

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140399398-01

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Wedbush Securities Inc., Respondent
Broker-Dealer
CRD No. 877

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wedbush Securities Inc. (the "firm" or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

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

BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

The firm became a FINRA member on July 30, 1955, and its registration remains in effect.

In April 2015, FINRA accepted an AWC in which the firm consented to a censure and a \$17,500 fine for violations of SEC Rule 200(g) by failing to properly mark 3,641 sell orders as long or short and, as a result, also failing to properly report transactions to the FINRA Trade Reporting Facility with the correct symbol indicating whether the transactions were long or short during the period between January 2012 and May 2012.

In December 2014, FINRA accepted an AWC in which the firm consented to a censure, a \$67,500 fine, and an undertaking to revise the firm's written supervisory procedures ("WSPs") for violations identified in the firm's 2011 and 2012 Cycle Exams, including violations related to: reporting to the FINRA Order Audit Trail System ("OATS"); customer confirmations; order marking; employee registration; TRACE reporting; and supervision.

In June 2013, FINRA accepted an Offer of Settlement in which the firm agreed to a censure and a total fine of \$750,000, including \$500,000 for OATS violations, \$225,000

for supervision with respect to OATS, and \$25,000 for registration violations. The matter involved billions of OATS reporting violations between January 2005 and December 2010. Pursuant to the Offer, the firm agreed to retain an independent consultant to redesign its OATS policies, procedures, systems, and controls.

In June 2013, FINRA accepted an AWC in which the firm consented to a censure and a \$72,500 fine for violations identified in the firm's 2009 and 2010 Cycle Exams, including violations related to: customer confirmations; order marking; trade reporting; books and records; and supervision.

SUMMARY

In Matter No. 20140399398, the staff of FINRA's Department of Market Regulation ("Staff") conducted a Trading and Financial Compliance Examination ("TFCE Examination"), which included the firm's trading activity on trade dates June 9 – 10, 2014 (the "2014 TFCE Review Period"), and identified violations committed by the firm with respect to OATS, and SEC rules relating to trading aggregation units and customer confirmations.

In Matter No. 20150442295, Staff conducted a TFCE Examination which included the firm's trading activity on trade dates July 13 – 14, 2015 (the "2015 TFCE Review Period"), and identified violations committed by the firm with respect to OATS, and SEC rules relating to customer confirmations, order marking and short sales.

FACTS AND VIOLATIVE CONDUCT

Matter No. 20140399398

1. Rule 200(f) of Regulation SHO requires a broker or dealer to aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation. Pursuant to Rule 200(f), independent trading unit aggregation is available only if: (1) the broker-dealer has a written plan of organization that identifies each aggregation unit ("AGU"), specifies its trading objectives, and supports its independent identity; (2) each AGU within the firm determines, at the time of each sale, its net position for every security that it trades; (3) all traders in an AGU pursue only the particular trading objectives or strategies of that AGU and do not coordinate that strategy with any other aggregation unit; and (4) individual traders are assigned to only one AGU at any time.
2. During the 2014 TFCE Review Period, the firm engaged in trading unit aggregation but failed to ensure: (i) that individual traders were assigned to only AGU at any time; (ii) that AGUs had operated autonomously and engaged in separate trading strategies without regard to other trading units; and (iii) that AGUs had not coordinated trading activities or interacted or shared order or position information. The firm employed four individuals who acted as both a trader in one AGU and as a trader or supervisor in another AGU, including two individuals who served in such dual capacities dating as far back as February 2008. Such arrangement is improper because it could result in the coordination of trading strategies or trading based upon position or trading information of the other AGU.

3. In addition, during the 2014 TFCE Review Period, the firm failed to provide adequate supervision to monitor for compliance with Rule 200(f) of Regulation SHO to ensure that the firm met the following requirements: (1) the broker-dealer has a written plan of organization that identifies each AGU, specifies its trading objectives, and supports its independent identity; (2) each AGU within the firm determines, at the time of each sale, its net position for every security that it trades; (3) all traders in an AGU pursue only the particular trading objectives or strategies of that AGU and do not coordinate that strategy with any other aggregation unit; and (4) individual traders are assigned to only one AGU at any time. Aggregation of a unit's independent net position prior to each sale limits the potential for abuse associated with coordination among units. The firm's written plan of organization reflected unclear strategies, strategies that overlapped for multiple AGUs, and traders that also acted as traders or supervisors in other AGUs. The firm also lacked adequate WSPs and supporting documentation reflecting its creation and approval of AGUs and its supervision of traders. The conduct described in paragraphs two and three constitutes separate and distinct violations of Rule 200(f) of Regulation SHO, NASD Rule 3010¹ and FINRA Rule 2010.
4. Pursuant to FINRA Rule 7450, reporting members are responsible for the complete and accurate transmittal to FINRA's OATS of information related to: (i) the receipt or origination of each order; (ii) the transmission of each order; and (iii) the modification, cancellation, or execution of each order. OATS was developed by FINRA to reconstruct markets promptly, effectively surveil them, and enforce various rules and regulations applicable to FINRA member firms.
5. During the 2014 TFCE Review Period, the firm transmitted to OATS 45 reports that contained inaccurate, incomplete, or improperly formatted data, representing 52 percent of the sample of reports (87) that Staff reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rules 7450 and 2010.
6. Rule 10b-10(a) of the Securities Exchange Act of 1934 ("Exchange Act") provides that a broker-dealer effecting a transaction in securities shall, at or before the completion of the transaction, provide written notification to its customer disclosing certain information relating to the transaction, including, among other things, the date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request); the capacity (agent or principal) of the broker-dealer; the identity, price and principal amount of the security; and the commission or other remuneration in connection with the transaction.
7. During the 2014 TFCE Review Period, the firm failed on 26 occasions to provide written notification disclosing to its customer that a transaction was executed by the firm at an average price, that transaction details were available upon request, and/or its capacity in the transaction. These 26 occasions represented 74 percent of the sample of confirmations (35) that Staff reviewed. The conduct described in this paragraph constitutes separate and distinct violations of Section 10(b) of the Exchange Act and Rule 10b-10 thereunder.

¹ After the 2014 TFCE Review Period, effective December 1, 2014, FINRA Rule 3110 replaced NASD Rule 3010.

Matter No. 20150442295

8. During the 2015 TFCE Review Period, the firm failed to report to OATS 611 non-market making proprietary orders, and erroneously submitted post-trade allocations as reportable order events to OATS in 30 instances. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
9. Pursuant to Rule 200(g) of Regulation SHO, "[a] broker or dealer must mark all sell orders of any equity security as 'long,' 'short,' or 'short exempt.'" Rule 200(g)(1) of Regulation SHO further provides that "An order to sell shall be marked 'long' only if the seller is deemed to own the security being sold . . . and either: (i) The security to be delivered is in the physical possession or control of the broker or dealer; or (ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction." During the 2015 TFCE Review Period, in 16 instances, the firm inaccurately marked short sell orders as long. The conduct described in this paragraph constitutes separate and distinct violations of Rule 200(g) of Regulation SHO.
10. Rule 203(b)(1) of Regulation SHO states, in relevant part, that "[a] broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)." During the 2015 TFCE Review Period, in 17 instances, the firm accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, without: (1) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (2) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (3) documenting compliance with Rule 203(b)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of Rule 203(b)(1) of Regulation SHO.

B. Respondent also consents to the imposition of the following sanctions:

- a censure; and
- a fine of \$110,000, of which \$45,000 is for OATS reporting violations and \$65,000 is for the SEC rule violations and supervisory deficiencies.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

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

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. This AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

Date: 7/28/2017

Respondent

Wedbush Securities Inc.

By: 

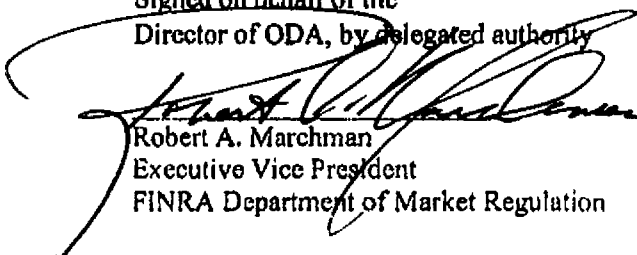
Name: GARY WEDBUSH

Title: EVP

Accepted by FINRA:

Date: 8/18/17

Signed on behalf of the
Director of ODA, by delegated authority


Robert A. Marchman
Executive Vice President
FINRA Department of Market Regulation