC LEXIS 199, at *46-47 (citing *John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787 (Nov. 12, 2010), *petition denied*, 2011 U.S. App. LEXIS 25933 (11th Cir. Dec. 28, 2011) (unpublished)); *see also George J. Kolar*, Exchange Act Rel. No. 46127, 2002 SEC LEXIS 1647, at *11 (June 26, 2002) (stating that "[d]ecisive action is necessary whenever supervisors are made aware of suspicious circumstances, particularly those that have an obvious potential for violations").

the Firm's supervision of regulatory reporting was inadequate, in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010.

There were certain specific failures of supervision. On several occasions, the Firm failed to file Form U4 amendments because the registered representatives failed to sign them. Maintaining a current and accurate Form U4 is a requirement for continued employment, not a subject of negotiation, yet nobody at the Firm took responsibility to ensure that the filings were timely. The Firm's compliance department functioned solely in an administrative capacity, without authority or influence in ensuring compliance with filing requirements, while the Firm's supervisors took no steps to ensure that filings were timely and accurate. The relegation of the Compliance Department to such a role, and the passivity of the Business Conduct Department in the face of known compliance problems, is inadequate supervision.

The Firm identified a weakness in the communication between the Legal and Business Conduct Departments as contributing to filing failures, and identified the same problem in subsequent responses to regulatory criticism. A similar communication problem occurred in the Firm's failure to use information obtained by the Human Resources Department for new employees. The Firm's Human Resources Department conducts a credit check on every new hire, but has no procedures to notify the Business Conduct Department if it learns that the new employee has declared bankruptcy. Tr. 1697-1698, 1704.

The Extended Hearing Panel finds that Wedbush Securities failed to supervise the Firm's regulatory filing procedures, thereby violating NASD Rules 3010 and 2110, and FINRA Rule 2010.

V. Fifth Cause of Action: Mr. Wedbush Violated NASD Rules 3010, 2110, and FINRA Rule 2010 by Failing to Supervise the Firm's Registration Filings

The Fifth Cause of Action charges Mr. Wedbush with failure to supervise registration filings, both as manager of the Business Conduct Department from August 2006 until October 2007, and as the Firm's president throughout the period covered by the Second Amended Complaint, in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010. As manager of the Business Conduct Department, Mr. Wedbush focused on assessing the needs of the department, and failed to supervise the Firm's regulatory filings. As president, Mr. Wedbush failed to ensure that the Firm complied with registration requirements despite frequent warning signs that those with more direct responsibility for the filings were failing to perform their filing duties.

A. Mr. Wedbush Failed to Supervise the Firm's Regulatory Reporting When He Was Manager of the Business Conduct Department

Mr. Wedbush became manager of the Business Conduct Department in order to assess the department's needs. Tr. 978, 1500-1501. While he was the department's manager and co-CCO, Mr. Wedbush looked at the big picture, and did not get involved in regulatory filings. Tr. 978, 983. Mr. Wedbush did not directly supervise the people responsible for regulatory filings while he was the department's manager. Tr. 1560, 1575, 1654. The Firm committed 34 regulatory reporting violations while Mr. Wedbush was manager of the Business Conduct Department.[67]

Mr. Wedbush failed to supervise the Business Conduct Department while he was its manager. Although he took on the responsibility in order to assess the needs of the department. Mr. Wedbush failed to ensure the Firm's registration filings were timely and accurate. In

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[67] *See* discussion above of CX-14A, Items 5, 7-9, 11, 13, 14, 18-24, 75.

essence, he let the department operate without an overall supervisor for the year in which he was its manager. By failing to ensure that the Business Conduct Department performed its duties to file regulatory reports in conformity with NYSE and FINRA Rules, Mr. Wedbush violated NASD Rules 3010 and 2110.

B. Mr. Wedbush Failed to Supervise the Firm's Regulatory Reporting as President of Wedbush Securities

Mr. Wedbush emphasized that his role at the firm is managerial, not supervisory. Tr. 1076, 1562. He described his role as a manager as planning, staffing, organizing, directing and controlling, but not the detailed review that is involved in supervision. Tr. 1563-4. As president of a FINRA member firm, however, he has supervisory duties as a matter of law.[68]

Mr. Wedbush knew of the Firm's reporting issues. Mr. Wedbush always attended the exit meetings with NYSE, NASD, and FINRA examiners after the examiners had concluded their examinations of the Firm, and reviewed the examination reports. He also reviewed the Firm's responses to regulatory examinations before they were sent to the regulators. Tr. 990, 1526-1530, 1567-1568.

The president of a member firm is responsible for ensuring that the firm complies with all applicable regulatory requirements, including reporting requirements, "unless and until he or she reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such person is not properly performing his or her duties."[69] Even when a supervisor delegates responsibility, he has a duty to follow up to ensure that the delegated

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[68] *Midas Securities LLC*, 2012 SEC LEXIS 199, at *55.

[69] *Richard F. Kresge*, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

authority is being properly exercised.[70] When a supervisor knows, or should know, of red flags, he or she has a duty to follow up, and act decisively to ensure compliance.[71]

The registration filing problems at Wedbush Securities persisted for years despite repeated warnings from regulators that the Firm's filings were late and inaccurate, and frequently not made at all. As president of the Firm, Mr. Wedbush should have taken more steps to ensure that the Firm addressed its problems, but he did not, thereby violating NASD Rules 3010 and 2110, and FINRA Rule 2010.

Sanctions

The Extended Hearing Panel finds that the Firm's violations have been persistent and egregious, and reflect a lack of a firm-wide commitment to prompt and accurate regulatory reporting. For the reasons set forth below, the Extended Hearing Panel fines Wedbush Securities $300,000, fines Mr. Wedbush $25,000, and suspends Mr. Wedbush from all supervisory activities for 31 days, except that Mr. Wedbush is not suspended with respect to the supervision of trading and order entry.

I. General Considerations

The Firm has a history of disciplinary problems related to compliance issues.[72] As noted above, the Firm entered into an AWC, and was censured and fined $18,000, in March 2007 for Form U5 reporting deficiencies. CX-158. In addition, the Firm was twice sanctioned by the New York Stock Exchange. In April 2007, NYSE censured the Firm, fined it $200,000, and

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[70] *Richard F. Kresge*, 2007 SEC LEXIS 1407, at *36.

[71] *Dep't of Market Reg. v. Leighton*, No. CLG050021, 2010 FINRA Discip. LEXIS 3 (March 3, 2010); *John B. Busacca, III*, 2010 SEC LEXIS 3787, at *35; *Dennis S. Kaminski*, Exchange Act Rel. No. 65347, 2011 SEC LEXIS 3225, at *25-26 (Sept. 16, 2011); *Midas Securities, LLC*, 2010 SEC LEXIS 199, at *55.

[72] *FINRA Sanction Guidelines* at 6 (2011), Principal Consideration No. 1 ("The respondent's relevant disciplinary history....")

required it to retain a consultant to evaluate its legal and compliance consultant, for "Blue Sheet" reporting failures, finding that the Firm's responses to requests for Blue Sheet information were "inadequate, inept, dilatory and systematically deficient."[73] In January 2009, NYSE imposed a censure, fined the Firm $100,000, and required the Firm to hire a consultant to assess the Firm's regulatory and compliance resources, for a variety of failures relating to the Firm's Paris branch office, as well as weaknesses in the Firm's anti-money laundering program and failure to maintain adequate funds in the Firm's reserve account. The NYSE Hearing Panel found that "the underlying factor or cause of the violations at issue was the Firm's understaffed legal and compliance departments."[74]

The Firm's failure to remedy the reporting problems despite repeated warnings from FINRA and the NYSE is also an aggravating factor applicable to all violations.[75] Over a period of at least eight years leading up to the filing of the Complaint, NYSE and FINRA both warned the Firm in examinations, an AWC, Wells Notices, and disciplinary actions, of failures in its regulatory reporting, yet the problems persisted.

II. Sanctions for First Cause of Action: Failure to File, Late Filing, and Filing of Inaccurate Forms RE-3 (FINRA Incorporated NYSE Rule 351(a) and NASD Rule 2110)

There is no specific Guideline for Form RE-3 filing violations. The Sanction Guidelines ("Guidelines") recommend consideration of a fine of $5,000 to $50,000 for late filing of Forms

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[73] *Wedbush Morgan Securities, Inc.*, 2007 NYSE Discip. Action LEXIS 167, at *4 (Apr. 9, 2007) (in evidence as CX-270). "Blue Sheets are documents that are generated by member organizations at the request of regulators in connection with investigations of questionable trading." *Id.* at *7.

[74] *Wedbush Morgan Securities, Inc.*, 2009 NYSE Discip. Action LEXIS 1, at *46 (Jan. 6, 2009) (in evidence as CX-271).

[75] Principal Consideration No. 15 ("Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA ... that the conduct violated FINRA rules or applicable securities laws or regulations.")

U4 and U5, the most closely analogous Guideline.[76] For failing to file, or for filing false, misleading, or inaccurate forms or amendments, the Guidelines recommend imposition of a fine of $5,000 to $100,000. One of the Principal Considerations for Form U4 and U5 reporting violations is the nature and significance of information at issue. The Firm's Form RE-3 failures were generally related to the failure to report arbitrations and litigation, which can be important information for regulators trying to identify sales practice problems for a firm and its registered representatives. The substantial number of violations,[77] the extent of the lateness,[78] and the complete failure to file some reports, are also aggravating factors supporting higher sanctions.

Enforcement recommends a fine of $75,000 for the Firm's violations with respect to its Form RE-3 filing failures, which the Extended Hearing Panel finds is the appropriate sanction. Accordingly, the Extended Hearing Panel fines Wedbush Securities $75,000 for its violations of NYSE Rule 351(a) and NASD Rule 2110 by late filing and failing to file Forms RE-3, and filing inaccurate Forms RE-3.

III. Sanctions for Second Cause of Action: Failure to File, Late Filing, and Filing of Inaccurate Forms U4 and Forms U5

As noted above, the Guidelines recommend consideration of a fine of $5,000 to $50,000 for late filing of Forms U4 and U5.[79] For failing to file, or for filing false, misleading, or inaccurate forms or amendments, the Guidelines recommend imposition of a fine of $5,000 to

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[76] *Guidelines* at 69-70.

[77] Principal Consideration No. 8

[78] As much as 1031 days for some filings, with a substantial number more than 100 days. CX-14A, Items 1-10, 12-22. Many of the RE-3 Forms were filed only after examiners called filing failures to the attention of the Firm.

[79] *Guidelines* at 69-70.

$100,000. One of the Principal Considerations is the nature and significance of information at issue.[80]

The Firm's reporting failures included substantial settlements with customers, FINRA and SEC Wells Notices, criminal matters, bankruptcies, customer complaints, and arbitration filings. Most of the failures involved information that could be important for customers who are seeking information about brokers on BrokerCheck, and for potential employers. Most of the information also would be important to regulators who might want to inquire into the details of each matter to determine whether disciplinary actions might be appropriate against the brokers or the Firm.

Both parties presented substantial evidence concerning whether the Firm's Form U4 and U5 filing failures exceeded industry averages.[81] From 2005 to July 2010, the industry average for late filings was about 21 percent. Tr. 54, 280. The evidence establishes that for much of the period for which violations are charged, the Firm's failure rate exceeded industry averages. The minor differences in the calculated averages that were the focus of the parties' arguments are unimportant, and the Hearing Panel will not attempt to resolve them. Whether above or below the industry average for some periods, it is clear that Form U4 and U5 reporting problems were persistent and substantial.[82]

The Firm emphasized measures that have been taken recently to improve its regulatory reporting procedures. Most were taken after the Firm became aware that it might be subject to

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[80] *Guidelines* at 69-70. Others are whether the filing failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm and whether respondent member firm's misconduct resulted in harm to a registered person, another member firm or any other person or entity, which are not relevant here.

[81] *See* CX-16A, 241-247; Tr. 62-63, 70, 280.

[82] *See Guidelines* at 6, Principal Considerations No. 8 ("Whether the respondent engaged in numerous acts and/or a pattern of misconduct."), and No. 9 ("Whether the respondent engaged in the misconduct over an extended period of time.")

enforcement actions for its reporting failures, by referrals of examination findings to Enforcement, Wells Notices, and the filing of the Complaint. It is too soon to know if these measures will be effective, and the evidence at the hearing was inconclusive.[83] Even if the measures improve the Firm's reporting performance, these measures are, "too little, too late." The Firm is not entitled to any reduction in sanctions for measures taken only after FINRA's investigation was far along and the Firm faced the threat of disciplinary action, or after the commencement of disciplinary action.[84] The Extended Hearing Panel finds that these measures are not mitigating.

Enforcement recommends a fine of $50,000 for late reporting, and an additional fine of $50,000 for the Firm's failures to report and inaccurate reports. In light of the nature and extent of the Form U4 and Form U5 filing failures, as well as the considerations applicable to all of Respondent's reporting issues, the Extended Hearing Panel imposes a fine of $100,000 for the Firm's Form U4 and U5 filing violations.

IV. Sanctions for Third Cause of Action: Failure to File, Late Filing, and Filing of Inaccurate Statistical Information (FINRA Incorporated NYSE Rule 351(d), NASD Rule 3070(c), NASD Rule 2110, and FINRA Rule 2010)

For late reporting under Rule 3070, the FINRA Sanction Guidelines recommend a fine of $5,000 to $50,000.[85] For failure to report or filing false, misleading, or inaccurate reports, the Guidelines recommend consideration of a fine of $5,000 to $100,000. The principal

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[83] RX-Q, FF; CX-15A, CX-16A, CX-174; Tr. 932, 1167-1171, 1174, 1202-1203, 1214-1215, 1407-1408.

[84] *Dep't of Enforcement v. Murphy*, No. 2005003610701, 2011 FINRA Discip. LEXIS 42, at *101 (N.A.C. Oct. 20, 2011), *appeal docketed*, SEC Dkt. No. 3-14609 (Oct. 28, 2011) (remedial measures taken by supervisor after violation has persisted for years, FINRA began its investigation, and action by the state, was "far too late."), citing *Ronald Pellegrino*, Exchange Act Rel. No. 59125, 2008 SEC LEXIS 2843, at *53 (Dec. 19, 2008) ("holding that 'reasonable supervision required that [supervisor] correct the deficiencies promptly' and that supervisor's failure to take certain supervisory steps until after the commencement of an NASD investigation demonstrated unreasonable supervision").

[85] *Guidelines* at 74.

considerations for late reporting are the number and type of incidents not reported, and whether the events reported in late reports established a pattern of potential misconduct. The principal consideration for failure to report or inaccurate reporting is whether the events not reported or reported inaccurately would have established a pattern of potential misconduct. In cases involving the failure to file or inaccurate filing of a quarterly report, the principal consideration is the number and type of incidents not reported or reported inaccurately.[86]

For the Firm's failure to file accurate quarterly statistical reports, Enforcement recommends a fine of $25,000. Although the number of violations for Rule 3070 reports was not large, the reports were late by an average of almost nine months. One matter was never reported, and two were reported inaccurately. A fine of $25,000 is appropriate. The Extended Hearing Panel imposes a fine of $25,000.

V. Sanctions for Fourth Cause of Action: Failure to Supervise Registration Filings (NASD Rules 3010, 2110, and FINRA Rule 2010)

For a firm's failure to supervise, the Guidelines recommend a fine of $5,000 to $50,000. The most relevant principal considerations are whether respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny, and the nature, extent, size and character of the underlying misconduct.

The Extended Hearing Panel finds that the Firm's failure to supervise its regulatory reporting function was egregious. The Firm's senior management was repeatedly made aware of the regulatory reporting problems, but did not fix the problems despite seeing red flags for years.

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[86] For egregious failures or egregious inaccurate reporting, the Guidelines recommend consideration of a suspension of the firm until the problems are corrected. Enforcement has not asked for a suspension, and the Extended Hearing Panel does not believe it would be appropriate to suspend the Firm. Enforcement has not characterized the statistical reporting problems as egregious, and the Extended Hearing Panel finds that they were not.

Even Mr. Wedbush's repeated reminders at the Firm's management committee meetings did not cause the Firm's supervisors to improve the Firm's regulatory reporting practices.

Enforcement recommends a fine of $50,000 for the Firm's supervisory failures. The Hearing Panel finds that the Firm's supervisory failures were egregious, and imposes a fine of $100,000.[87]

VI. Sanctions for Fifth Cause of Action: Failure to Supervise Registration Filings by Mr. Wedbush (NASD Rules 3010, 2110, and FINRA Rule 2010)

For failing to supervise by an individual, the Guidelines recommend a fine of $5,000 to $50,000, and consideration of a suspension in all supervisory capacities for up to 30 business days.[88] A fine and a suspension are appropriate sanctions.

One of the principal considerations is "[w]hether respondent ignored 'red flag' warnings that should have resulted in additional supervisory scrutiny." Although Mr. Wedbush did not literally ignore the warnings, his failure to take decisive action was tantamount to ignoring the regular warnings from regulators. It should have been apparent to him that the Firm's supervisors were failing to do an adequate job of managing the filing process, and, as president, it was his responsibility to take whatever measures necessary to correct the problems.

In imposing sanctions, the Extended Hearing Panel has considered the number and duration of the violations, the regulatory warning signs that were known to Mr. Wedbush, the Firm's failure to remedy the problems even when it received warnings that the Firm might be subject to disciplinary action, and Mr. Wedbush's own failure to file timely amendments to his

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[87] The Guidelines permit consideration of a suspension or expulsion in egregious cases. Guidelines at 103. The Extended Hearing Panel finds that a suspension or expulsion would be unwarranted, and that a substantial fine is sufficiently remedial.

[88] Guidelines at 103.

own Form U4. We have also considered positive steps, such as emphasizing the importance of timely and accurate reporting to the Firm's executives.

Accordingly, the Extended Hearing Panel imposes a fine of $25,000 and a 31-day suspension in all supervisory capacities, except that Mr. Wedbush is not suspended with respect to the supervision of trading and order entry activities.

Conclusion

Respondent Wedbush Securities, Inc. is fined a total of $300,000, allocated to the four causes of action with which it is charged in the following amounts. For the First Cause of Action, violation of NYSE Rule 351(a) and NASD Rule 2110 with respect to the filing of NYSE Forms RE-3, the Firm is fined $75,000. For the Second Cause of Action, violation of NASD and FINRA By-Laws Article V, Section 2(c), NASD Rule 2110, and FINRA Rule 2010 with respect to the filing of Forms U4 and U5, the Firm is fined $100,000. For the Third Cause of Action, violation of NYSE Rule 351(d), NASD Rule 3070(c), NASD Rule 2110, and FINRA Rule 2010 with respect to the filing of statistical information, the Firm is fined $25,000. For the Fourth Cause of Action, failure to supervise registration filings in violation of NASD Rules 3010, 2110, and FINRA Rule 2010, the Firm is fined $100,000. For the Firth Cause of Action, failure to supervise, Respondent Edward William Wedbush is fined $25,000 and suspended for 31 days in all supervisory capacities, except that he is not suspended from any supervisory activities with respect to trading or order entry activities. If this Decision becomes FINRA's final disciplinary action, Mr. Wedbush's suspension shall become effective at the start of business on October 1, 2012, and shall end at the close of business on October 31, 2012.

In addition to the fine, Respondents shall pay costs in the amount of $14,930.95, which represents the cost of the hearing transcript together with a $750 administrative fee.[89] Respondents shall be jointly and severally responsible for payment of costs. The fines and costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

Extended Hearing Panel

Lawrence B. Bernard
Hearing Officer

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David R. Sonnenberg, Esq. *(via e-mail)*

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[89] The Extended Hearing Panel has considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.