

**NASDAQ PHLX LLC  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2017054491008**

TO: Nasdaq PHLX LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of Nasdaq PHLX LLC (“Phlx”) Code of Procedure,<sup>1</sup> Wedbush Securities Inc. (the “firm” or “Respondent”) submits this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, Phlx will not bring any future actions against the Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of Phlx, or to which Phlx 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 Phlx:

**BACKGROUND**

The firm has been a FINRA member since 1955 and a Phlx member since June 2006. The firm is a full-service broker-dealer headquartered in Los Angeles, CA, which has approximately 70 branch offices and approximately 510 registered employees. The firm provides, among other things, brokerage, wealth management, and investment banking services.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

In January 2019, the firm was censured and fined \$1,000,000 by NYSE Arca, Inc. (“NYSE Arca”) and ordered to complete several undertakings in connection with, among other violations, its failure to establish, document, and maintain a system of risk management controls and supervisory systems reasonably designed to ensure compliance with regulatory requirements regarding detection and prevention of potentially manipulative activity, including but not limited to wash sales, and marking the open and

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<sup>1</sup> Series 9000 of The Nasdaq Stock Market LLC Rules are incorporated by reference into Phlx Rule General 5, Section 3, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange’s jurisdiction.

close, in violation of Rule 15c3-5(b) and (c)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) and NYSE Arca Rules 11.18, 11.1(b), 11.2(b), and 9.2010-E.

In December 2015, the firm was censured and fined \$1.8 million by FINRA, The Nasdaq Stock Market LLC (“Nasdaq”), NYSE Arca, and Cboe BZX Exchange, Inc. (“BZX”) for violations of Exchange Act Rule 15c3-5, and applicable FINRA and exchange supervisory rules, from January 2008 through August 2013. The firm agreed to, among other things, findings that the firm failed to establish, maintain, and enforce supervisory systems and procedures related to its market access business, and failed to supervise for potentially manipulative trading.

In November 2014, the firm entered into a settlement with the U.S. Securities and Exchange Commission (“SEC”) in which it agreed to pay \$2.44 million for findings that, from July 2011 until at least January 2013, the firm willfully failed to establish, document, and maintain a system of risk management controls and supervisory procedures that was reasonably designed to manage the risks associated with its market access business and applicable regulatory requirements regarding potentially manipulative trading, such as wash sales and manipulative layering.

### **SUMMARY**

From June 2015 through the present, the firm has provided certain customers with access to third-party electronic trading platforms (“electronic trading customers”), which allows these customers to enter orders for execution using one of the firm’s market participant identifiers (“MPIDs”). Those orders are transmitted to other broker-dealers that may route them to various exchanges for execution using the executing broker-dealer’s MPID. The firm failed to conduct supervisory reviews of its electronic trading customers’ trading activity for any type of potentially manipulative trading, including layering, spoofing, wash sales, or marking the close or open. Instead, the firm relied upon the third-party broker-dealers to conduct such reviews.

Also, since June 2015, the firm failed to supervise the trading activities of its proprietary traders and other firm customers for potential layering and spoofing.

Based on the conduct described in this AWC, the firm violated Phlx Rules General 9, Sections 1(a) and 20(a), and Phlx Rules 707 and 748.

### **FACTS AND VIOLATIVE CONDUCT**

1. This matter arises from cross market surveillance conducted by FINRA on behalf of Phlx.

#### **Applicable Rules**

2. Phlx Rule General 9, Section 20, and its predecessor Phlx Rule 748, require each member to “establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered

representatives, employees, and associated persons. The written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange.”<sup>2</sup>

3. Phlx Rule General 9, Section 1(c), and its predecessor Phlx Rule 707, provide that “[a] member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade.” A violation of Phlx Rule General 9, Section 20 also constitutes a violation of Phlx Rule General 9, Section 1(c) or Phlx Rule 707.<sup>3</sup>

**The firm failed to review electronic trading customers’ trading activities for potential manipulation**

4. The firm permitted certain customers to enter orders directly onto third-party electronic trading platforms using the firm’s MPID. The firm separately executed transactions for its proprietary traders and other customers through its own internal trading systems.
5. For various reasons, including the disciplinary actions described in the Relevant Prior Disciplinary History section above, Wedbush stopped providing market access services to its customers in June 2015. As described above, however, the firm still provided certain electronic trading customers with access to third-party electronic trading platforms, which routed these customers’ orders to other broker-dealers for execution.
6. The firm mistakenly believed that it was not required to review this trading for any type of potentially manipulative activity since it was no longer providing market access. Instead, the firm believed that the obligation to review this trading for potentially manipulative activities rested solely with the executing broker-dealers. Thus, since June 2015, the firm did not conduct any supervisory reviews of the trading activities by its electronic trading customers for potentially manipulative trading, such as layering, spoofing, wash sales, or marking the close or open.
7. As a result, Wedbush failed to detect potential layering activity in February and March 2017 by an institutional electronic trading customer, which was comprised of hundreds of foreign day traders, on various exchanges, including Phlx. During those two months, FINRA surveillance identified approximately 2,900 layering exceptions involving over 130 different stock symbols associated with the customer’s order flow. On March 13, 2017, the executing broker-dealer for that order flow detected the potential layering, provided notice of the potential layering to the firm, and stopped accepting orders from the customer.
8. Upon receiving notice of the potential layering activity from the executing broker-dealer, the firm closed the electronic trading customer’s account. The firm, however, did not take any steps to detect and prevent other electronic trading customers from engaging in

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<sup>2</sup> Phlx Rule General 9, Section 20(a) superseded Phlx Rule 748, effective February 3, 2020.

<sup>3</sup> Phlx Rule General 9, Section 1(c) superseded Phlx Rule 707, effective February 3, 2020.

potentially manipulative trading, or to implement any type of supervisory reviews for potentially manipulative trading. As a result, from June 2015 through the present, approximately 90 electronic trading customers effected more than 3.4 million transactions involving 13.5 billion shares without being subject by Wedbush to any review for potentially manipulative trading.

**The firm also failed to supervise its proprietary traders' and all firm customers' transactions for potential layering and spoofing**

9. Since June 2015, the firm also failed to implement any supervisory system, including written supervisory procedures (“WSPs”), to review for potential layering and spoofing by the firm’s proprietary traders and all firm customers, including the firm’s electronic trading customers.
10. Between June 2015 and May 2019, the firm’s WSPs failed to include any procedures requiring a review by the firm for potential layering and spoofing activity. In June 2019, the firm added a reference to layering and spoofing in its WSPs, which required the firm’s Equity Trading Managers to conduct weekly reviews of certain supervisory reports to detect potential layering and spoofing. Those reports, however, were designed to capture other forms of potential manipulative trading, such as wash sales and marking the open and close, and were not reasonably designed to detect layering and spoofing.
11. As a result, from June 2015 to the present, the firm also failed to supervise its proprietary traders and other firm customers for potential layering and spoofing activity, and an additional 26.9 million transactions involving approximately 5.1 billion shares were not reviewed by the firm for potential layering and spoofing.
12. Therefore, the firm violated Phlx Rules General 9, Sections 1(c) and 20(a), and Phlx Rules 707 and 748.

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

- a censure;
- a total fine of \$975,000, of which \$82,142.86 shall be paid to Phlx;<sup>4</sup> and
- an undertaking that, within 90 days of the date this AWC is accepted, the firm shall submit a written report to FINRA, certified by a registered principal of the firm, that details the steps taken by the firm to correct the supervisory deficiencies regarding supervision of manipulation and the date(s) the revised supervisory system and WSPs were implemented. The report shall be submitted to Compliance Assistant, FINRA Department of Enforcement, 15200 Omega Drive,

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<sup>4</sup> The remainder of the fine will be paid to FINRA; Cboe BYX Exchange, Inc. (“BYX”); BZX; EDGA Exchange, Inc. (“EDGA”); Cboe EDGX Exchange, Inc. (“EDGX”); Nasdaq; Nasdaq BX, Inc. (“BX”); New York Stock Exchange LLC (“NYSE”); NYSE Arca; and Investors Exchange LLC (“IEX”).

Third Floor, Rockville, MD 20850 and by e-mail from a work-related account of the registered principal to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org).

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between the firm and FINRA; BYX; BZX; EDGA; EDGX; Nasdaq; BX; NYSE; NYSE Arca; and IEX.

Respondent agrees to pay the monetary sanction in accordance with its executed payment form.

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

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal 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 Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

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

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

### III.

#### OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx 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 Respondent; and
- C. If accepted:
  - 1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the Respondent;
  - 2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3; and
  - 3. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by Phlx, nor does it reflect the views of Phlx 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 the firm 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.

January 4, 2023  
Date

Wedbush Securities Inc.  
Respondent

By: *Andrew Druch* \_\_\_\_\_

Name: Andrew Druch

Title: General Counsel

Reviewed by:

*Patrick M. Smith, Esq.* \_\_\_\_\_

*Patrick Smith, Esq.*  
Counsel for Respondent  
Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, CA 90067-3012

Accepted by Phlx:

January 19, 2023  
Date

*Gary E. Jackson* \_\_\_\_\_

Senior Counsel  
FINRA Department of Enforcement

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