

NYSE ARCA, INC.

ARCA DECISION 13-ARCA-16

June 27, 2013

NEWEDGE USA, LLC,
ETP HOLDER

FINRA Proceeding No. 20110270196¹

Violated NYSE Arca Equities Rules 6.18(b) and (c), NYSE Arca Equities Rule 9.2(b) and NYSE Arca Equities Rule 6.2 by failing to reasonably supervise the activities of its associated persons, Direct Market Access (“DMA”) and Sponsored Access (“SA”) customer activity and the operation of its DMA and SA business, in that Newedge USA failed to establish and maintain adequate supervisory procedures, including written procedures, and a reasonable system of follow-up and review, designed to reasonably achieve compliance with applicable NYSE Arca Equities Rules and federal securities laws and regulations and detect and prevent potentially manipulative and suspicious trading activity during the period between approximately January 2008 through December 2011.

Violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 promulgated thereunder, NYSE Arca Equities Rule 2.24 and NYSE Arca Equities Rule 9.2(b) by failing to preserve for a period of three years, the first two in an accessible place, accurate records regarding customer accounts and other documents related to its business.

Consent to censure, a fine of \$875,000, and an undertaking.

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 13-NYSE-10

June 27, 2013

NEWEDGE USA, LLC,
MEMBER ORGANIZATION

FINRA Proceeding No. 20110270196²

Violated NYSE Rule 342 by failing to reasonably supervise the activities of its associated persons, Direct Market Access (“DMA”) and Sponsored Access (“SA”) customer activity and the operation of its DMA and SA business, in that Newedge USA failed to establish and maintain adequate supervisory procedures, including written procedures, and a reasonable system of follow-

¹ This Decision also resolves FINRA proceeding number 20110270452.

² This Decision also resolves FINRA proceeding number 20110270426.

up and review, designed to reasonably achieve compliance with applicable NYSE Rules and federal securities laws and regulations and detect and prevent potentially manipulative and suspicious trading activity during the period between approximately January 2008 through December 2011.

Violated NYSE Rule 476(a)(6) (prior to December 15, 2008) and NYSE Rule 2010 (on and after December 15, 2008) by engaging in conduct inconsistent with just and equitable principles of trade.

Violated Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 17a-3 and 17a-4, promulgated thereunder, and NYSE Rule 440 by failing to preserve for a period of three years, the first two in an accessible place, accurate records regarding customer accounts and other records related to its business.

Violated Section 12(k)(4) of the Exchange Act by allowing clients to enter numerous short sale orders in covered financial institutions in violation of the SEC’s September 2008 Emergency Short-Sale Ban.

Violated NYSE Rule 342 by failing to establish, implement, and maintain a supervisory system, including written supervisory procedures, and a reasonable system of follow-up and review, reasonably designed to achieve compliance with its obligations under Section 12(k)(4) of the Exchange Act.

Consent to censure, a fine of \$1,125,000, and an undertaking.

Appearances

For Market Regulation:

**Jacqueline Gorham, Esq.
Kenneth R. Bozza, Esq.
David E. Rosenstein, Esq.
Robert A. Marchman, Esq.**

For Newedge USA, LLC:

Stephen L. Ratner, Esq.

NYSE ARCA, INC.

A Hearing Officer at the Financial Industry Regulatory Authority (“FINRA”) on behalf of the General Counsel of NYSE Arca, Inc. considered an Offer of Settlement and Consent (“Offer of Settlement”) entered into between the Market Regulation Department at FINRA (“Market Regulation”) on behalf of NYSE Regulation, Inc.³ and Respondent Newedge USA, LLC (“Newedge USA”), an NYSE Arca Equities Trading Permit Holder (“ETP Holder”).

³ FINRA is handling this matter on behalf of NYSE Regulation, Inc. pursuant to a Regulatory Services Agreement among NYSE Group, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Amex LLC, NYSE Regulation, Inc., and FINRA, which became effective June 14, 2010.

The Offer of Settlement was submitted for the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to therein. Market Regulation recommends that the Hearing Officer accept the Offer of Settlement.

The Hearing Officer accepts the Offer of Settlement and issues this Decision in accordance with NYSE Arca Equities Rules.

NEW YORK STOCK EXCHANGE LLC

The same Hearing Officer considered a Stipulation of Facts and Consent to Penalty (“Stipulation of Facts”) entered into between Market Regulation on behalf of NYSE Regulation, Inc. and Newedge USA, a member organization of the New York Stock Exchange LLC (“NYSE”).⁴

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts, Newedge USA stipulated to the facts set forth below.⁵

The Hearing Officer accepts the Stipulation of Facts and issues this Decision in accordance with NYSE Rules.

BACKGROUND AND JURISDICTION

1. Newedge USA’s principal place of business is Chicago, Illinois. Newedge USA is registered with the Securities and Exchange Commission (SEC) and FINRA. It has been a member organization of the NYSE since January 2007, and an ETP Holder since July 2002.⁶ Newedge is also a member of BATS Exchange, Inc. and The NASDAQ Stock Market LLC.
2. Newedge USA’s customers are mainly institutional, consisting of financial institutions, hedge funds, asset managers, professional trading groups, and corporate clients. The Offer of Settlement and the Stipulation of Facts relate to the equities⁷ business entered into by Newedge in 2005.

⁴ See supra note 3.

⁵ The facts, allegations, and conclusions contained in paragraphs 1 through 44 of this Decision are taken from the Offer of Settlement and the Stipulation of Facts.

⁶ In January 2008, Fimat USA, LLC merged with Calyon North America Holdings, Inc. and changed its name to Newedge USA, LLC. Accordingly, Newedge USA’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, Newedge USA acts as a correspondent clearing firm and prime broker on DMA trades executed by other U.S. broker-dealers. Many of Newedge USA’s clients trade both securities and options with Newedge USA on a DMA basis.

⁷ Throughout this Decision, the term “equities” shall include stock, equity options, and/or exchange-traded funds.

3. Newedge USA offers Direct Market Access (“DMA”) and, prior to July 2011, Sponsored Access (“SA”) to its equities customers. Newedge USA’s DMA customers access U.S. markets electronically through Newedge USA’s order routing platform and Internet service vendors. Its SA clients routed orders directly to market centers without going through Newedge USA’s servers. In both cases, customers access U.S. equities markets using Newedge USA’s equities market participant identifiers, or MPIDs.
4. Newedge USA has no relevant prior disciplinary history.

OVERVIEW

5. During the period January 2008 through December 2011 (the “Relevant Period”), Newedge USA failed to establish, maintain, and implement adequate supervisory procedures and systems, including written supervisory procedures, and a reasonable system of follow-up and review, that were reasonably designed to achieve compliance with applicable securities laws and regulations, including NYSE and NYSE Arca Equities rules, addressing the detection, monitoring, prevention, and reporting of potentially manipulative and suspicious trading activity by Newedge USA’s DMA and SA clients, such as spoofing,⁸ marking the close,⁹ excessive repetitive order entry, and wash sale transactions, numerous instances of which may have occurred on as many as four exchanges, including the NYSE and NYSE Arca.
6. In addition, during the Relevant Period, Newedge USA failed to obtain and maintain certain required records, such as opening account documents, order data from SA clients, attachments to emails, “bcc” email information, text messages, and certain required documentation related to its DMA and SA client accounts.
7. Newedge USA failed to establish, maintain, and enforce adequate supervisory systems and procedures, and a reasonable system of follow-up and review, that were reasonably designed to achieve compliance with the September 2008 Emergency Order issued by the SEC 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.

⁸ Generally, “spoofing” is a form of market manipulation that involves the market manipulator placing 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 bona fide orders.

⁹ “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.

VIOLATIONS

Failure to Supervise DMA and SA Business Lines

8. During the Relevant Period, NYSE Arca Equities Rule 6.18(b) required each ETP Holder to “establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules.” During the Relevant Period, NYSE Arca Equities Rule 6.18(c) also required each ETP Holder to “establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the NYSE Arca Equities Rules.”
9. During the Relevant Period, NYSE Arca Equities Rule 9.2(b) required ETP holders to diligently supervise all accounts accepted or carried by the ETP Holders, and to review accounts periodically for irregularities or abuses.
10. During the Relevant Period, NYSE Arca Equities Rule 6.2 prohibited conduct or proceeding inconsistent with just and equitable principles of trade.
11. Regulatory Information Bulletin, RBE-07-01, dated January 29, 2007, entitled “ETP Holders’ Supervisory Obligations of Order Flow,” reminded ETP Holders of their obligation to establish, implement, and maintain supervisory procedures designed to prevent and detect fraudulent, manipulative, and improper trading practices. In particular, RBE-07-01 indicated that: “An ETP Holder offering access to [the NYSE Arca Exchange] must have a supervisory system in place designed, at a minimum, to (1) prevent erroneous transmission of orders by its clients and (2) review all trading activity submitted to [the NYSE Arca Exchange] by the ETP Holder for manipulative or improper trading practices.”
12. During the Relevant Period, NYSE Rule 342 required firms to establish, implement, and maintain appropriate supervisory controls, including a reasonable system of follow-up and review, designed to achieve compliance with the applicable federal securities laws and regulations, and with the NYSE Rules.
13. During the Relevant Period, NYSE Rule 476(a)(6) (prior to December 15, 2008) and NYSE Rule 2010 (on and after December 15, 2008) prohibited conduct inconsistent with just and equitable principles of trade.
14. Newedge USA did not establish, implement, and maintain a supervisory system reasonably designed to achieve compliance with applicable federal securities laws and regulations, NYSE Arca Equities Rules, and NYSE Rules, or have in place adequate written supervisory procedures with respect to supervision of its DMA and SA participant clients, addressing the detection, monitoring, prevention, and reporting of potentially manipulative and suspicious trading activity violative of NYSE and NYSE Arca rules and applicable securities laws.

Newedge USA did not have sufficient procedures to monitor DMA and SA client trading potentially violative of NYSE and NYSE Arca rules and applicable securities laws.

15. While Newedge USA began providing clients access to equities exchanges through DMA and SA arrangements in January 2008, Newedge USA did not establish any policies or procedures to monitor such customer activity until August 2008.
16. After August 2008, Newedge USA's existing procedures were inconsistent and inadequate. For example, Newedge USA did not have adequate procedures or controls to track or monitor which equities clients used DMA and SA access. Newedge USA knew 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 Newedge USA (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 USA 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."
17. After the May 2008 Report's recommendation that, among other things, Newedge USA 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 USA expressed concern about these issues, Newedge USA still did not have an adequate understanding of or have adequate information regarding Newedge USA's customers' trading systems and risk controls as of late 2010. Additionally, as late as 2011, Newedge USA was unable to identify which of its clients accessed the markets using DMA and SA.
18. The May 2008 Report put Newedge USA 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 USA staff recommended that Newedge USA "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 USA staff stated: “We recommend that [internal departments] coordinate and consolidate their efforts in establishing and implementing policies and procedures regarding DMA business.”¹⁰
19. A significant number of Newedge USA’s clients were not “on-boarded” in compliance with Newedge USA’s internal policies.¹¹ In spite of several red flags (discussed below) regarding Newedge USA’s inconsistent on-boarding, Newedge USA did not take adequate steps to remedy these issues during the Relevant Period.
- a. Newedge USA’s 2009 Securities Compliance Memorandum (issued on April 15, 2009) noted that NYSE Arca notified Newedge USA that it needed to “strengthen its DMA on-boarding procedures.”
- b. Between 2008 and the end of 2010, Newedge USA’s then head of its eSolutions group alerted senior personnel at Newedge USA that it needed to allocate more resources to properly on-board clients. Newedge USA, however, failed to do so.
20. The policies and procedures that did exist at Newedge USA during the Relevant Period dealt primarily with credit and risk management. These procedures, however, were not adequate. Newedge USA 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.
21. From its inception in January 2008, Newedge USA 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.

Newedge USA did not have adequate surveillance tools to monitor for client trading activity potentially violative of NYSE and NYSE Arca rules, and applicable securities laws.

¹⁰ Newedge USA’s internal references to “DMA” were intended to include both DMA and SA market access arrangements with clients.

¹¹ “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 a firm provides a new client access to certain trading platforms. Newedge USA did not consistently handle on-boarding of new clients or consistently approve new DMA clients.

22. Newedge USA 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, Newedge USA's internal auditors and an outside consultant warned that Newedge USA 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, Newedge USA knew that it was unaware of what controls its clients had implemented, but still chose to largely rely on its equities clients to achieve compliance with applicable rules.

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

23. Newedge USA, however, failed to implement appropriate risk controls and filters to monitor for, detect, and prevent potentially manipulative conduct violative of NYSE, NYSE Arca, and applicable securities laws at least through December 2011, a period of approximately four years.
24. Newedge USA 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 NYSE, NYSE Arca, and applicable securities laws. Newedge USA's failure in this regard caused considerable systemic risk to the marketplace.
25. Newedge USA received numerous red flags that it failed to respond to, including:
- a. A March 25, 2008 Annual Compliance Report recommending that Newedge USA "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 Newedge USA of potential compliance issues."
 - c. An April 15, 2009 compliance memo recommending, among other things, that "[Information Technology] review current securities DMA transmission lines provided and/or sponsored by Newedge USA 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 email 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 makers"; "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.”
26. Newedge USA did not take adequate steps to develop the appropriate systems or surveillances to detect and prevent potentially manipulative and other suspicious conduct violative of NYSE and NYSE Arca rules, and applicable securities laws. Additionally, during the Relevant Period, Newedge USA failed to confirm that the controls that its clients agreed to implement as specified in the contracts Newedge USA had with its DMA clients were in fact current and functioning within acceptable parameters to detect potentially violative trading activity. Newedge USA 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, Newedge USA did not take sufficient steps to react to this red flag and correct its supervisory systems.
27. During the Relevant Period, Newedge USA 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 to achieve compliance with the applicable NYSE and NYSE Arca Rules pertaining to wash sale transactions, numerous instances of which may have occurred on as many as four exchanges, including the NYSE exchanges.
28. Newedge USA failed to implement a wash trading surveillance report until November 2010, almost three years after Newedge USA’s inception, notwithstanding numerous requests from its compliance department to implement a wash trade surveillance report. Even after implementation of a wash trade surveillance report, however, Newedge USA failed to adequately review the surveillance report throughout the remainder of the Relevant Period.
29. For example, on multiple trading dates between October 2008 and September 2009, three of Newedge USA’s broker-dealer customers executed wash trades involving more than 70,000 shares of stock on the NYSE Arca Equities market. Additionally, during the

Relevant Period, Newedge USA failed to block more than 200 accounts (both retail and firm customer accounts) with the same beneficial owner from trading with each other.

30. During the Relevant Period, Newedge USA failed to adequately and effectively monitor for compliance with NYSE Rule 132 (account type indicators) and failed to have reasonable systems and controls, including surveillance systems designed to detect or prevent violations of NYSE Rule 132 by its DMA and SA clients. As a result of these supervisory failures, Newedge USA failed to reasonably supervise the on-boarding of numerous clients, causing fifteen trades to be submitted with inaccurate account type codes to the NYSE Exchange, in violation of NYSE Rule 132, between January 2009 and December 2009. Newedge USA's failure to properly code these trades with the correct account type indicator could have harmed customers by causing them to lose trade priority¹² in the marketplace and could have impeded various NYSE Exchange surveillances, by causing inaccurate or misleading information to be included in NYSE Exchange audit trail data.
31. During the Relevant Period, Newedge USA failed to adequately and effectively monitor for compliance with NYSE Rule 123C (Market On The Close Policy and Expiration Procedures) and failed to have reasonable systems and controls, including surveillance systems designed to detect or prevent potential violations of NYSE Rule 123C by its DMA and SA clients. As a result of Newedge USA's failure, one of its customers repeatedly violated NYSE Rule 123C on eleven trade dates between September 2008 and March 2009 by (a) entering a total of 2,596 Market-on-Close (MOC)/Limit-on-Close (LOC) orders on the NYSE Exchange after the cut-off time and when there was no published imbalance, and (b) cancelling a total of 1,249 MOC/LOC orders after 3:50 p.m.
32. During the Relevant Period, Newedge USA failed to reasonably and effectively monitor for potential excessive repetitive order entry by its DMA and SA clients, failed to have adequate systems and controls, including surveillance systems designed to detect or prevent potentially violative excessive repetitive order entry by its DMA and SA clients, and failed to have reasonable written supervisory procedures with regard to the same.
33. For the reasons set forth above, Newedge USA failed to adequately supervise DMA and SA trading, in violation of NYSE Arca Equities Rules 6.18(b) and (c), NYSE Arca Equities Rule 9.2(b), NYSE Arca Equities Rule 6.2, NYSE Rule 342, NYSE Rule 476(a)(6) (prior to December 15, 2008), and NYSE Rule 2010 (on and after December 15, 2008) during the Relevant Period.

Failure to Maintain Books and Records

34. During the Relevant Period, Section 17(a) of the Exchange Act and Rule 17a-3, promulgated thereunder, NYSE Arca Equities Rule 2.24, and NYSE Rule 440 required Newedge USA to make and keep current a memorandum of each brokerage order for the purchase or sale of securities, and of any other instruction given or received for the

¹² Certain markets provide execution priority to the execution of customer orders versus non-customer (broker-dealer) orders.

purchase or sale of securities, whether executed or unexecuted, and various other documents related to its business. Rule 17a-4, NYSE Arca Equities Rule 2.24, and NYSE Rule 440 required Newedge USA to maintain the documents listed in Rule 17a-3 for a period of three years, the first two years of which in an accessible place.

35. During the Relevant Period, NYSE Arca Equities Rule 9.2(b) required ETP Holders to adopt appropriate procedures for the opening and maintaining of accounts, including the maintaining of records required by the NYSE Arca Equities Rules and the rules and regulations of the SEC, and maintaining adequate records to provide for the supervision of accounts.
36. During the Relevant Period, Newedge USA 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 Newedge USA's books and records. Newedge USA 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 Newedge USA had granted access. Because Newedge USA failed to obtain certain order data from SA clients, failed to retain certain order and execution data from DMA and SA clients, the few reviews completed by Newedge USA were based on inadequate and incomplete information.
37. During the Relevant Period, Newedge USA failed to retain certain information on email correspondence, including "bcc" information and attachments to certain emails. Additionally, Newedge USA failed to retain certain text messages.
38. Newedge USA 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.
39. For the reasons set forth above, during the Relevant Period, Newedge failed to make, keep current, and retain records in violation of Section 17(a) of the Exchange Act and Rule 17a-3, and Rule 17a-4, NYSE Arca Equities Rule 2.24, NYSE Arca Equities Rule 9.2(b), and NYSE Rule 440.

Regulation SHO

Newedge USA failed to adequately supervise compliance with the SEC's September 2008 Emergency Order.

40. On September 18, 2008, the SEC issued an Emergency Order¹³ 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 its listed

¹³ See Exchange Act Rel. No. 58592, as amended by Exchange Act Rel. No. 58611 (Sept. 21, 2008).

securities was subject to the short selling ban.¹⁴ The September Emergency Order was effective on September 18, 2008, through October 8, 2008.

41. 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.
42. 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 restricted stocks. To the extent Newedge USA placed such blocks, those blocks did not affect the ability of by-pass clients to effect prohibited short sales, and Newedge USA took inadequate steps to impose restrictions on by-pass accounts, resulting in violative short sales by such accounts. Additionally, Newedge USA had no 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 email, "Have you guys given any thought to how we should address preventing clients from shorting one of the 1000+ stocks on the list?"
43. Newedge USA also failed on several occasions to timely update its Easy to Borrow ("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.
44. 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 NYSE Rule 342, by failing to establish, implement, and maintain a supervisory system and a reasonable system of follow-up and review, reasonably designed to achieve compliance with its obligations under Section 12(k)(4) of the Exchange Act.

DECISION

NYSE ARCA, INC.

The Hearing Officer, in accepting the Offer of Settlement and Consent to Penalty, concludes that Newedge USA:

- I. Violated NYSE Arca Equities Rules 6.18(b) and (c), NYSE Arca Equities Rule 9.2(b) and NYSE Arca Equities Rule 6.2 by failing to reasonably supervise the activities of its associated persons, Direct Market Access and Sponsored Access customer activity and the operation of its Direct Market Access and Sponsored Access business, in that Newedge USA failed to establish and maintain adequate

¹⁴ See Exchange Act Rel. No. 58611 (Sept 21, 2008).

supervisory procedures, including written procedures, and a reasonable system of follow-up and review, designed to reasonably achieve compliance with applicable NYSE Arca Equities Rules and federal securities laws and regulations and detect and prevent potentially manipulative and suspicious trading activity during the period between approximately January 2008 through December 2011.

- II. Violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 promulgated thereunder, NYSE Arca Equities Rule 2.24 and NYSE Arca Equities Rule 9.2(b) by failing to preserve for a period of three years, the first two in an accessible place, accurate records regarding customer accounts and other documents related to its business.

NEW YORK STOCK EXCHANGE LLC

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, concludes that Newedge USA:

- I. Violated NYSE Rule 342 by failing to reasonably supervise the activities of its associated persons, Direct Market Access and Sponsored Access customer activity and the operation of its Direct Market Access and Sponsored Access business, in that Newedge USA failed to establish and maintain adequate supervisory procedures, including written procedures, and a reasonable system of follow-up and review, designed to reasonably achieve compliance with applicable NYSE Rules and federal securities laws and regulations and detect and prevent potentially manipulative and suspicious trading activity during the period between approximately January 2008 through December 2011.
- II. Violated NYSE Rule 476(a)(6) (prior to December 15, 2008) and NYSE Rule 2010 (on and after December 15, 2008) by engaging in conduct inconsistent with just and equitable principles of trade.
- III. Violated Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4, promulgated thereunder, and NYSE Rule 440 by failing to preserve for a period of three years, the first two in an accessible place, accurate records regarding customer accounts and other records related to its business.
- IV. Violated Section 12(k)(4) of the Securities Exchange Act of 1934 by allowing clients to enter numerous short sale orders in covered financial institutions in violation of the SEC's September 2008 Emergency Short-Sale Ban.
- V. Violated NYSE Rule 342 by failing to establish, implement, and maintain a supervisory system, including written supervisory procedures, and a reasonable system of follow-up and review, reasonably designed to achieve compliance with its obligations under Section 12(k)(4) of the Exchange Act.

PENALTY

NYSE ARCA, INC.

In accordance with the Offer of Settlement and Consent to Penalty, Newedge USA, LLC is:

1. Censured;
2. Fined \$875,000;¹⁵
3. Ordered to:
 - a. Retain, within 60 days of the date of the Notice of Acceptance of this Offer of Settlement and Consent to Penalty, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of Newedge USA's¹⁶ policies, systems, procedures (written and otherwise), and training relating to the specific areas described above and those listed below (the "Review") to ensure:
 - i. That Newedge USA is in compliance with the Sponsored Access or Direct Market Access Rules of all Exchanges and Alternative Trading Systems to which Newedge USA grants clients market access with respect to its equities business (*i.e.*, stock, equity options, and exchange-traded funds);
 - ii. That Newedge USA is in compliance with Exchange Act Rule 15c3-5;
 - iii. That Newedge USA is in compliance with and adequately supervising compliance with Regulation SHO, including but not limited to Rule 204; and
 - iv. That Newedge USA adequately supervises trading on both option and equities exchanges by its DMA and SA clients.
 - 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 Newedge USA, 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

¹⁵ The Offer of Settlement provides for a total fine of \$9,500,000 to be paid jointly to NYSE LLC, NYSE Arca, Inc., The NASDAQ Stock Market, LLC, FINRA, and the BATS Exchange, Inc.

¹⁶ The requirements of this undertaking shall also apply to successors or affiliated entities of Newedge USA that undertake to perform or perform, in lieu of or in addition to Newedge, any of the functions or responsibilities described herein.

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 date of retention of the Independent Consultant, the Independent Consultant shall submit to Newedge USA and FINRA an Initial Report. The Consultant's Initial Report shall address, at a minimum, (i) the adequacy of Newedge USA's policies, systems, procedures, and training relating to sponsored access, direct market access, SEC Rule 15c3-5, 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 Newedge USA'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 Decision 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 Initial 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. Newedge USA shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days after receipt of any proposed alternative procedures, 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 Newedge USA with a written decision reflecting his or her determination. Newedge USA 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 Newedge USA'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 Newedge USA and to FINRA staff no later than one year after the date of this Decision. In the Final Report, the Independent Consultant shall address Newedge USA'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.

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 Newedge USA from accepting new sponsored access or direct market access equities clients.

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

NEW YORK STOCK EXCHANGE LLC

In accordance with the Stipulation of Facts and Consent to Penalty, Newedge USA, LLC is:

1. Censured;
2. Fined \$1,125,000;¹⁷
3. Ordered to:
 - a. Retain, within 60 days of the date of the Notice of Acceptance of this Offer of Settlement and Consent to Penalty, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of Newedge USA's¹⁸ policies, systems, procedures (written and otherwise), and training relating to the specific areas described above and those listed below (the "Review") to ensure:
 - i. That Newedge USA is in compliance with the Sponsored Access or Direct Market Access Rules of all Exchanges and Alternative Trading Systems to which Newedge USA grants clients market access with respect to its equities business (*i.e.*, stock, equity options and exchange-traded funds);
 - ii. That Newedge USA is in compliance with Exchange Act Rule 15c3-5;

¹⁷ The Stipulation of Facts provides for a total fine of \$9,500,000 to be paid jointly to NYSE LLC, NYSE Arca, Inc., The NASDAQ Stock Market, LLC, FINRA, and the BATS Exchange, Inc.

¹⁸ The requirements of this undertaking shall also apply to successors or affiliated entities of Newedge USA that undertake to perform or perform, in lieu of or in addition to Newedge USA, any of the functions or responsibilities described herein.

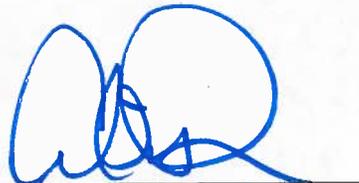
- iii. That Newedge USA is in compliance with and adequately supervising compliance with Regulation SHO, including but not limited to Rule 204; and
 - iv. That Newedge USA adequately supervises trading on both option and equities exchanges by its DMA and SA clients.
- b. Exclusively bear all costs, including 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 Newedge USA, 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 date of retention of the Independent Consultant, the Independent Consultant shall submit to Newedge USA and FINRA an Initial Report. The Initial Report shall address, at a minimum, (i) the adequacy of Newedge USA's policies, systems, procedures, and training relating to sponsored access, direct market access, SEC Rule 15c3-5, 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 Newedge USA's policies, systems, procedures, and training;
 - 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 Decision 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 Initial 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 objectives. Newedge USA shall submit such proposed alternative in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days after receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objectives as the Independent Consultant's original recommendation; and (ii) provide Newedge USA with a written decision reflecting his or her determination. Newedge USA 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 Newedge USA'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 Newedge USA and to FINRA staff no later than one year after the date of this Decision. In the Final Report, the Independent Consultant shall address Newedge USA'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 the recommendations contained in the Final Report.

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 Newedge USA from accepting new sponsored access or direct market access equities clients.

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



Andrew H. Perkins
Deputy Chief Hearing Officer