

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061872201**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Wedbush Securities, Inc. (Respondent)
Member Firm
CRD No. 877

Pursuant to FINRA Rule 9216, Respondent Wedbush Securities, Inc. 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Wedbush Securities, Inc. has been a FINRA regulated broker-dealer since 1955. The firm is headquartered in Los Angeles, California and has more than 530 registered representatives in 69 branches. The firm engages in securities trading on behalf of individual and institutional clients.

In September 2017, FINRA entered into an AWC with the firm (No. 2011030598001) imposing a fine of \$470,000, including for certain violations similar to those under review in this matter. The 2017 AWC stated that during various review periods between April 1, 2010 and June 28, 2013, the firm failed to timely close out 171 fail-to-deliver positions, in violation of Regulation SHO Rule 204, and it violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with Rule 204(a).

OVERVIEW

During the periods of January 1, 2016 through July 31, 2020 and December 9, 2020 through April 7, 2021, Wedbush Securities, Inc. violated Regulation SHO Rules 204(a), (b), and (c) and FINRA Rule 2010 by failing to timely close out approximately 2,056 fail-to-deliver positions as required by Rule 204(a), and, on approximately 390 occasions failing to place securities in the “penalty box” as required by Rule 204(b) and failing to

comply with the notice requirement of Rule 204(c). During the relevant periods, the firm further violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Regulation SHO Rules 204(a) and (c).

FACTS AND VIOLATIVE CONDUCT

This matter originated from examinations conducted by FINRA Member Supervision.

Rule 204 of Regulation SHO

The Securities and Exchange Commission adopted Regulation SHO to address concerns regarding persistent failures to deliver and potentially abusive “naked” short selling, e.g., the sale of securities that an investor does not own or has not borrowed.

Regulation SHO imposes certain requirements on broker-dealers with respect to sales of equity securities to promote market stability, preserve investor confidence, and increase short sale transparency. These requirements include Regulation SHO Rule 204(a)’s close out provisions, Rule 204(b)’s “penalty box” provision, which restricts short selling in securities when the close out requirement is not satisfied unless the broker-dealer borrows or arranges to borrow the security, and Rule 204(c)’s notice provision, which requires a firm to provide written notice to any customer for whom the firm clears and settles trades when it enters and leaves the penalty box.

A fail to deliver (FTD) occurs when a seller fails to deliver securities to the buyer when delivery is due. Rule 204(a) provides that a participant of a registered clearing agency that has a FTD at a registered clearing agency resulting from short sale transactions in an equity security close out the FTD by purchasing or borrowing securities of like kind and quantity by no later than the beginning of market open on the settlement day following the settlement date of the transactions that caused the FTD. The participant must close out FTDs resulting from long sale transactions in an equity security by the beginning of market open on the third consecutive settlement day following the settlement date of the transactions that caused the FTD.

Rule 204(b) provides that if a participant has an FTD position in any equity security at a registered clearing agency and does not close out the FTD, the participant may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, without first borrowing the security, or arranging to borrow the security. This requirement, known as the “penalty box” provision, remains in effect until the participant closes out the FTD by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency.

Rule 204(c) provides that the participant must notify any broker or dealer from which it receives trades for clearance and settlement that the participant has an FTD position in an equity security that has not been closed out in accordance with Rule 204(a) and when it leaves the penalty box by closing out the FTD position.

FINRA Rule 2010 requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade. A violation of Rule 204 of Regulation SHO constitutes a violation of FINRA Rule 2010.

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

When Wedbush had an FTD, a firm automated system attempted to identify the FTD and to borrow or recall shares to close out it out. If the automated system failed to acquire the shares, firm staff was required to borrow, recall or buy-in shares to close out the FTD. Firm staff, however, failed to timely recall shares that had been out on loan or execute buy-ins where the firm initiated a stock loan recall but did not receive the shares in time to deliver them to the Continuous Net Settlement System (“CNS”).¹

During the relevant periods, the firm failed to timely close out approximately 2,056 FTD positions due to the firm failing to timely borrow shares, recall shares that were out on loan or otherwise acquire shares and deliver them in accordance with the requirements of Rule 204(a).

In addition, during the period between January 1, 2016 through July 31, 2020, on approximately 390 occasions, the firm further failed to place a security in which it had failed to obtain a close-out into the penalty box, as required by Regulation SHO Rule 204(b) and to send the notice that the firm had a position in any equity security that had not been closed out, as required by Regulation SHO Rule 204(c).

Therefore, Respondent violated Regulation SHO Rules 204(a), (b) and (c) and FINRA Rule 2010.

Wedbush Failed to Establish and Maintain a Supervisory System, Including Written Procedures, Reasonably Designed to Achieve Compliance with Rules 204(a) and (c)

FINRA Rule 3110(a) requires a member firm to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules.” FINRA Rule 3110(b)(1) requires member firms to “establish, maintain, and enforce written procedures to supervise the type of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules.” A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

During the relevant periods, Wedbush failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with Rules 204(a) and (c). The firm’s system for complying with Rule 204(a) first relied on an automated in-house system to attempt to borrow or recall shares necessary to effectuate a close-out, and then, when the firm did not obtain such shares, on a manual process to obtain the shares. However, the firm’s WSPs included

¹ The National Securities Clearing Corporation uses CNS to clear and settle securities transactions.

only summary instructions to close out FTDs and failed to offer reasonable guidance on the steps that firm staff needed to take to execute buy-ins if the automated process did not result in closing an FTD. The firm also failed to effectively delegate responsibility for ensuring that the firm was closing out each FTD.

The firm was on notice that its process for closing out FTDs was unreasonable because in its 2018 and 2019 exams FINRA's Department of Member Supervision identified FTDs to the firm that were not properly closed out, which the firm acknowledged, but the firm failed to institute effective remedial measures to its supervisory system in response to these red flags. Additionally, the firm did not maintain any WSPs for complying with Rule 204(c) during the relevant periods.

Therefore, Respondent violated FINRA Rules 3110 and 2010.

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

- a censure
- a \$900,000 fine (of which \$450,000 shall be allocated to FINRA)² and
- an undertaking requiring Wedbush to submit, within 90 days of the issuance of the Notice of Acceptance of this AWC, a certification in writing by one or more principal(s) and officer(s) of Wedbush with supervisory authority over the areas described in this AWC that, as of the date of the certification, the firm's supervisory systems and written procedures are reasonably designed to achieve compliance with Rule 204 (a) and (c) of Regulation SHO. The certification should be submitted to Jason Mogel, at Jason.Mogel@FINRA.org. All correspondence must identify the respondent and matter number 2019061872201. Upon written request showing good cause, FINRA staff may extend any of the deadlines related to the certification component of the sanction.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

² These matters were brought by NYSE, NYSE American, NYSE Chicago, and NYSE National and each of these exchanges will receive \$112,500.

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 it;
- 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 prejudgment 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 its acceptance or rejection.

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:

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1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 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 its subject matter 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

September 12, 2022

Date

Andrew Druch

Wedbush Securities, Inc.
Respondent

Print Name: Andrew Druch

Title: Executive Vice President, General Counsel
and Chief Administrative Officer



Accepted by FINRA:

September 27, 2022

Date

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

Jason Mogel

Jason Mogel
Eric Hansen
Richard Chin
FINRA
Department of Enforcement
99 High Street, Suite 900
Boston, MA 02110