FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090186944

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

RE: Newedge USA, LLC, Respondent
Broker-Dealer
CRD No. 36118

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Newedge USA, LLC ("Newedge" or the "Firm"), 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The Firm 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

1. Newedge's principal place of business is Chicago, Illinois. The Firm has been registered with the Securities and Exchange Commission since 1994 and with FINRA since 1996. Newedge is also registered with multiple equity and option exchanges, including the New York Stock Exchange LLC, NYSE Arca, Inc., BATS Exchange, Inc., and The NASDAQ Stock Market LLC.[1]

2. The Firm's customers are mainly institutional and consist of financial institutions, hedge funds, asset managers, professional trading groups, and corporate clients. This AWC relates to the equities[2] business entered into by Newedge in 2005.

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[1] In January 2008, Fimat USA, LLC merged with Calyon North America Holdings, Inc. and changed its name to Newedge USA, LLC. Accordingly, the Firm's registration statuses noted above (which predate the formation of Newedge USA, LLC in January 2008) were transferred in succession from Fimat USA, LLC to Newedge USA, LLC in January 2008. Among other things, the Firm acts as a correspondent clearing firm and prime broker on DMA trades executed by other U.S. broker-dealers. Many of the Firm's clients trade both securities and options with the Firm on a DMA basis.

[2] Throughout this document, the term "equities" shall include stocks, equity options, and/or exchange-traded funds.

3. Newedge offers Direct Market Access ("DMA") and, prior to July 2011, Sponsored Access ("SA") to its equities customers. The Firm's DMA customers access U.S. markets electronically through the Firm's order routing platform and/or internet service vendors. Its SA clients routed orders directly to market centers without going through the Firm's servers. In both cases, the customers access U.S. equities markets using Newedge's market participant identifiers, or MPIDs.

RELEVANT DISCIPLINARY HISTORY

4. The Firm has no relevant disciplinary history.

OVERVIEW

5. During the period of January 2008 through December 2011 (the "relevant period"), the Firm failed to establish, maintain and enforce adequate supervisory systems and procedures, including written supervisory procedures that were reasonably designed to achieve compliance with applicable securities laws and regulations, including FINRA and exchange rules, addressing anti-money laundering and other potentially manipulative and suspicious trading activity by the Firm's DMA and SA clients, such as spoofing,[3] marking the close,[4] excessive repetitive order entry, and wash sale transactions, numerous instances of which may have occurred on as many as four exchanges.

6. Newedge failed to establish, maintain and enforce adequate supervisory systems and procedures that were reasonably designed to achieve compliance with 17 C.F.R. Part 242, also known as "Regulation SHO." In addition, by accepting customer's short sale orders without a reasonable basis to believe the securities could be borrowed, Newedge directly violated Rule 203(b) of Regulation SHO. The Firm also violated Rules 200(f) and 200(g) of Regulation SHO, in that the Firm could not determine its net position for appropriate sell order marking in a given security Firm-wide, and could not reasonably determine whether sell orders entered by clients were accurately marked.

7. Newedge further failed to establish, maintain, and enforce adequate supervisory procedures, and a reasonable system of follow-up and review, that were reasonably designed to achieve compliance with the July and September 2008 Emergency Orders issued by the Securities and Exchange Commission pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), and violated Section 12(k)(4) of the Exchange Act by entering short sale orders on the NYSE in covered financial institutions in violation of the September 2008 Emergency Order.

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[3] Generally, "spoofing" is a form of market manipulation that involves the market manipulator placing certain non-bona fide orders with the intention of cancelling those orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading certain other bona fide orders.

[4] "Marking the close" involves the placing and execution of orders shortly before the close of trading on any given day to artificially affect the closing price of a security.

8. In addition, during the relevant period, the Firm failed to obtain and maintain certain required records, such as opening account documents, order data from SA clients, attachments to e-mails, "bcc" email information, text messages, and certain required documentation related to its DMA and SA client accounts.

FACTS AND VIOLATIVE CONDUCT

Failure to Supervise DMA and SA Business Lines

9. During the relevant period, NASD Rule 3010(a) required firms to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." Rule 3010(a) goes on to provide that a member's supervisory system shall provide, at a minimum, for the establishment and maintenance of written procedures as required by paragraph (b) of the rule.

10. NASD Rule 3010(b) required that each firm "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of the NASD."

11. During the relevant period, NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008) stated that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

12. Newedge did not establish and maintain a supervisory system, or establish, maintain, and enforce written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws and regulations, including FINRA rules, addressing the detection, monitoring, prevention and reporting of potentially manipulative and suspicious trading activity violative of FINRA and exchange rules, and applicable securities laws.

The Firm did not have sufficient procedures to monitor DMA and SA client trading potentially violative of FINRA and exchange rules, and applicable securities laws

13. While the Firm began providing clients access to equities exchanges through DMA and SA arrangements in January 2008, the Firm did not establish any policies or procedures to monitor such customer activity until August 2008.

14. After August 2008, the Firm's existing procedures were inconsistent and inadequate. For example, the Firm did not have adequate procedures or controls to track or monitor which equities clients used DMA and SA access. The Firm knew in as early as May 2008 that it could not adequately identify which of its clients had access to its systems and could not readily identify all of the entities to which it granted DMA and SA access for purposes of monitoring their equities trading activity.

a. In May 2008, the report of an outside consultant engaged by the Firm (the "May 2008 Report") noted that there was no "full inventory of all customers and their e-trading/direct access systems" and that there was "[n]o department that had the responsibility for the compilation of . . . relationships and exchange linkages or for limit setting and review for e-trading business."

b. In May 2008, a high ranking employee of Newedge sent an email to another high ranking Newedge employee indicating: "I am concerned about the proliferation of equity trading systems without any sort of systemic evaluation of the risk control functions being employed or how theses [sic] systems will be set up and supported. Every time I think I have a definitive list of systems . . . I hear about systems they are using that are not on the list."

15. After the May 2008 Report's recommendation that, among other things, the Firm compile a master list of all customers and their trading systems with risk controls and review direct access client risk monitoring, and after high ranking members of Newedge expressed concern on these issues, the Firm still did not have an adequate understanding of or have adequate information regarding the Firm's customers' trading systems and risk controls as of late 2010. Additionally, as late as 2011, the Firm was still unable to identify which of its clients accessed the markets using DMA and SA.

16. The May 2008 Report put the Firm on notice that it had inadequate and inconsistent policies and procedures regarding DMA and SA clients, and it had not clearly delegated responsibility for supervising the DMA/SA program. It received additional red flags in the form of continued warnings by its compliance group:

a. In its March 25, 2008 Annual Compliance Report, Newedge staff recommended that the Firm "standardize and harmonize its DMA agreements and procedures" and "require the various groups and departments involved in DMA... to work together to share information, harmonize procedures, controls and agreements, and delineate clearly which group is responsible for which DMA-related activity."

b. In an April 9, 2009 compliance memo, Newedge staff stated: "We recommend that [internal departments] coordinate and consolidate their efforts in establishing and implementing policies and procedures regarding DMA business."[5]

17. A significant number of the Firm's clients were not "on-boarded" in compliance with the Firm's internal policies.[6] In spite of several "red flags" (discussed below) regarding the Firm's inconsistent on-boarding, the Firm did not take adequate steps to remedy these issues during the relevant period.

[5] The Firm's internal references to "DMA" were intended to include both DMA and SA market access arrangements with clients.

[6] On-boarding is generally the process during which a firm obtains necessary information about a new client to determine the proper monitoring of the client in light of the client's trading strategy. It is also the process during which the firm provides the new client access to certain trading platforms. The Firm did not consistently handle on-boarding of new clients or even consistently approve new DMA clients.

a. The Firm's 2009 Securities Compliance Memorandum (issued on April 15, 2009) noted that NYSE Arca notified the Firm that it needed to "strengthen its DMA on-boarding procedures."

b. Between 2008 and the end of 2010, the Firm's then head of its eSolutions group alerted senior personnel at the Firm that it needed to allocate more resources to properly on-board clients. Newedge, however, failed to do so.

18. The policies and procedures that did exist at the Firm during the relevant period dealt primarily with credit and risk management. These procedures, however, were not adequate. The Firm failed to take steps to ensure that its equities order routing systems contained appropriate blocks and filters with regard to credit and risk management until the spring of 2011.

19. From its inception in January 2008, the Firm knew that it was unaware of what controls its clients had implemented, but chose to largely rely on its clients to achieve compliance with applicable rules and ignored, or otherwise inadequately responded to, "red flags" regarding supervisory failures highlighted by its own internal auditors, an outside consultant it engaged, and numerous regulatory inquiries it received regarding the activity of one particular Newedge client. During the relevant period, responsibility for responding to regulatory inquiries was too spread out to be effective and ensure accountability. Additionally, testimony from employees confirmed that Newedge lacked the ability to effectively promote compliance with the applicable rules and regulations during the relevant period, and did not have monitoring tools sufficient to monitor clients' trading activity.

<u>The Firm did not have adequate surveillance tools to monitor for client trading activity potentially violative of FINRA and exchange rules, and applicable securities laws</u>

20. The Firm failed to perform adequate real-time and post-trade surveillance reviews, and in some instances used incomplete data for the few reviews it did conduct. From its inception in January 2008 to 2010, the Firm's own internal auditors and an outside consultant warned that the Firm relied too heavily on clients to achieve compliance with regulatory requirements, and had insufficient controls in place to supervise and surveil client DMA and SA equities trading activity. During this time, the Firm knew that it was unaware of what controls its equities clients had implemented, but still chose to largely rely on its clients to achieve compliance with applicable rules.

a. The Firm's 2009 Securities Compliance Memorandum (issued on April 15, 2009) noted that the Firm had been advised by an exchange that its procedures and controls were "geared more toward risk than compliance issues, and [it] rel[ied] too much on customers for adherence to applicable rules and regulations."

21. The Firm, however, failed to implement appropriate risk controls and filters to monitor for, detect and prevent potentially manipulative conduct violative of FINRA and exchange rules, and applicable securities laws at least through December 2011, a period of approximately four years.

22. The Firm was also put on notice in 2008, 2009, and 2010, through the aforementioned internal auditors and outside consultants, that it did not have sufficient surveillance reports to detect potentially manipulative conduct violative of FINRA and exchange rules, and applicable securities laws.

23. The firm received numerous red flags that it failed to respond to, including:

a. A March 25, 2008 Annual Compliance Report recommending that the Firm "ensure that all DMA transmission lines (whether NUSA lines or third-party lines) contain the appropriate compliance and risk filters and blocks..."

b. A March 27, 2009 Annual Compliance Report stating that "DMA transmission lines still lack certain essential blocks and filters, and more exception reports need to be made that will advise the Firm of potential compliance issues."

c. An April 15, 2009 compliance memorandum recommending, among other things, that "[Information Technology] review current securities DMA transmission lines provided and/or sponsored by the Firm to ensure that they contain the necessary compliance-related blocks and filters, such as those designed to prevent spoofing, market making, unbundling, improper crosses, wash sales, marking the close, painting the tape and inappropriate short sales"; and that Newedge "implement immediately supervisory reviews of securities DMA activities by properly qualified supervisors."

d. A May 4, 2009 compliance e-mail listing "Possible Compliance-Related Blocks, Filters, Alerts for NUSA Securities DMA Business" setting forth blocks and filters to be implemented, such as reports to "prevent users from acting as market markers"; "prevent the same beneficial owner from trading with itself"; "prevent the same beneficial owner from transmitting multiple orders on the same side of the market within a prescribed interval of time in violation of exchange interval or unbundling rules"; "prevent spoofing"; prevent incremental price changes out of step with the underlying security to influence the closing price (marking the close)"; "prevent the inappropriate transmission of MOC/LOC orders past the 3:40 cut-off time"; and "ensure that users will comply with the locate rule prior to executing short sales..."

e. A March 29, 2010 Annual Compliance Report stating: "During 2010, efforts should be made to, among other things, obtain trade data from exchanges rather than the clients, implement a third-party vendor solution to collect DMA trade data and create compliance and risk reports with the data, review the Firm's equity DMA procedures and ensure they are being followed, and ensure that appropriate blocks and filters have been implemented and periodically tested."

24. The Firm did not take adequate steps to develop the appropriate systems or surveillances to detect and prevent potentially manipulative and other suspicious conduct violative of FINRA and exchange rules, and applicable securities laws. Additionally, during the relevant period, the Firm failed to confirm that the controls

that its clients agreed to implement as specified in the contracts the Firm had with its DMA clients were in fact current and functioning within acceptable parameters to detect potentially violative trading activity. The Firm was aware of this failure by March 2010 at the latest, when it stated in its March 29, 2010 Annual Compliance Report that: "Currently, the Firm does not have sufficient ongoing monitoring policies and procedures necessary to determine whether the client controls specified in the contract with the DMA client are current and functioning within acceptable parameters." However, the Firm did not take sufficient steps to react to this red flag and correct its supervisory systems.

25. During the relevant period, the Firm failed to reasonably and effectively monitor for potential wash trading activities (*i.e.*, trades for which there was no change in beneficial ownership) by its DMA and SA clients, failed to have reasonable systems and controls, including surveillance systems, designed to prevent potentially violative wash trading activity by its DMA and SA clients, and failed to have adequate written supervisory procedures reasonably designed to achieve compliance with the applicable FINRA Rules pertaining to wash sale transactions, numerous instances of which may have occurred on as many as four exchanges.

26. The Firm failed to implement a wash trading surveillance report until November 2010, almost three years after the Firm's inception, notwithstanding numerous requests from its own compliance department to implement a wash trade surveillance report. Even after implementation of a Firm wash trade surveillance report, however, the Firm failed to adequately review the surveillance report throughout the remainder of the relevant period.

The Firm did not have the necessary information to adequately monitor for client activity potentially violative of FINRA and exchange rules, and applicable securities laws

27. Even if the Firm's procedures and surveillance tools had been adequate to supervise the significant DMA and SA trading by the Firm's equities clients, the Firm was not able to adequately monitor SA client activity because it did not receive all of the order data it needed to do so. For example, in 2008, the Firm did not receive order data from approximately twenty-three of its sixty SA clients, many of which had master accounts that were associated with sub-accounts, through which trading could have also originated. This failure to obtain order data for numerous clients continued into 2011. As late as 2011, Newedge still did not adequately receive order data from approximately 9 SA clients, and failed to process or review order data from an additional 6 SA clients. The Firm was incapable of adequately supervising the orders that entered the market using access Newedge provided to those clients.

28. One of the SA equities clients for whom the Firm did not review order data was Newedge UK, a foreign affiliate that provided market access to additional end users. From as early as the Firm's inception in January 2008, the Firm failed to act upon significant red flags indicating that it lacked essential knowledge about the beneficial owners of accounts directly accessing U.S. markets through Firm affiliates such as

Newedge UK – knowledge that was necessary for the Firm to properly monitor for potentially manipulative or otherwise suspicious activity. For example:

a. On January 24, 2008, a Compliance consultant in an e-mail to the Firm's US Securities Compliance Director, stated "[a]s we discussed yesterday we do not have information as to the identity of the clients that the affiliates grant DMA access to."

b. On March 5, 2008, the Compliance consultant in an e-mail stated "as it currently stands the relationship that USA has with the affiliates for US equity and option market trading and clearing is NOT an omnibus one. As long as clients directly (whether through GL or some other ISV) access US markets or as long as the US broker-dealer acts as the clearing agent to custodial banks acting on behalf of the end client, the entities are clients of the US broker-dealer. That being the case the US broker-dealer needs to know the identity of the clients ..."

c. On March 17, 2008, the Compliance consultant in an e-mail to the Firm's Chief Compliance Officer stated that the Firm's Equity Clearing Division ("ECD") "currently sponsors access to US exchanges and clears the associated trades for a large number of accounts that are clients of the firm's affiliates" and that "[t]here are no written agreements (fully disclosed or omnibus) to cover this business. ECD does not know who the end client who is assessing the US exchanges is, whether through the [Firm's] PT front end or a 3rd party ISV under 'sponsored access.'"

d. In the Annual Compliance Report to senior management dated March 25, 2008, the Firm's Chief Compliance Officer noted that in 2007, Compliance recommended that foreign affiliate accounts maintained at the Firm be monitored more closely. Compliance further stated that "[a]mong other things, in our view, our agreements with affiliates must be reviewed to determine whether they meet regulatory requirements, our affiliates must work more closely with our back-office on trading issues, and comprehensive procedures must be put in place with regard to the opening, maintaining and supervising of affiliate accounts."

e. This problem was not resolved during the relevant time period. After the end of the relevant time period, Firm compliance personnel were still voicing concerns about foreign affiliate accounts with DMA access to US markets and whether they would be considered the Firm's customers.

29. Despite the concerns raised, the Firm did not take adequate supervisory steps to ensure it satisfied its obligations to surveil for manipulative or other potentially suspicious activity in connection with DMA accounts of foreign affiliates. The Firm did not sufficiently address the red flags that its employees raised about the Firm's lack of basic knowledge about the foreign accounts that used DMA to access U.S. markets, and failed to design or implement a process to monitor for potentially manipulative activity in DMA accounts.

30. For example, from 2008 through 2011, the Firm held numerous accounts in the name of a Swiss on-line broker-dealer and a single individual once associated with that firm.[7] Newedge knew that the trades placed through these accounts were entered by traders at the Swiss broker-dealer, likely on behalf of its own clients, via Newedge's front end DMA screens. In February 2010, the Firm permitted the Swiss broker-dealer to open another account that served as a DMA portal through which no fewer than 1,133 distinct numbered (and likely retail) accounts associated with the broker-dealer entered internet orders in equity options.

31. Before being routed to the Firm, these internet DMA orders first electronically passed through Newedge UK (a Firm affiliate and foreign financial institution). Although the orders were not subject to active intermediation by Newedge UK, the Firm did not have adequate supervisory policies or adequate practices or procedures to determine whether or not the subaccount holders entering these internet orders were in fact customers of the Firm. The Firm did not take steps to ensure that it performed due diligence on and titled accounts in the name of the beneficial owner (*e.g.*, Newedge UK if the accounts were intermediated by Newedge UK, or the foreign beneficial owner if Newedge UK did no more than introduce the client to Newedge).

32. NASD Rule 3010 requires a member firm to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations. Newedge failed to supervise potentially manipulative activity through its DMA and SA accounts, and failed to adequately respond to multiple red flags regarding its supervisory deficiencies. In so doing, the Firm violated NASD Rule 3010.

33. The Firm's failure to implement an adequate system of supervision reasonably designed to achieve compliance with the applicable federal securities laws and regulations and exchange rules, and the failure to monitor its client activity, enabled various Newedge clients to potentially violate various rules and regulations across at least four exchanges. The Firm's failure in this regard caused considerable systemic risk to the marketplace.

34. For the reasons set forth above, during the relevant period, the Firm failed to adequately supervise DMA and SA trading in violation of NASD Rule 3010, NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008.) during the aforementioned relevant time period.

[7] A Google search of this individual indicates that he was a Swiss national and former employee of the Swiss broker dealer, who was no longer associated with the broker dealer after February 2008.

Violations of Regulation SHO

The Firm systemically failed to ensure that a locate was obtained and documented prior to order entry

35. Rule 203(b)(1) of Regulation SHO states that, subject to certain exceptions, 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)." For a broker-dealer to have reasonable grounds to believe the security can be borrowed, it typically identifies a source from which it could borrow the security -- generally referred to as obtaining a "locate." Regulation SHO requires that the "locate" must be obtained and documented prior to effecting the short sale.

36. Regulation SHO allows broker-dealers to satisfy the locate requirement for short sales in certain securities by creating a daily list of equity securities which it deems "easy-to-borrow," henceforth referred to as the "ETB List." A firm's ETB List contains securities that the firm has determined it can easily supply, satisfying the "reasonable belief" requirement for short sales in the listed securities. Short sales in "easy to borrow" securities, based on a firm's ETB List, therefore do not require a separate locate. Newedge's DMA order management system was programmed so that if an account holder entered a short sale order of a security on the Firm's ETB List, the short sale would be immediately released for execution. For a security that was not on the ETB List, the system would typically reject the order.

37. However, the Firm improperly designated numerous DMA accounts, including client accounts, affiliate accounts, and proprietary accounts, as "by-pass" accounts. The Firm had inadequate supervisory or procedural controls in place over which accounts were given by-pass status, or centralized records identifying by-pass accounts. By-pass accounts could enter short sale orders in non-ETB stocks, and the Firm's order management system would by-pass the controls in place for non-ETB stocks. Instead of automatically rejecting short sale orders for non-ETB stocks, these orders were released for execution for by-pass accounts.

38. The Firm did not perform any verification or check to ensure that the by-pass accounts obtained locates before entering these short sale orders that were released for execution. Rather, the Firm purported to satisfy its locate obligations by informing its clients once, at the time they became clients, that they should obtain required locates in the future – essentially relying on an "honor system."

39. The Firm typically provided its equities clients with access to the Firm's locate request and documentation system to enable them to obtain locates. However, the Firm did not provide all by-pass clients with access to the locate system, and thus had no system or procedure to obtain or document a locate for short sales entered by such clients.

More generally, the Firm did not have systems or procedures in place to ensure that SA accounts accessed the locate system (or were given access) to obtain locates.

40. Furthermore, the Firm did not adequately supervise the systems used by its foreign affiliates' clients accessing U.S. markets to ensure that they complied with Regulation SHO. The Firm did not know whether or how its foreign affiliates' clients, some of which were directly accessing U.S. markets through Newedge, were complying with Regulation SHO or, indeed, whether such accounts were subject to any filters or if they had the ability to evade Regulation SHO through by-pass access. In an e-mail dated March 14, 2011, more than three years after the Firm's inception, the US Securities Compliance Director asked what would happen if the by-pass option was removed for UK affiliate clients. The following day, the Head of Equities Clearing Division stated in an e-mail that "Compliance needs to be sure Reg Sho is being followed. On short orders, how and what tools do they [UK] use to locate non-EtB items."

41. The Firm additionally failed to meet its locate obligations, by providing SA clients and ISVs with stale Firm ETB lists. As early as November 2010, the Firm knew that certain clients had placed short sale orders in reliance on stale ETB lists. However, the Firm did not take corrective measures until March 2011 when it implemented a procedure to prevent a client from accessing a stale list.

The Firm failed to have an adequate post-trade locate review system

42. The Firm failed to supervise its compliance with Regulation SHO in that it did not conduct adequate post-trade reviews of short sales effected by DMA or SA clients to determine whether such short sales had valid locates. At different points during the relevant period, the Firm either did not conduct such reviews, or conducted such reviews using exception reports that were inadequate for their intended purpose.

43. From January 2008 until mid-May 2008, the Firm reviewed its trading for locate violations by manually comparing trade execution data and locate data. This review would not identify whether required locates were obtained and documented prior to order entry as required by Regulation SHO.

44. On or about May 15, 2008, Newedge began to use Report 415, a vendor generated exception report, to review for locate violations. Like the previous manual review, Report 415 compared execution data against locate information and did not capture whether locates were obtained in advance of order entry, as required. In addition, the Firm knew as of mid-May 2008 that because the Firm supplied the vendor with insufficient data, the Report would not capture certain locate violations by individual clients, and thus the Report aggregated information and improperly allocated locates to unrelated accounts/clients. The Firm did not correct this issue until approximately October 2008, when the Firm rolled out a new exception report, Report 425, and a summary report known as Report 420.

45. However, Report 425 was again improperly execution-based. The Firm did not implement a post-trade exception report that utilized order data (rather than execution data) until September 12, 2011.

46. Moreover, after implementing Reports 420 and 425 in October 2008, the Firm did not regularly review them for approximately two years. The Firm only began to do so in November 2010. It was not until approximately May 2011 that the Firm developed written Regulation SHO policies and procedures more specifically tailored to its DMA and SA business, including a process to identify persistent offenders.

47. Based upon the Firm's failure to obtain and to document locates, and to have an effective post trade review of short sales to determine whether such sales had valid locates, the Firm violated Rule 203(b)(1) of Regulation SHO.

The Firm failed to adequately comply with Regulation SHO Rule 200(f)

48. As a result of the Firm's failure to receive order information from certain principal accounts with SA in at least 2008 and 2009, the Firm violated Rule 200(f) of Regulation SHO.

49. Rule 200(f) states, in relevant part, that in order to determine its net position, a broker or dealer shall determine its net position by aggregating all of its positions in a security in order to determine whether a Firm sell order should be marked long or short. Since the Firm did not receive order information in at least 2008 and 2009 with respect to certain principal trading accounts with sponsored access, the Firm could not take principal orders entered via SA into account when determining its net position, and therefore could not determine the appropriate order marking for any sell order in a given security Firm-wide.

The Firm failed to adequately supervise compliance with Regulation SHO Rule 200(g)

50. Rule 200(g) of Regulation SHO states that "[a] broker or dealer must mark all sell orders of any equity security as 'long,' 'short' or 'short exempt.'" The accurate marking of sale orders is essential for locate, stock borrow, reporting, record-keeping and execution purposes.

51. Without complete order information from its SA clients, including information regarding whether sell orders were marked long or short, the Firm could not reasonably determine whether sell orders entered by such clients were accurately marked. The Firm was aware that it did not receive order data from a number of SA clients, but did not take any steps to address this issue in order to comply with its obligations under Rule 200(g).

52. In addition, in late September 2008, the Firm learned that short sell indicators were not built into the FIX engine used by its UK affiliate. Thus, UK-related short sale orders received by the Firm would be released for execution as inaccurately marked sell long orders. The Firm failed to implement a system or procedure to ensure that these

foreign trades would comply with Regulation SHO requirements. Furthermore, to the extent that UK accounts entered short sales that were improperly marked as long, the Firm further violated its Rule 203(b) requirement to ensure that a locate had been obtained and documented.

The Firm failed to adequately supervise compliance with SEC Emergency Orders

53. Given that the Firm could not under ordinary circumstances adequately supervise its DMA and SA trading to ensure compliance with Regulation SHO, as set forth above, the Firm was incapable of complying with the more stringent short sale restrictions imposed by SEC Emergency Orders, as set forth below.

54. On July 15, 2008, the SEC issued an emergency order (the "July Emergency Order")[8] prohibiting short sales in securities issued by 19 financial institutions unless the investor borrowed or arranged to borrow the security. The Firm failed to reasonably supervise the orders it routed to U.S. markets to ensure they complied with the July Emergency Order. For the reasons described above, it could not ensure that it or its clients borrowed or could borrow shares of restricted securities prior to short sales by DMA and SA accounts.

55. This was evidenced by, among other things, an e-mail dated July 30, 2008 directed to the Head of the Equity Products Group, which stated that it "has become apparent we cannot handle the monitoring and tracking of these 19 stocks with the tools we have."

56. On September 18, 2008, the SEC issued an Emergency Order[9] prohibiting short sales in securities issued by certain financial institutions. On September 21, 2008, the SEC issued an amendment to the September 18, 2008 Emergency Order (collectively the "September Emergency Order"), which required each exchange to designate which of their listed securities were subject to the short selling ban.[10] The September Emergency Order was effective on September 18, 2008 through October 8, 2008.

57. On numerous occasions between September 22, 2008 and October 6, 2008, Newedge permitted its clients to submit numerous orders for short sales in securities covered by the September Emergency Order, which were executed on the NYSE.

58. Newedge did not adequately supervise orders it routed to U.S. equities markets, including the NYSE, to ensure they complied with the September Emergency Order. It did not consistently place timely blocks in its DMA order management system to prevent short sales in all restricted stocks. To the extent the Firm placed such blocks, those blocks did not affect the ability of by-pass clients to effect prohibited short sales and the Firm took inadequate steps to impose restrictions on by-pass accounts, resulting in violative short sales by such accounts. Additionally, the Firm had no

[8] See, Exchange Act Rel. No. 58166, as amended by Exchange Act Rel. No. 58190 (July 18, 2008) and Exchange Act Rel. No. 58248 (July 29, 2008).
[9] See, Exchange Act Rel. No. 58592, as amended by Exchange Act Rel. No. 58611 (Sept 21, 2008).
[10] See, Exchange Act Rel. No. 58611 (Sept 21, 2008).

ability to block, and did not block, SA accounts from entering short sale orders in restricted stocks, similarly resulting in violations. On September 30, 2008, twelve days after the effective date of the Order, a Compliance consultant charged with monitoring Regulation SHO and Emergency Order compliance asked in an e-mail: "Have you guys given any thought to how we should address preventing clients from shorting one of the 1000+ stocks on the list?"

59. The Firm also failed on several occasions to timely update its ETB Lists to remove securities subject to the September Emergency Order, and thus signaled to all recipients of these inaccurate ETB lists that short sales in prohibited securities were permissible.

60. As a result of the conduct described above, Newedge violated Section 12(k)(4) of the Exchange Act, which requires that brokers and dealers comply with the SEC's orders, and violated NASD Rule 3010(a) by failing to establish, implement, and maintain a supervisory system reasonably designed to achieve compliance with its obligations under Section 12(k)(4) of the Exchange Act.

Failure to Maintain Books and Records

61. During the relevant period, Section 17(a) of the Exchange Act and Rule 17a-3, promulgated thereunder, required the Firm to make and keep current a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted, and various other documents related to its business. Rule 17a-4 required the Firm to maintain the documents listed in Rule 17a-3 for a period of three years, the first two of which in an accessible place.

62. During the relevant period, NASD Rule 3110 required firms to make and preserve books, accounts, records, memoranda, and correspondence in conformity will all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of FINRA as prescribed by SEC Rule 17a-3.

63. During the relevant period, the Firm did not receive order data (including drop copies of equities orders entered by its SA clients) from certain SA clients, many of which had master accounts that were associated with sub-accounts, so trading could have originated from a number of different accounts not specified in the Firm's books and records. The Firm also failed to preserve certain order and trade data from a particular order management system. Additionally, Newedge failed to keep accurate records as to which entities it granted DMA or SA, and to which exchanges the Firm had granted access. Because the Firm failed to obtain certain order data from SA clients and failed to retain certain order and execution data from DMA and SA clients, the few reviews completed by the Firm were based on inadequate and incomplete information.

64. During the relevant period, the Firm failed to retain certain information on email correspondence, including "bcc" information and attachments to certain emails. Additionally, the Firm failed to retain certain text messages.

65. The Firm failed to obtain or retain certain required documentation related to DMA and SA clients, such as account documents and client agreements, during the relevant period.

66. For the reasons set forth above, Newedge failed to make, keep current, and retain records in violation of Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 promulgated thereunder, and NASD Rule 3110, NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).

B. The Firm also consents to the imposition of the following sanctions:

1. A censure;

2. A fine in the total amount of $9,500,000, to be paid jointly to FINRA, BATS Exchange, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., and The NASDAQ Stock Market LLC, of which $4,000,000 of that total amount shall be paid to FINRA.

3. Newedge shall further undertake to:

   a. Retain, within 60 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's[11] policies, systems and procedures (written and otherwise) and training relating to the specific areas described above and/or listed below, (the "Review") to ensure:

      i. That the Firm is in compliance with the Sponsored Access or Direct Market Access Rules of all Exchanges and Alternative Trading Systems to which the Firm grants clients market access with respect to its equities business (*i.e.*, stock, equity options and exchange-traded funds);
      ii. That the Firm is in compliance with Exchange Act Rule 15c3-5;
      iii. That the Firm is in compliance with and adequately supervising compliance with Regulation SHO, including but not limited to Rule 204;
      iv. That the Firm adequately supervises trading on both option and equities exchanges by its DMA and SA clients; and
      v. That the Firm's written supervisory procedures and programs with respect to its equities business are sufficient to ensure compliance with FINRA Rule 3310 and the requirements of the Bank Secrecy Act, including but not limited to 31 C.F.R. 1023.220, 31 C.F.R. 1023.320, and 31 C.F.R. 1010.610, and specifically considering fund movements, direct accounts at Newedge, accounts for Newedge's foreign affiliates, and accounts in which trading is conducted by or on behalf of foreign affiliates' clients.

[11] The requirements of this undertaking shall also apply to any successor or affiliated entities of Newedge which undertake to perform or perform, in lieu of or in addition to Newedge, any of the functions or responsibilities described herein.

b. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;

c. Cooperate with the Independent Consultant in all respects, including by providing staff support. Newedge shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm, and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Newedge shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Newedge shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;

d. At the conclusion of the review, which shall be no more than 100 days after the retention of the Independent Consultant, the Independent Consultant shall submit to the Firm and FINRA staff a Consultant's Report. The Consultant's Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures, and training relating to sponsored access, direct market access, SEC Rule 15c3-5, anti-money laundering, Regulation SHO, and books and records retention, (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training, if any;

e. Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with Newedge, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Newedge or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement;

f. Within 90 days after delivery of the Consultant's Report, Newedge shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant

shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant;

g. Within 30 days after the issuance of the later of the Independent Consultant's Initial Report or written determination regarding alternative procedures (if any), Newedge shall provide FINRA staff with a written implementation report, certified by an officer of Newedge, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations; and

h. Newedge shall further retain the Independent Consultant to conduct a follow up review and submit a written Final Report to the Firm and to FINRA staff no later than one year from the date of the Notice of Acceptance of this AWC. In the Final Report, the Independent Consultant shall address the Firm's implementation of the systems, policies, procedures, and training and make any further recommendation he or she deems necessary. Within 30 days of receipt of the Independent Consultant's Final Report, Newedge shall adopt and implement recommendations contained in the Final Report.

4. Newedge shall be restricted from accepting any new sponsored access or direct market access equities clients until such time as the Independent Consultant provides FINRA staff with a written determination that there are no material issues related to the scope of the terms of this undertaking or the findings described herein that should prohibit the Firm from accepting new sponsored access or direct market access equities clients.

5. Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

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

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm 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, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

The Firm 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

The Firm 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 the Firm; 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 response to public inquiries about the Firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

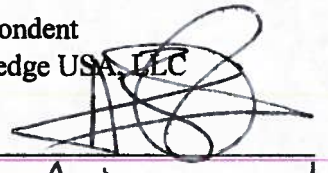
4. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding 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. The Firm 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.

06/21/13
Date

Respondent
Newedge USA, LLC

By: 

Name: Antoine Babule

Title: CEO

Reviewed by:

Stephen L. Ratner, Esq.
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036

Counsel for Newedge USA, LLC

Accepted by FINRA:

7/10/13
Date

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

Susan M. Schroeder
Senior Vice President
Department of Enforcement

7/10/13
Date