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FOUNDED 1866

September 9, 2016

By Email

Elizabeth Murphy, Esq.
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of SG Americas Securities, LLC, as successor to
Newedge USA, LLC*

Dear Ms. Murphy:

We are writing on behalf of SG Americas Securities, LLC (“SGAS”) in connection with the anticipated settlement with the Commodity Futures Trading Commission (“CFTC”) relating to *In the Matter of SG Americas Securities, LLC, as successor to Newedge USA, LLC*. The settlement would result in an Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act (“CEA”), Making Findings, and Imposing Remedial Sanctions (the “Order”) against SGAS.

On behalf of SGAS, we hereby respectfully request a waiver of any disqualification that will arise pursuant to Rule 506 of Regulation D under the Securities Act of 1933 (the “Securities Act”) with respect to SGAS or any of its affiliates as a result of the entry of the Order.

BACKGROUND

SGAS has engaged in settlement discussions with the CFTC’s Division of Enforcement in connection with the above-captioned proceeding. As a result of these discussions, SGAS has submitted an Offer of Settlement that will agree to the Order, which will be presented by the staff to the CFTC.

SGAS is a broker-dealer registered with the Securities and Exchange Commission (“SEC”) and a registered futures commission merchant with the CFTC. SGAS is a wholly-owned indirect subsidiary of Société Générale S.A. (“SG”), a French multinational banking and financial services company headquartered in Paris.

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The Order will find that Newedge USA, LLC (“Newedge”) (now known as SGAS¹) executed and confirmed the execution of, and reported to the Chicago Mercantile Exchange (“CME”) and Chicago Board of Trade (“CBOT”), numerous exchange of futures for physical transactions (“EFPs”) in agricultural and soft commodities for and on behalf of its clients that are, are of the character of, or are commonly known as non-competitive wash sales. The trades were for the same contract, quantity and same or similar price with the buyer and seller for each EFP under the same common control and ownership. The CFTC found that the trades were executed under circumstances where certain Newedge account representatives either knew that clients desired to net out futures positions across commonly owned and controlled accounts through the use of EFPs, or else failed to inquire why clients were routinely on both sides of the EFPs.

The Order will find that (1) Newedge accepted, executed and confirmed the execution of wash EFP transactions on behalf of customers and, because the EFPs were not done in accordance with the written non-competitive trade rules of the CME and CBOT and were therefore not bona fide EFPs, caused EFPs to be reported, registered or recorded that were not true and bona fide prices in violation of Section 4c(a) of the CEA, (2) executed noncompetitive trades for customers in violation of CFTC Regulation 1.38(a), and (3) failed to supervise diligently its employees’ handling of the transactions at issue and failed to have adequate policies and procedures designed to detect and deter the execution of wash EFP trades, in violation of CFTC Regulation 166.3. Newedge executed, confirmed, and reported the EFPs but was not a party to the transactions at issue.

SGAS has submitted an Offer of Settlement (the “Offer”) that will be presented to the CFTC. Without admitting or denying the findings or conclusions in the Order, SGAS has agreed to consent to the issuance of the Order and to (1) cease and desist from violating Section 4c(a) of the CEA, 7 U.S.C. § 6c(a) (2012) and Regulations 1.38 and 166.3, 17 C.F.R. §§ 1.38 and 166.3 (2015), (2) pay a civil money penalty in the amount of \$750,000, and (3) comply with certain undertakings enumerated in the Order.

DISCUSSION

SGAS understands that the entry of the Order will disqualify it, affiliated entities, and certain other issuers from relying on Rule 506 of Regulation D under the Securities Act. SGAS is concerned that if it or its affiliates are deemed to be an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of an issuer, or promoter of securities, or if it is deemed to be acting in any other capacity described in Rule 506 for purposes of Rule 506(d)(1), then SGAS, its affiliates, and third parties that engage SGAS and its affiliates to act in

¹ On January 2, 2015, SGAS and Newedge merged, with SGAS being the surviving entity.

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(or otherwise involve SGAS in) one of the listed capacities in connection with their securities offerings would be prohibited from relying on Rule 506.

The Commission has the authority to waive this disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances.² SGAS requests that the Commission waive any disqualifying effects that the Order will have under Rule 506 as a result of its entry as to SGAS, on the following grounds:

1. *The Violations in the Order Arose out of the Sale of Futures Instruments*

Although the conduct in the Order did not involve the offer or sale of securities, it did involve the sale of futures instruments. Accordingly, the violations in the Order are solely violations of the CEA and the rules thereunder, not the Securities Act or the rules thereunder. Specifically, as described in the Order, Newedge caused prices of EFPs to be reported, registered or recorded that were not true and bona fide prices in violation of Section 4c(a) of the CEA and CFTC Regulation 1.38(a). Newedge confirmed the execution of wash EFP transactions for clients when the buyer and the seller for each EFP was under common control or ownership. A wash EFP is a non-bona fide transaction in violation of Regulation 1.38(a), thereby making the prices reported for such transactions also non-bona fide, in violation of Section 4c(a). Newedge also failed to supervise diligently its employees' handling of the transactions at issue and failed to have adequate policies and procedures designed to detect and deter the execution of wash EFP trades, in violation of CFTC Regulation 166.3. Specifically, Newedge lacked adequate internal controls and procedures to verify the validity of EFPs before they were cleared and reported to the CME and CBOT. Newedge also lacked adequate procedures and surveillance systems to identify trades incorrectly or improperly designated as EFPs. Finally, Newedge failed to provide adequate training to its employees who participated in the execution or processing of EFPs regarding the requirements for bona fide EFPs. As a result, Newedge failed to detect numerous wash EFPs between commonly owned and controlled client accounts.

2. *Although Intent is an Element of a Wash Trade Violation, the Violations Do Not Involve the Offer and Sale of Securities.*

In its policy statement on *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D* (the "Rule 506 Policy Statement"),³ the Division states that it will consider "whether the conduct involved a criminal or scienter based violation, as opposed to a civil or administrative non-scienter based violation. Where there is a criminal conviction or a

² See Rule 506(d)(2)(i).

³ See Division of Corporation Finance, *Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D*, available at: <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>.

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scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater.”

The violations outlined in the Order do require a finding of intent. As the Order states, “the liability of a participant in the wash sale requires a showing that the participant knew, at the time he chose to participate in the transaction, that the transaction was designed to achieve a wash result in a manner that negated risk.” With respect to SGAS in particular, “[a]n account executive’s intent to knowingly participate in a wash sale may be inferred from his failure to undertake a reasonable inquiry in the face of facts suggesting his customer intended to avoid a bona fide market position.” On that basis, the Order concludes that Newedge “knowingly executed and confirmed the execution of wash EFP transactions for clients in agricultural and soft commodities where the buyer and seller for each EFP was under the same common control and/or ownership.” Hence, the violations outlined in the Order are administrative scienter-based violations. Importantly, however, these violations do not involve the offer and sale of securities, and therefore, consistent with the Rule 506 Policy Statement, should not subject SGAS to a “significantly greater” burden to show good cause that a waiver is justified.

3. *SGAS Has Taken and Will Take Remedial Steps*

SGAS has taken substantial remedial steps to address the conduct at issue in the Order, and it will take additional remedial steps to comply with the undertakings in the Order.

In 2014, after the CFTC’s Division of Enforcement began its investigation, Newedge implemented the following new policies and procedures intended to detect and prevent the execution of unlawful wash EFPs:

- Established the SGAS trade monitoring team (“TMT”), which monitors trade data, reports, and trading activities to ensure compliance with regulatory requirements.
- Required that customers verify that their EFP transactions are in compliance with exchange rules.⁴
- Established additional surveillance reports used by the TMT to detect potential violations, including:
 - a daily report used to ensure that the parties trading specific instruments in agricultural products can deliver or take delivery of the physical products;

⁴ EFP transactions between accounts with the same owner can be compliant with exchange rules if the client confirms that the accounts have different controllers; hence, this requirement requests customers to confirm that fact, if applicable.

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- a daily wash trade report to highlight potential wash trades; and
- self-match prevention technology, which detects potentially problematic trades, including wash trades.

Second, SGAS, on its own initiative, has developed stronger and additional internal controls, processes, and supervisory measures to detect and deter wash EFP transactions, including, but not limited to:

- Developed and maintained detailed compliance and procedural manuals that provide the regulatory framework for conducting its commodities-related business, including sections specific to requirements applicable to EFP transactions. All SGAS traders, brokers, and employees are expected to be familiar with and conduct their trading activities in accordance with SGAS's compliance manuals.
- Conducted regular compliance trainings for relevant employees, including its traders and brokers. At a minimum, SGAS provides an annual compliance training for all personnel at its trading and sales desks that discusses all relevant regulatory requirements applicable to its commodities business. In addition, SGAS provides "hot issue" *ad hoc* trainings on regulatory matters of significant importance, including specific *ad hoc* trainings on EFP requirements and the prohibition on wash trades.

Third, SGAS has also agreed to settlement terms requiring the following:

- SGAS will continue to implement and improve its internal controls and procedures in a manner reasonably designed to detect potential wash EFP transactions submitted by clients. Specifically, SGAS has undertaken to implement policies, procedures and training programs reasonably designed to prevent the execution, clearing and reporting to an exchange of non-bona fide EFPs.
- SGAS shall submit a report to the CFTC, through the Division of Enforcement, within 180 days, explaining how it complied with the undertakings described above. The report shall contain a certification from a representative of SGAS's Executive Management that SGAS has complied with the undertakings detailed above and that it has established policies, procedures, and controls to satisfy the undertakings described above.

SGAS thus has taken and will continue to take concrete steps to remediate the conduct at issue in the Order and to enhance SGAS's overall compliance program going forward.

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Accordingly, it is not necessary to disqualify SGAS and its affiliates from relying on Rule 506 in conducting private offerings.

4. *The Order Predates SGAS's Merger with Newedge*

The conduct in the Order relates to the period from June 2010 through at least January 2014. Such conduct predates SGAS's merger with Newedge in January 2015 and did not involve SGAS employees.

5. *No Individuals Associated with Newedge Were Charged With Any Violations in Connection with the Order*

The CFTC has not charged any individuals⁵ associated with Newedge with violations in connection with the conduct underlying the Order, and we understand that no such charges are forthcoming. The focus of the Order is on Newedge's supervisory failures, which include the failure to "adequately train its employees involved in the execution, confirmation and reporting of EFPs in understanding the requirements for executing bona fide EFPs," and not on any one particular individual.

6. *Disqualification Would Have a Material and Disproportionate Impact on SGAS, its Affiliates and its Clients*

SGAS currently acts, and in the future desires to act, as a placement agent for (1) private placements of securities offered by its affiliates, including its parent company, and (2) third-party issuers (collectively, the "Private Placements"). The Private Placements may be offered and sold in reliance on the exemptions under Rule 506 or Section 4(a)(2) of the Securities Act ("Section 4(a)(2)"). SGAS's disqualification from participating in transactions conducted pursuant to Rule 506 of Regulation D would have a material adverse impact on SGAS, its affiliates and corporate finance clients that have retained, or would like to retain, SGAS in connection with offerings, as well as on the investors in those offerings.

In 2014 and 2015, SGAS served as placement agent for corporate finance clients in private debt and equity offerings that raised \$5.6 billion from approximately 147 institutional investors. These offerings were offered in reliance on Section 4(a)(2) of the Securities Act. For its work on these offerings, SGAS earned \$10.7 million in fees, which comprised approximately 11.9% of fees earned by SGAS's capital markets business in 2014 and 2015. Currently, SGAS is

⁵ Although the Order states, in several places, "Newedge, acting through its agents, officers and employees...", no executive officers, as defined in Securities Act Rule 405 and Exchange Act Rule 3b-7, of Newedge were involved in the conduct at issue in the Order. This descriptive phrase references the fact that a legal entity acts through its employees, officers and directors and other human beings.

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working on three private placements and expects to move forward on five private placements in the next several months.⁶

Without a waiver, the Order would cause SGAS to be subject to the Rule 506 disqualification for a period of ten years. Although SGAS has generally used Section 4(a)(2) for its offerings, market practice favors the use, or at least availability, of Rule 506 because it provides issuers and market participants with the benefit of a safe harbor. Even when clients utilize Section 4(a)(2), they want to ensure that SGAS can assist them in any offering they decide to make, including a Rule 506 offering, and/or that they can rely on Rule 506 in the event that Section 4(a)(2) becomes unavailable for any variety of reasons.⁷ Therefore, if SGAS is disqualified from conducting offerings pursuant to Rule 506, it may not be able to compete effectively against its peer firms in meeting the needs of its clients.

For SGAS, serving clients means being able to deliver financing structures tailored to each client's unique facts and circumstances and needs. If SGAS is not granted a waiver, any SGAS client or potential client that wanted the possibility to raise capital in the Rule 506 market would have to choose another investment bank for assistance in conducting its offering. Not only would SGAS thereby lose Private Placement opportunities and related fees – as well as the opportunity to build or strengthen a relationship with a client that could lead to other assignments – it is also possible that some employees of SGAS who participate in Private Placements would seek employment elsewhere so they can continue to offer clients the full suite of fundraising services (including Rule 506 offerings), and current SGAS clients could leave with them.

7. *The Violations Are Not Criminal.*

The violations in the Order are not criminal in nature.

8. *Disclosure of Written Description of Order to Investors*

If this requested waiver is granted, SGAS agrees to provide written disclosure to investors describing the nature of the Order in any offering relying on an exemption under Rule 506 of Regulation D, for the time period described in Rule 506(d)(1).

⁶ SGAS expects such private placements to be offered in reliance on Section 4(a)(2) of the Securities Act.

⁷ For example, general solicitation is not permitted for Section 4(a)(2) offerings, whereas it is permitted for Rule 506(c) offerings. In the event an offering attracts publicity for any reason, thereby putting into question whether the offering satisfies Section 4(a)(2), the issuer would want the option of being able to rely on Rule 506(c) for its offering, assuming, of course, that the offering can satisfy all of the requirements of Rule 506(c).

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REQUEST FOR WAIVER

SGAS will pay \$750,000 in civil penalties, as required by the Order. Under the circumstances, SGAS has shown good cause that relief should be granted.

Accordingly, we respectfully urge the Commission, pursuant to Rule 506(d)(2)(ii), to waive the disqualification provisions in Rule 506 under the Securities Act to the extent they may be applicable to SGAS and its affiliates as a result of the entry of the Order.⁸

We appreciate your consideration of this request. Please feel free to contact me with any questions.

Very truly yours,

/s/ Thomas J. Kim

Thomas J. Kim

⁸ We note in support of this request that the Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances. *See, e.g., In the Matter of JPMorgan Chase Bank, N.A.*, Securities Act of 1933 Release No. 9993 (pub. avail. Dec. 18, 2015); *In the Matter of Barclays PLC, Barclays Bank PLC and Barclays Capital Inc.*, Securities Act of 1933 Release No. 9786 (pub. avail. May 20, 2015).