

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73652 / November 20, 2014**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3971 / November 20, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15913**

**In the Matter of**

**Wedbush Securities Inc.,  
Jeffrey Bell, and Christina  
Fillhart,**

**Respondents.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTIONS 15(b) AND  
21C OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND SECTION 203(e) OF  
THE INVESTMENT ADVISERS ACT OF  
1940 AS TO WEDBUSH SECURITIES  
INC.**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) as to Wedbush Securities Inc. (“Wedbush”).<sup>1</sup>

**II.**

Respondent Wedbush has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Annex A attached hereto and acknowledges that its conduct as set forth in Annex A violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 as to Wedbush Securities Inc. (“Order”), as set forth below.

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<sup>1</sup> On June 6, 2014, the Commission instituted public administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act against Wedbush and co-respondents Jeffrey Bell and Christina Fillhart.

### III.

On the basis of this Order and Wedbush's Offer, the Commission finds<sup>2</sup> that:

#### Summary

1. These proceedings involve the market access business of Wedbush, one of the largest volume market access providers in the United States. From July 2011 until at least January 2013 (the "relevant period"), Wedbush served as the gateway to U.S. markets for dozens of trading firms, including foreign, domestic, registered, and unregistered firms, as well as thousands of their traders. Most of these firms and their traders engaged in trading activity that did not flow through any Wedbush systems before reaching exchanges and other trading venues in the U.S.

2. During the relevant period, Wedbush failed to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the risks associated with its market access business, as required by Exchange Act Rule 15c3-5 (the "Market Access Rule" or "Rule").<sup>3</sup> Violations of the Market Access Rule pose significant risks to the orderly functioning of the U.S. securities markets. Wedbush allowed thousands of essentially anonymous foreign traders to send orders directly to U.S. trading venues to trade billions of shares every month. Wedbush enjoyed increased trading commissions and fees generated by its high-volume market access customers from its risky market access business.

3. Wedbush failed to adopt and implement risk management controls that were reasonably designed to ensure compliance with applicable regulatory requirements—such as those for preventing naked short sales, wash trades, manipulative layering and money laundering. Wedbush's failure to adopt and implement such controls came after communications by the Commission's staff through an examination deficiency letter and in face-to-face meetings regarding Wedbush's compliance procedures whereby the staff informed Wedbush of compliance shortcomings and significant compliance concerns, particularly the access provided to unknown overseas traders. By nonetheless failing to adopt and implement the necessary risk management controls, Wedbush willfully violated the Market Access Rule.

4. Wedbush's lack of reasonably-designed market access controls and procedures resulted in Wedbush violating other regulatory requirements, including Regulations SHO and NMS. Wedbush also failed to preserve certain written communications with customers pertaining to its business as required by Exchange Act Rule 17a-4, including communications containing trading instructions relating to brokerage orders submitted directly by Wedbush's market access customers. In connection with its market access business, Wedbush also failed to file suspicious activity reports pursuant to anti-money laundering ("AML") requirements in violation of Exchange Act Rule 17a-8.

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<sup>2</sup> The findings herein are made pursuant to Wedbush's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>3</sup> 17 C.F.R. § 240.15c3-5.

## **Respondents**

5. Wedbush Securities Inc. is a California corporation with its headquarters in Los Angeles, California. The firm was founded in 1955 and registered with the NASD as a broker-dealer in 1955, with the Commission as a broker-dealer in 1966 and as an investment adviser in 1970. Wedbush is a wholly-owned subsidiary of Wedbush, Inc., a privately-held company. As of December 31, 2012, Wedbush had 79 branch offices and 844 employees. During the relevant period, Wedbush was consistently ranked as one of the five largest firms by trading volume on NASDAQ.

6. During the relevant period, Jeffrey Bell was Executive Vice President of the Correspondent Services Division of Wedbush, reporting to the firm's President, and was an associated person of Wedbush. Bell also was President of Lime Brokerage LLC ("Lime"), another wholly-owned subsidiary of Wedbush, Inc. Bell, age 40, is a resident of Austin, Texas, and holds Series 7 and 24 licenses.

7. Christina Fillhart is a Senior Vice President in the Correspondent Services Division of Wedbush and is an associated person of Wedbush. Fillhart reported to Bell until late 2012, when she began reporting to one of Wedbush's Co-Chief Compliance Officers. Fillhart, age 56, is a resident of Covina, California, and holds Series 7, 24, 27, 53, and 63 licenses.

## **The Market Access Rule**

8. The Commission adopted the Market Access Rule in November 2010 to require that broker-dealers with market access "appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system." *Risk Management Controls for Brokers or Dealers with Market Access*, 75 Fed. Reg. 69792, 69792 (Nov. 15, 2010) (Final Rule Release).

9. Section (b) of the Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange through the use of its market participant identifier ("MPID") or otherwise, to "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks" of its market access business.

10. Section (c) of the Market Access Rule identifies specific required elements of a broker-dealer's system of risk management controls and supervisory procedures relating to market access. Subsection (c)(1) addresses financial controls and procedures and subsection (c)(2) addresses regulatory controls and procedures. Under subsection (c)(2), a broker-dealer must have controls and procedures that are reasonably designed to ensure compliance with all regulatory requirements, including controls to prevent the entry of orders that do not comply with all regulatory requirements that must be satisfied on a pre-order entry basis and controls to restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker-dealer with market access.

11. Section (d) of the Market Access Rule requires the risk management controls and supervisory procedures to be under the "direct and exclusive control" of the broker-dealer with market access. Subsection (d)(1) contains an exception to the direct and exclusive control

requirement that applies when a broker-dealer with market access reasonably allocates, by written contract, after a thorough due diligence review, control over specific regulatory risk management controls and supervisory procedures to a broker-dealer customer who is registered with an exchange in the United States where the broker or dealer with market access has a reasonable basis for determining that such broker-dealer customer, based on its position in the transaction and relationship with an ultimate customer, has better access to the ultimate customer and its trading information such that it can more effectively implement the specified controls or procedures.

12. Section (e) of the Market Access Rule requires a broker-dealer with market access to establish, document, and maintain a system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures relating to market access. Subsection (e)(1) requires the broker-dealer to conduct and document a review of its market access business at least annually in accordance with written procedures, and subsection (e)(2) requires the CEO to certify annually that the broker-dealer conducted the review and is in compliance with the Rule.

### **Wedbush's Market Access Business**

13. Wedbush's primary market access business is part of the Correspondent Services Division, which originally handled only traditional clearing operations for introducing broker-dealers, otherwise known as "correspondent" firms. Wedbush began providing "sponsored" market access to customer firms in 2004, which allowed customer firms and their traders to send orders that bypassed Wedbush's trading systems and were routed directly to exchanges and other trading venues under a Wedbush MPID. Sponsored access customers were able to send orders that bypassed Wedbush's systems by using online trading platforms or software programs that the customer either owned directly or leased from a third-party platform provider, referred to as a service bureau.

14. During the relevant period, Wedbush had about 50 sponsored access customers that generated average monthly trading volume of 10 billion shares. Several of Wedbush's sponsored access customer firms had hundreds or thousands of authorized traders each. Wedbush's correspondent services business was the most profitable operation of Wedbush, Inc. Bell and Fillhart each received bonus compensation based in part on the profitability of the Correspondent Services Division, which depended largely on the trading volumes of Wedbush's market access customers. During the relevant period, Bell received salary of \$344,000 and bonus compensation of \$310,000 and Fillhart received salary of \$150,000 and bonus compensation of \$105,000.

15. In June 2011, Wedbush acquired Lime Brokerage LLC, a provider of trading technology platforms. After Wedbush acquired Lime, about 20% of Wedbush's sponsored access customers began using the Lime platform. The other 80% continued to use sponsored access either through their own proprietary trading platform or through a third-party platform that the customer leased from a service bureau. As a result, during the relevant period, the vast majority of orders from Wedbush's sponsored access customers did not flow through Wedbush's own risk management systems.

16. Wedbush's primary risk management controls and supervisory procedures relating to market access were described in Chapter 31 of the firm's written supervisory procedures ("WSPs"), titled "Sponsored Access." On July 14, 2011, the day most provisions of the Market Access Rule took effect, Wedbush updated Chapter 31 to cite certain provisions of the Rule.

17. Bell and Fillhart, along with one other senior Wedbush employee in the Correspondent Services Division, had the primary responsibility for preparing and adopting Wedbush's controls and procedures relating to market access. Bell and Fillhart had authority to adopt and revise the firm's controls and procedures relating to market access, including the WSPs, without approval of Wedbush's President or Co-Chief Compliance Officers.

### **Wedbush Knew Of Compliance Issues For Its Sponsored Access Trading**

18. Prior to the effective date of Rule 15c3-5, Wedbush received a number of indications that its sponsored access trading business posed particular regulatory and compliance risks. In 2009 and 2010, just before the relevant period, two of Wedbush's sponsored access customer firms extended their market access to a Latvian trader who used that access to conduct profitable trading as part of a widespread account intrusion and market manipulation scheme. The Commission obtained a judgment by default against the Latvian trader in connection with the scheme after learning the trader's identity from Fillhart in 2011. *See SEC v. Nagaicevs*, N.D. Cal. Case No. 12-CV-00413-JST (Order Granting Motion for Default Judgment, dated July 12, 2013; Order of Judgment and Equitable and Other Relief Against Defendant Igors Nagaicevs, dated July 18, 2013).

19. The Commission also imposed cease-and-desist orders, civil monetary penalties, and other relief against one of the Wedbush customer firms for acting as an unregistered broker in extending market access to the Latvian trader, and also obtained relief against the firm's principals. *See In the Matter of KM Capital Management, LLC, et al.*, Admin. Proc. File No. 3-14720 (Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to Yisroel M. Wachs, dated Sept. 19, 2012; Initial Decision as to KM Capital Management, LLC and Joshua A. Klein, dated Nov. 28, 2012; Notice that Initial Decision Has Become Final, dated Oct. 17, 2013).

20. Wedbush was well aware of the requirements, objectives, and importance of Rule 15c3-5. During the public comment period for the then-proposed Rule 15c3-5, Bell submitted a comment letter to the Commission on behalf of Wedbush on March 31, 2010. Bell also submitted a comment letter to the Commission on behalf of Wedbush on February 23, 2009 addressing a Nasdaq proposed rule change relating to sponsored market access, which was later approved by the Commission. Although proposing certain changes to the Nasdaq proposed rule, Bell and Wedbush stated in the 2009 comment letter that sponsoring non-broker-dealer customers "requires the highest level of due diligence, oversight and controls. In this case, the sponsoring member is also the broker-dealer of record and would be accountable for all the responsibilities as such." Despite this acknowledgement, one of Wedbush's largest sponsored access customers was not a broker-dealer registered in the United States, and Wedbush failed to engage in the "highest level of due diligence, oversight and controls."

21. On May 17, 2011, Commission staff from the Office of Compliance Inspections and Examinations ("OCIE") sent an Examination Deficiency Letter to Wedbush, which was addressed to Bell. That letter advised Wedbush that the staff had identified deficient Wedbush controls relating to short sales, in violation of Regulation SHO, due in part to an excessive reliance upon a non-broker-dealer sponsored access client to locate shares before placing a short sale order. The Deficiency Letter also identified problems with internal controls over a third-party order management system. The Letter also stated that Wedbush had failed to respond promptly to compliance issues when they arose and there were weaknesses in its anti-money-laundering

controls. This letter put Wedbush on notice that it was relying on inadequate regulatory controls that were outside of its direct and exclusive control.

22. On July 5, 2011, Wedbush representatives, including Bell and Fillhart, met with representatives of OCIE to discuss the impending effectiveness of the final Rule 15c3-5. During that meeting, the Commission's staff expressed concerns about Wedbush's largest sponsored non-broker-dealer client and the need to identify the ultimate traders. Wedbush's presentation to the staff cited the Market Access Rule requirements relating to allocating compliance responsibilities to sponsored access broker-dealer clients and maintaining "direct and exclusive control" of risk settings in trading platforms.

### **Market Access Through Third-Party Trading Platforms**

23. Section (d) of the Market Access Rule requires Wedbush to maintain exclusive control over the risk settings in the trading platforms that its customers use to access the markets, including both Wedbush's own Lime platform and the non-Wedbush trading platforms that 80% of Wedbush's customers used. As described below, for many customers that used non-Wedbush trading platforms, Wedbush's control was not exclusive because it allowed customers to have access to determine and make changes to risk settings in the trading platforms.

24. Wedbush did not directly set or monitor regulatory risk settings in the third-party or client-proprietary trading platforms that 80% of Wedbush's customers used. Customers had access to set and revise the risk settings, and could disable risk settings intended to prevent violations of specific regulatory requirements, such as illegal short sales, wash trades, and violations of Regulation NMS. In addition to Wedbush not having exclusive control over the settings, Wedbush's customers, rather than Wedbush, leased the trading platforms from third parties and Wedbush had no contractual relationship with the platform providers.

25. Wedbush employees in the Correspondent Services Division received access from platform providers to view risk settings and trading activity in the platforms, but Bell and Fillhart knew that Wedbush did not have exclusive control over the settings.

26. Shortly before most provisions of the Market Access Rule took effect, Wedbush obtained email statements from many of the trading platform providers that the risk management settings in the platforms were under the direct and exclusive control of Wedbush. In reality, Wedbush did not have exclusive control of the risk management settings because Wedbush continued allowing sponsored access customers to determine and make changes to the risk settings in the platforms, and Wedbush had no contractual relationship with the platform providers. These statements also were not part of any legally enforceable contract; Wedbush had no contractual relationship with the platform providers.

27. Wedbush's WSPs stated that each new sponsored access customer would perform an initial "risk demonstration" to show Wedbush the customer's trading platform settings for certain financial and regulatory risk controls. Wedbush had a checklist for the risk demonstration that included settings to prevent clearly erroneous trades, wash trades, illegal short

sales,<sup>4</sup> and, unless authorized by Wedbush, intermarket sweep orders (“ISOs”).<sup>5</sup> That Wedbush needed the customer to show the settings to Wedbush demonstrates that Wedbush did not have “direct and exclusive control” over the risk settings in the platforms, as required by Rule 15c3-5(d).

28. In June 2012, platform providers, rather than sponsored access customers, provided Wedbush demonstrations of risk settings in their trading platforms. During a demonstration, the provider would submit test orders and confirm that certain risk settings were in place at the time of the demonstration.

29. Wedbush did not receive demonstrations of the actual risk settings in effect for particular sponsored access customers, and Wedbush did not have any physical ability to prevent customers from subsequently changing the settings shown during the platform provider’s demonstration. Wedbush also did not maintain records of the risk settings in the platforms so that it could determine whether any settings had been changed without its consent.

30. Customers could, and sometimes did, change the risk settings without Wedbush’s knowledge or consent. For example, as discussed below, Fillhart learned that on numerous occasions a risk setting to prevent illegal short sales failed to prevent violations of Regulation SHO because the wrong list of securities that were easy to borrow was loaded into the customer’s third-party trading platform. Fillhart also learned that a customer repeatedly circumvented a risk setting that was designed to prevent the use of ISOs. For other risk settings, such as controls to prevent wash trades, Wedbush often did not require customers or platform providers to activate the settings.

#### **Attempts to Allocate Responsibility for Regulatory Controls and Procedures**

31. The Final Rule Release for the Market Access Rule stated that Section 15c3-5(d) “is designed to eliminate the practice . . . whereby the broker-dealer providing market access relies on its customer, a third party service provider, or others, to establish and maintain the applicable risk controls.” *See* 75 Fed. Reg. at 69804. The Final Rule Release further cautioned that “the Commission continues to be concerned about circumstances where broker-dealers providing market access simply rely on assurances from their customers that appropriate risk controls are in place. . . . Accordingly, the Commission emphasizes that in any permitted allocation arrangement, the broker-dealer providing market access may not merely rely on another broker-dealer’s attestation that it has implemented appropriate controls or procedures.” *Id.* at 69808.

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<sup>4</sup> Rule 203(b)(1) of Regulation SHO prohibits broker-dealers from accepting or effecting a short sale order unless the broker-dealer has borrowed the security or entered into an arrangement to borrow the security, or has reasonable grounds to believe that the security can be timely borrowed, and has documented its compliance with Rule 203(b)(1).

<sup>5</sup> Rule 611(c) of Regulation NMS requires the broker-dealer responsible for routing an ISO to take reasonable steps to establish that the order meets the requirements of Rule 600(b)(30) of Regulation NMS, which requires the broker-dealer routing the ISO to route simultaneously additional orders, as necessary, to execute against the full size of all better-priced protected quotations.

32. After the Market Access Rule took effect, Wedbush simply relied on attestations in the exact manner that the Final Rule Release said was improper. Wedbush attempted to assign to other broker-dealers the responsibility for regulatory risk management controls and supervisory procedures for many of its sponsored access customers. Wedbush employees documented purported agreements to assign responsibilities to other broker-dealers, but as described below, despite the plain language of Rule 15c3-5(d) and the staff's statements on July 5, 2011, Wedbush failed to conduct the required "thorough due diligence review" when purporting to allocate responsibility to another broker-dealer and continued to simply rely on the other broker-dealer's attestation that it had implemented appropriate controls and procedures.

33. For some customers, Wedbush entered into an allocation agreement with a registered introducing broker-dealer. For other customers, Wedbush entered into an allocation agreement directly with the sponsored access customer itself, if it was a registered broker-dealer trading its own capital on a proprietary basis. Some of these sponsored access customers used trading platforms that they themselves owned, either directly or through a corporate affiliate that they controlled. As a result, Wedbush often relied on a broker-dealer customer to monitor its own trading.

34. All of Wedbush's purported allocation agreements were based on the same form, which Bell approved. The agreements did not specify any particular controls or procedures that Wedbush purported to be allocating. Even though Wedbush, as the party with market access, purportedly was attempting to allocate responsibility for controls or procedures to another broker-dealer, the agreements mistakenly stated that the other broker-dealer, rather than Wedbush, had "allocatable regulatory responsibilities as defined within SEC Rule 15c3-5." As a result, it was not even clear from the documents themselves from and to which broker-dealer the controls or procedures purportedly were being allocated.

35. Bell knew or should have known that Wedbush did not conduct the required due diligence reviews of the other broker-dealers in connection with its attempts to allocate responsibilities for market access controls and procedures, and that Wedbush also did not conduct later reviews to determine whether the other broker-dealers were adequately carrying out the responsibilities purportedly allocated. The agreements simply contained a statement by the introducing broker-dealer or registered customer firm that its regulatory risk management controls and supervisory procedures were reasonably designed to ensure compliance with all regulatory requirements.

36. Better access to the ultimate customer was discussed in the Final Rule Release as the reason why control over certain regulatory controls could be allocated after due diligence. Yet Wedbush did not have any policies or procedures for determining whether a broker-dealer to which it claimed to have assigned responsibilities had better access than Wedbush to ultimate customers such that the other broker-dealer could more effectively implement the risk management controls and supervisory procedures relating to market access.

### **Regulatory Requirements That Must Be Satisfied On a Pre-Order Entry Basis**

37. Subsection (c)(2)(i) of the Market Access Rule required Wedbush to have risk management controls and supervisory procedures that were reasonably designed to prevent the entry of orders that do not comply with all regulatory requirements that must be satisfied on a pre-order entry basis. The Final Rule Release for the Market Access Rule specifically identified Regulations



SHO and NMS as examples of regulatory requirements that must be satisfied on a pre-order entry basis, and with which a broker-dealer's controls and procedures must ensure compliance. *See* 75 Fed. Reg. at 69803. As described below, Wedbush's risk management controls and supervisory procedures were not reasonably designed to satisfy these pre-trade regulatory requirements and, in fact, did not prevent Wedbush customers from entering numerous orders that violated Regulations SHO and NMS.

38. Wedbush was responsible for ensuring that all short-sale orders submitted by its sponsored access customers complied with Regulation SHO. Among other things, Regulation SHO required Wedbush, prior to accepting or effecting a short sale order, to borrow the security or enter into an agreement to borrow the security, or have reasonable grounds to believe that the security could be timely borrowed (generally known as the "locate" requirement). Absent countervailing factors, "easy-to-borrow" lists may provide "reasonable grounds" for a broker-dealer to believe that the security sold short is available for borrowing without directly contacting the source of the borrowed securities (known as "easy-to-borrow securities"). Thus, for instance, if a broker-dealer seeking to rely on the list knows or should know that there are concerns regarding the list, it would not be reasonable for the broker-dealer to rely on the list. As an example, the Commission has stated that repeated failures to deliver in securities included on an "easy-to-borrow" list would indicate that the broker-dealer's reliance on such a list did not satisfy the "reasonable grounds" standard of Rule 203. *See Short Sales*, 69 Fed. Reg. 48008, 48014 (Aug. 6, 2004).

39. Wedbush's WSPs stated that the firm sometimes relied on sponsored access customers to meet the short-sale requirements of Regulation SHO. Wedbush maintained a list of easy-to-borrow securities, but Wedbush relied on sponsored access customers or their platform providers to load that list into third-party trading platforms rather than taking direct steps to make sure that customers were using the correct list. Maintaining up-to-date lists in the trading platforms was a key step in the control process because the platforms relied on the lists to determine whether Regulation SHO had been satisfied before routing a short-sale order for execution.

40. Wedbush's procedures asserted that Wedbush allowed customers to submit short-sale orders for securities on the easy-to-borrow list and that it required customers to otherwise locate shares to borrow before submitting short-sale orders for securities not on the easy-to-borrow list. However, if a customer or platform provider failed to load the correct easy-to-borrow list, Wedbush had no controls or procedures to prevent the customer from submitting a short-sale order for a security that was not easy-to-borrow without first obtaining a locate.

41. On three occasions between July 2011 and November 2012, Fillhart learned that a customer or platform provider loaded the wrong easy-to-borrow list, which resulted in Wedbush customers submitting short-sale orders for securities that were not easy to borrow without first having located shares that it had reasonable grounds to believe could be timely borrowed as required by Regulation SHO. Bell and Fillhart knew that similar incidents had occurred numerous times before July 2011, based on the May 2011 OCIE Deficiency Letter and face-to-face meetings that Bell and Fillhart attended with Commission staff. The incidents demonstrated that Wedbush did not have "direct and exclusive control" over these risk settings in the trading platforms as required by Rule 15c3-5(d) and did not have controls reasonably designed to ensure compliance with all regulatory requirements that must be satisfied on a pre-order entry basis.

42. Wedbush was responsible for ensuring that all orders marked as ISOs by its sponsored access customers complied with Regulation NMS, which requires the broker-dealer

responsible for routing an ISO to route simultaneously additional orders, as necessary, to execute against the full size of all better-priced protected quotations. Sending the simultaneous orders to sweep the market of better-priced protected quotations is essential to ensuring that the ISO order type is not misused and that other market participants willing to trade at more favorable prices do not have their orders bypassed.

43. Wedbush's WSPs asserted that in order to comply with Regulation NMS, Wedbush did not permit a customer to use ISOs unless the customer swept the market of all better-priced protected quotations. However, Wedbush did not have any controls or procedures reasonably designed to ensure that its customers complied with this regulatory requirement.

44. As a result of Wedbush's lack of "direct and exclusive control" over risk settings designed to ensure ISO compliance, and its failure to have controls and procedures reasonably designed to ensure compliance with the ISO requirements of Regulation NMS, at least one Wedbush customer submitted ISOs without Wedbush's prior knowledge and without a broker-dealer acting to ensure compliance with the relevant regulatory requirements. In April 2011, Fillhart learned from an exchange that one of Wedbush's largest sponsored access customers was submitting ISOs even though Wedbush did not authorize the customer to submit ISOs and even though Wedbush had not allocated responsibility to another registered broker-dealer to ensure that ISOs submitted by the customer complied with Regulation NMS. Without Wedbush's knowledge, the customer and its third-party platform provider had enabled an order route that was configured to allow ISOs, even though the platform provider had previously informed Wedbush that the customer was not able to submit ISOs. This also demonstrated that it was unreasonable for Wedbush to rely on the written attestations that it received from the platform providers, as described above.

45. Because Wedbush had not authorized the customer to submit ISOs, Wedbush had not taken any steps to ensure that the ISOs complied with Regulation NMS. Fillhart instructed the platform provider to close the ISO route, but she did not directly close or disable the route and she knew that Wedbush did not have any controls or procedures to prevent a similar route from being enabled again in the future.

46. In November 2011, Fillhart learned that the same customer had again enabled an ISO route in its trading platform and submitted ISOs without Wedbush's knowledge. As in April 2011, Wedbush had not taken any steps to ensure that the ISOs complied with Regulation NMS because Wedbush had not authorized the customer to submit ISOs. These incidents demonstrate that Wedbush did not have "direct and exclusive control" over these risk settings as required by Rule 15c3-5(d), and did not have controls reasonably designed to ensure compliance with all regulatory requirements that must be satisfied on a pre-order entry basis.

### **Other Regulatory Requirements**

47. Subsection (c)(2) of the Market Access Rule required Wedbush to have risk management controls and supervisory procedures that were reasonably designed to ensure compliance with all existing regulatory requirements. Wedbush did not have controls and procedures in connection with its market access business that were reasonably designed to ensure that Wedbush complied with all AML reporting and recordkeeping requirements applicable to Wedbush.

48. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping, and record retention requirements of the regulations adopted by the Department of the Treasury pursuant to the Bank Secrecy Act. The Bank Secrecy Act requires financial institutions such as broker-dealers to establish AML programs that include, among other things, internal policies, procedures, and controls, and authorizes the Department of the Treasury to adopt regulations prescribing minimum standards for AML programs. 31 U.S.C. §§ 5318(h)(1) and (2). Treasury regulations require broker-dealers to file reports of any suspicious transactions relevant to a possible violation of law or regulation, 31 C.F.R. § 1023.320, and state that broker-dealers regulated by a self-regulatory organization (“SRO”) are deemed to satisfy the Bank Secrecy Act’s AML program requirements if they comply with the AML program requirements of their SRO. 31 C.F.R. § 1023.210.

49. Wedbush’s SRO, FINRA, requires its members to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions as required by the Bank Secrecy Act and Treasury regulations thereunder. See FINRA Rule 3310. As described below, on numerous instances Fillhart became aware of potential wash trading and other forms of potential manipulation, but she did not cause Wedbush to file reports regarding the suspicious activity, and Wedbush’s policies and procedures did not cause Wedbush to detect suspicious activity and file such reports.

50. Wedbush’s WSPs asserted that it did not permit its customers to execute wash and pre-arranged trades. Wedbush’s WSPs defined “wash trades” as “transactions which result in no beneficial change of ownership” and defined a “pre-arranged trade” as “an offer to sell coupled with an offer to buy back at the same or at an advanced price, or the reverse.”

51. In most of the trading platforms used by Wedbush sponsored access customers, individual traders were identified by a unique trader ID. While most traders received a single trader ID, on some occasions a single trader had multiple trader IDs. Wedbush did not have any controls or filters to prevent a single trader from trading with himself or herself in a customer firm’s account, or to prevent two different traders from trading with each other in a customer firm’s account.

52. Most trading platforms used by Wedbush’s customers had risk settings to prevent potential wash trades, but Wedbush often did not require customers or platform providers to activate the settings, and Wedbush had no controls or procedures to prevent customers or platform providers from deactivating the settings if they were activated. Some exchanges offered functionality to block wash trades, but Wedbush had no controls or procedures requiring customers to use this anti-wash trade functionality.

53. Wedbush personnel responsible for filing suspicious activity reports pursuant to the Bank Secrecy Act relied on Fillhart and other employees in the Correspondent Services Division, which Bell oversaw, to review trading activity by sponsored access customers to determine whether it was relevant to potential violations of securities laws or regulations. But Bell and Fillhart knew or should have known that Wedbush did not have policies or procedures describing how Correspondent Services employees were to review trading to determine whether it was suspicious and should be reported.

54. The WSPs stated that Wedbush would review reports of potential wash trades from vendors and exchanges, determine whether there were potential securities violations, and if so,

obtain representations from sponsored access customers regarding their internal wash trade reviews and systems.

55. A Wedbush employee who reported to Fillhart received reports of potential wash or pre-arranged trades from exchanges on a daily basis during the relevant period. For most of the trades on the reports, which involved two trader IDs in a single customer account, Fillhart did not ask the Wedbush employee to follow up with the customer firm because Fillhart assumed the two traders were independent and did not consider the trading suspicious. No one from Wedbush ever attempted to contact traders to determine whether they were pre-arranging their trades.

56. For trades with a single trader ID on both sides, Fillhart relied on the customer firm to follow up with the trader. On many occasions, the customer simply responded that it was not wash trading or was an error. On some occasions, the customer did not respond at all. Fillhart generally did not ask the Wedbush employee to follow up with customers for further explanation and did not report the trading to the AML officer as suspicious.

57. In February and March 2012, Fillhart learned from exchanges that numerous traders in the account of one of Wedbush's largest sponsored access customers, which had recently become a customer of a Wedbush correspondent broker-dealer under common ownership with the customer, appeared to be engaged in wash or pre-arranged trading. The customer and correspondent broker-dealer had not enabled pre-trade controls in the trading platform used by the customer that would have prevented wash or pre-arranged trades, and Wedbush did not take steps to enable such controls. The customer and correspondent broker-dealer informed Wedbush that they would either enable the controls in the platform or send future orders through a route that blocked wash trades. Fillhart did not directly enable the risk controls and Wedbush did not take any steps to ensure that the customer or correspondent broker-dealer either enabled the controls or sent future orders through a route that blocked wash trades.

58. The correspondent broker-dealer informed Wedbush that it had disabled one of the traders involved in the incidents, but Wedbush did not directly disable any of the traders. Wedbush had no controls or procedures for preventing traders who had been disabled by a customer or correspondent broker-dealer from obtaining a new trader ID through the same or a different Wedbush customer account.

59. On multiple occasions, Fillhart learned from exchanges that traders in the same customer account appeared to be engaged in potentially manipulative trading referred to as "layering," which involves submitting and cancelling large numbers of non-*bona fide* orders on one side of the market in order to obtain executions at more favorable prices for smaller *bona fide* orders on the other side. See, e.g., *In the Matter of Hold Brothers On-Line Investment Services, LLC, et al.*, Admin. Proc. File No. 3-15046 (Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders, dated Sept. 25, 2012), at 5-6.

60. As early as February 2011, Fillhart notified the customer of potential layering activity in its account and told the customer that layering "is a manipulative activity." Until at least September 2012, Fillhart continued receiving reports from exchanges of potential layering activity through the same customer account, but she did not cause Wedbush to develop or acquire any tools

to detect or cause the reporting of potential layering activity and did not warn the customer's principals that the account would be disabled if the trading activity continued.

61. In late 2011, Bell and Fillhart met with another senior officer in the Correspondent Services Division to discuss the substantial compliance risks posed to Wedbush by sponsored access customers like the one that had been the subject of numerous reports of potential layering and wash trading and had been addressed in face-to-face meetings with Commission staff—the customer that had thousands of essentially anonymous foreign traders trading through a single Wedbush customer account. Bell, Fillhart, and the other officer decided not to terminate the customer's relationship with Wedbush, but agreed that Wedbush should not take on new market access customers with similar business models because of the compliance risks to Wedbush. In October 2012, Bell, Fillhart, and the other officer met again and decided to terminate Wedbush's relationship with the customer.

62. During the relevant period, Wedbush did not file any suspicious activity reports relating to potential layering and filed only two suspicious activity reports relating to potential wash or pre-arranged trading. More broadly, Fillhart knew that Wedbush did not review for a variety of manipulative trading practices, including fictitious orders, marking the open or marking the close, traders at a Wedbush customer trading a security between each other to manipulate the price of the security, manipulating securities prices through wash trades, or layering.

### **Authorization of Traders**

63. Subsection (b) of the Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through the use of its MPID or otherwise, to “establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks” of its market access business. Subsection (c)(2)(iii) of the Market Access Rule required Wedbush to have risk management controls and supervisory procedures that were reasonably designed to restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by Wedbush, the broker-dealer with market access. As described below, for many of its largest sponsored access customers, Wedbush only pre-approved and authorized the principals for the account and relied on its customer to pre-approve and authorize the thousands of individual traders who received market access through the account without reasonably designed controls and supervisory procedures to restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker or dealer. Accordingly, Wedbush failed to have controls and procedures that complied with Subsection (c)(2)(iii) of the Market Access Rule. Wedbush also did not effectively allocate these obligations, to the extent permitted by Subsection (d)(1) of the Market Access Rule, to its registered broker-dealer customers.

64. Wedbush's WSPs asserted that sponsored access customers were required to provide authorized trader information to Wedbush “upon commencement of sponsored access and when a change occurs.” The WSPs also asserted that Wedbush would verify authorized trader information annually. Wedbush did not have any controls or procedures requiring customers to obtain approval from Wedbush before authorizing new traders.

65. When Wedbush opened a sponsored access account, Wedbush employees obtained identifying information and performed background checks only on the principals of the entity

opening the account, not on other individuals that the entity authorized to trade through the account. While customers sometimes copied a Wedbush employee on their emails instructing platform providers to authorize new traders to trade through the customer's account, Wedbush did not have any written policies or procedures for pre-approving or authorizing new traders for existing sponsored access accounts.

66. Some customer firms and platform providers used a one-page "AccountID creation form" that called for certain information about each authorized trader, but Wedbush did not require use of the form and Wedbush rarely obtained copies of the forms from customers. There was a section on the form for approval of the trader's access, but neither Wedbush nor the customers completed that section of the form.

67. For customer firms with hundreds or thousands of traders, Wedbush usually relied on the customer firm to maintain a list of authorized traders and their trader IDs. Beginning in September 2011, Wedbush employees who reported to Fillhart occasionally obtained lists of authorized traders from customer firms with large numbers of traders and ran searches by name to determine whether any traders were subject to sanctions or restrictions on business activity by the Office of Foreign Assets and Control (OFAC), an office with the Department of the Treasury that administers economic and trade sanctions based on U.S. foreign policy and national security goals. These searches were done after, not before, the customer firm extended market access to the traders. OFAC's programs are separate and distinct from the AML requirements imposed on broker-dealers by Exchange Act Rule 17a-8 and underlying Treasury regulations.

68. For customer firms with hundreds or thousands of traders, neither Fillhart nor Bell asked Wedbush employees to take any steps to verify trader names or identities or to speak to any of the traders. Bell and Fillhart knew that Wedbush relied exclusively on the customer firms, some of which were not registered broker-dealers, to confirm trader identities and oversee their trading strategies. Fillhart herself had the experience of being unable to find a list of trader information for a particular Wedbush client. Because of these facts, particularly the component of Wedbush's business that provided sponsored access to hundreds or thousands of traders through Wedbush's customers, Wedbush's controls and procedures for the pre-approval and authorization of traders were not reasonable. As noted above, Wedbush also did not effectively allocate these obligations, to the extent permitted by Subsection (d)(1) of the Market Access Rule, to its registered broker-dealer customers.

### **Review of Effectiveness of Market Access Controls and Procedures**

69. Section (e) of the Market Access Rule required Wedbush to establish, document, and maintain a system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures relating to market access and to conduct a review of its market access business in accordance with written procedures at least annually. Wedbush did not have any written procedures for regularly reviewing the effectiveness of its market access controls and procedures, and Bell and Fillhart both acknowledged that they had primary responsibility for designing and implementing Wedbush's controls and procedures relating to its market access business. As described below, the only review relating in any way to the market access business that Wedbush conducted during the relevant period did not mention the Market Access Rule or any specific risk management controls or supervisory procedures relating to market access.

70. On Friday, March 23, 2012, in preparation for Wedbush's required certification of supervisory controls pursuant to SRO rules, one of Wedbush's Co-Chief Compliance Officers asked the two internal audit employees at Wedbush to review five areas of Wedbush's business, including one described as "High Frequency Trading." The memorandum containing this request did not mention the Market Access Rule, any other Commission rules, or sponsored access.

71. The internal audit employees prepared a written report dated Monday, March 26, 2012, describing their review, including one page relating to "High Frequency Trading/Exchange Traded Funds." The report did not mention the Market Access Rule, any other Commission rules, sponsored access, Wedbush's WSPs, or any specific risk management controls or supervisory procedures that Wedbush had adopted to comply with the Rule.

72. According to the report, the employees reviewed documents, observed procedures, and spoke with three employees in the Correspondent Services Division as part of the review. The report cited two specific steps—reviewing the checklist for onboarding new customers and observing software applications used for monitoring customer buying power and trading activities. The report noted that the software applications included risk management settings, but did not state that any specific settings were reviewed or tested.

73. The report concluded that, based on the internal audit employees' review, management's controls in the "High Frequency Trading/Exchange Traded Funds" area were adequate and functioning as intended.

74. The Co-Chief Compliance Officer incorporated this section of the report verbatim in a report that he sent to Wedbush's President and the rest of Wedbush's management team and Board on March 30, 2012. Like the internal audit report, this report did not mention the Market Access Rule, any other Commission rules, sponsored access, Wedbush's WSPs, or any specific risk management controls or supervisory procedures that Wedbush had adopted to comply with the Rule. No other reviews of the market access business were conducted by Wedbush employees during the relevant period.

75. Based on the report, as well as conversations with and information previously provided by Bell and others, Wedbush's President signed a certification dated March 30, 2012, citing SRO rules and Rule 15c3-5 (the Market Access Rule), and stating that the firm's risk management controls and supervisory procedures in connection with market access complied with Rule 15c3-5. For the reasons described above, that certification was inaccurate.

### **Preservation of Records**

76. Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder require broker-dealers to preserve for three years originals of all communications received and copies of all communications sent relating to its business as such. Wedbush did not preserve originals or copies of communications containing trading instructions relating to ISOs submitted by some of its customers under a Wedbush MPID through third-party trading platforms. As a result, Wedbush employees could not determine which orders submitted by those customers during the relevant period were ISOs.

## Violations

77. Section 15(c)(3) of the Exchange Act requires broker-dealers to comply with the Commission's rules regarding safeguards, financial responsibility, and related practices of broker-dealers. Rule 15c3-5 thereunder requires broker-dealers with market access to establish, document, and maintain a system of risk management controls and supervisory procedures that is reasonably designed to manage the financial, regulatory, and other risks of its market access business; to maintain direct and exclusive control over the market access controls and procedures; and to establish, document, and maintain a system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures relating to market access. As discussed above, Wedbush willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder because it did not maintain exclusive control over risk management controls in sponsored access trading platforms; did not have a system of risk management controls and supervisory procedures that was reasonably designed to ensure compliance with all regulatory requirements, including those that must be satisfied on a pre-order entry basis; did not have controls and procedures reasonably designed to restrict access to market access trading systems to persons and accounts pre-approved and authorized by Wedbush; did not establish, document, and maintain a system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures relating to market access; and did not conduct an adequate review of its market access controls and procedures during the relevant period.

78. Section 17(a) of the Exchange Act and Rule 17a-8 thereunder require broker-dealers to comply with the reporting, recordkeeping, and record retention requirements of the regulations adopted by the Department of the Treasury pursuant to the Bank Secrecy Act. Treasury regulations require broker-dealers to file reports of any suspicious transactions relevant to a possible violation of law or regulation. As discussed above, Wedbush willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder because it failed to file reports of suspicious trading activity in connection with its market access business.

79. Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder require broker-dealers to preserve for three years originals of all communications received and copies of all communications sent relating to their business as such. As discussed above, Wedbush willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder because it failed to preserve originals or copies of communications containing trading instructions relating to ISOs submitted by its customers under a Wedbush MPID through third-party trading platforms.

80. Rule 203(b)(1) of Regulation SHO prohibits a broker-dealer from accepting or effecting a short sale order unless the broker-dealer has borrowed the security or entered into an arrangement to borrow the security, or has reasonable grounds to believe that the security can be timely borrowed, and has documented its compliance with Rule 203(b)(1). As discussed above, Wedbush willfully violated Rule 203(b)(1) of Regulation SHO because it allowed sponsored access customers to submit short-sale orders for securities that were not easy to borrow without first otherwise locating shares to borrow.

81. Rule 611(c) of Regulation NMS requires the broker-dealer responsible for routing an ISO to take reasonable steps to establish that the order meets the requirements of Rule 600(b)(30), which requires the broker-dealer routing the ISO to sweep the market by routing simultaneously additional orders, as necessary, to execute against the full size of all better-priced protected quotations. As discussed above, Wedbush willfully violated Rule 611(c) of Regulation NMS



because it allowed sponsored access customers to submit ISOs without Wedbush taking reasonable steps to ensure that it satisfied the requirements for sending ISOs.

### **Undertakings**

Wedbush has undertaken to do the following:

82. Retain, at its own expense, one or more qualified independent consultants (the “Consultant”) not unacceptable to the Commission staff to conduct a comprehensive review of Wedbush’s current system of controls and procedures for compliance with all applicable regulatory requirements relating to its market access business, including but not limited to Exchange Act Rules 15c3-5 and 17a-8; to assess Wedbush’s corporate governance and culture of compliance with respect to its market access business; and to provide recommendations for improvements as may be needed. The Consultant’s review and analysis shall include:

a. Wedbush’s documented system of risk management controls and supervisory procedures relating to market access as required by Exchange Act Rule 15c3-5, including both regulatory and financial risk management controls and supervisory procedures;

b. Wedbush’s documented system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures relating to market access;

c. Wedbush’s policies and procedures to detect and cause the reporting of transactions by its market access customers that may be relevant to a possible violation of law or regulation as required by Exchange Act Rule 17a-8 and underlying Bank Secrecy Act regulations; and

d. Wedbush’s corporate governance structure and culture of compliance relating to its market access business, including the structure and functioning of Wedbush’s Business Conduct and Compliance departments relating to its market access business.

83. Provide, within thirty (30) days of the issuance of this Order, a copy of the engagement letter detailing the Consultant’s responsibilities to Daniel M. Hawke, Chief, Market Abuse Unit, U.S. Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103, with a copy to Steven D. Buchholz, Assistant Regional Director, U.S. Securities and Exchange Commission, 44 Montgomery Street, 28th Floor, San Francisco, CA 94104.

84. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel (and the files, books, records, and personnel of Wedbush’s affiliated entities, to the extent they relate to Wedbush’s market access business), as reasonably requested for the above-referenced review, and obtaining the cooperation of respective employees or other persons under Wedbush’s control.

85. Require the Consultant to report to the Commission staff on its activities as the staff may request.

86. Permit the Consultant to engage such assistance, clerical, legal, or expert, as necessary and at a reasonable cost, to carry out its activities, and the cost, if any, of such assistance shall be borne exclusively by Wedbush.

87. Require the Consultant, within thirty (30) days of being retained (unless otherwise extended by the Commission staff for good cause), to provide Wedbush and the Commission staff with (i) an estimate of the time needed to complete the review and analysis, and (ii) a proposed deadline, subject to the approval of the Commission staff, for the preparation of a written report describing the review and analysis (“Report”).

88. Require the Consultant to issue the Report by the approved deadline and provide the Report simultaneously to Wedbush and the Commission staff. The Report shall:

a. Evaluate the adequacy of Wedbush’s documented system of risk management controls and supervisory procedures to manage the regulatory, financial, and other risks of its market access business and, as may be needed, make recommendations for strengthening Wedbush’s system of market access controls and procedures;

b. Evaluate the adequacy of Wedbush’s documented system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures relating to market access and, as may be needed, make recommendations for strengthening Wedbush’s system for regularly reviewing the effectiveness of its market access controls and procedures;

c. Evaluate the adequacy of Wedbush’s policies and procedures relating to its market access business to detect and cause the reporting of transactions that may be relevant to a possible violation of law or regulation and, as may be needed, make recommendations for strengthening Wedbush’s policies and procedures relating to suspicious activity reporting with respect to its market access business; and

d. Evaluate Wedbush’s corporate governance structure and culture of compliance relating to its market access business and, as may be needed, make recommendations for improvements.

89. Submit to the Commission staff and the Consultant, within thirty (30) days of the Consultant’s issuance of the Report, the date by which Wedbush will adopt and implement any recommendations in the Report, subject to Sections (a)-(c) below and subject to the approval of the Commission staff.

a. As to any recommendation that Wedbush considers to be, in whole or in part, unduly burdensome or impractical, Wedbush may submit in writing to the Consultant and the Commission staff a proposed alternative reasonably designed to accomplish the same objectives, within thirty (30) days of the Consultant’s issuance of the Report. Wedbush shall then attempt in good faith to reach an agreement with the Consultant relating to each disputed recommendation and request that the Consultant reasonably evaluate any alternative proposed by Wedbush. If, upon evaluating Wedbush’s proposal, the Consultant determines that the suggested alternative is reasonably designed to accomplish the same objectives as the recommendations in question, then the Consultant shall approve the suggested alternative and make the recommendations. If the Consultant determines that the suggested alternative is not reasonably designed to accomplish the same objectives, the Consultant shall reject Wedbush’s proposal. The Consultant shall inform Wedbush and the Commission staff of the Consultant’s final determination concerning any recommendation that Wedbush considers to be unduly burdensome or impractical within fourteen (14) days after the conclusion of the discussion and evaluation by Wedbush and the Consultant.

b. In the event that Wedbush and the Consultant are unable to agree on an alternative proposal, Wedbush and the Consultant shall jointly confer with the Commission staff regarding the disputed recommendation, and Wedbush shall accept the Commission staff's determination with respect to the disputed recommendation.

c. Within fourteen (14) days after the final determination of any disputed recommendation, Wedbush shall submit to the Consultant and the Commission staff the date by which Wedbush will adopt and implement the recommendation, subject to the approval of the Commission staff.

90. Adopt and implement, on the timetable set forth by Wedbush in accordance with paragraph 89, the recommendations in the Report. Wedbush shall notify the Consultant and the Commission staff in writing when the recommendations have been implemented.

91. Within thirty (30) days after Wedbush notifies the Consultant that the recommendations have been implemented, require the Consultant to certify, in writing, to Wedbush and the Commission staff, that Wedbush has implemented the Consultant's recommendations. The Consultant's certification shall also include an opinion of the Consultant as to whether Wedbush's risk management controls and supervisory procedures relating to market access are reasonably designed to manage the financial, regulatory, and other risks of its market access business, and whether Wedbush's policies and procedures relating to its market access business can be reasonably expected to detect and cause the reporting of transactions that may be relevant to a possible violation of law or regulation.

92. Within one hundred and eighty (180) days from the date of the Consultant's certification described in paragraph 91 above, require the Consultant to have completed a review of how Wedbush is implementing, enforcing, and auditing the effectiveness of its risk management controls and supervisory procedures relating to market access and its policies and procedures relating to suspicious activity reporting with respect to its market access business and submit a final written report ("Final Report") to Wedbush and the Commission staff. The Final Report shall include an opinion of the Consultant as to whether Wedbush is taking reasonable steps to implement, enforce, and audit the effectiveness of its risk management controls and supervisory procedures relating to market access and its policies and procedures relating to suspicious activity reporting with respect to its market access business.

93. Require the Consultant to enter into an agreement providing that, for the period of the engagement and for a period of two years after completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Wedbush, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist the Consultant in the performance of its duties under this Order, shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Wedbush, 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 completion of the engagement.

94. Certify, in writing, its compliance with the Undertakings set forth above. Wedbush's certification shall identify the Undertakings, provide written evidence of compliance in

the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Wedbush agrees to provide such evidence. The certification and supporting material shall be submitted no later than thirty (30) days after the completion of the Undertakings to Daniel M. Hawke, Chief, Market Abuse Unit, U.S. Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103, with a copy to Steven D. Buchholz, Assistant Regional Director, U.S. Securities and Exchange Commission, 44 Montgomery Street, 28th Floor, San Francisco, CA 94104.

95. To ensure the independence of the Consultant, Wedbush shall not have the authority to terminate the Consultant without prior written approval of the Commission's staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

96. Wedbush may apply to the Commission staff for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Wedbush, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

97. The Commission's acceptance of Wedbush's offer of settlement and entry of this Order shall not be construed as its approval of any controls, policies, or procedures reviewed by the Consultant or implemented based on the Consultant's recommendations.

#### IV.

In view of the foregoing, the Commission deems it appropriate in the public interest to impose the sanctions agreed to in Respondent Wedbush's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Wedbush cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a) of the Exchange Act; Rules 15c3-5, 17a-4, and 17a-8 thereunder; Rule 203(b)(1) of Regulation SHO; and Rule 611(c) of Regulation NMS.

B. Respondent Wedbush is censured.

C. Respondent Wedbush shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$2,447,043.38 to the Securities and Exchange Commission. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways: (1) Wedbush may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Wedbush may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) Wedbush may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Wedbush as a Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel M. Hawke, Chief, Market Abuse Unit, U.S. Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103, with a copy to Steven D. Buchholz, Staff Attorney, U.S. Securities and Exchange Commission, 44 Montgomery Street, 28<sup>th</sup> Floor, San Francisco, CA 94104.

D. Respondent Wedbush shall comply with the Undertakings enumerated in paragraphs 82 through 97 above.

By the Commission.

Brent J. Fields  
Secretary

## **ANNEX A**

Respondent Wedbush Securities Inc. admits the facts set forth below (the “Admissions”) and acknowledges that its conduct violated the federal securities laws:

### **Respondents**

1. Wedbush Securities Inc. is a California corporation with its headquarters in Los Angeles, California. The firm was founded in 1955 and registered with the NASD as a broker-dealer in 1955, with the Commission as a broker-dealer in 1966 and as an investment adviser in 1970. Wedbush is a wholly-owned subsidiary of Wedbush, Inc., a privately-held company. As of December 31, 2012, Wedbush had 79 branch offices and 844 employees. From at least July 2011 until January 2013 (the “relevant period”), Wedbush was consistently ranked as one of the five largest firms by trading volume on NASDAQ.

2. During the relevant period, Jeffrey Bell was Executive Vice President of the Correspondent Services Division of Wedbush, reporting to the firm’s President, and was an associated person of Wedbush. Bell also was President of Lime Brokerage LLC (“Lime”), another wholly-owned subsidiary of Wedbush, Inc.

3. Christina Fillhart is a Senior Vice President in the Correspondent Services Division of Wedbush and is an associated person of Wedbush. Fillhart reported to Bell until late 2012, when she began reporting to one of Wedbush’s Co-Chief Compliance Officers.

### **Wedbush’s Market Access Business**

4. Wedbush’s primary market access business is part of the Correspondent Services Division, which also handles traditional clearing operations for introducing broker-dealers, otherwise known as “correspondent” firms. Wedbush’s sponsored market access customers send orders directly to exchanges and other trading venues by using online trading platforms or software programs that the customer either owns directly or leases from a third-party platform provider, referred to as a service bureau.

5. During the relevant period, Wedbush had about 50 sponsored access customers that generated average monthly trading volume of 10 billion shares. Several of Wedbush’s sponsored access customer firms had hundreds or thousands of authorized traders each during the relevant period.

6. The Correspondent Services Division was Wedbush’s most profitable division during the relevant period. Senior managers in the Correspondent Services Division, including Bell and Fillhart, received bonus compensation based in part on the profitability of the Division.

7. In June 2011, Wedbush acquired Lime Brokerage LLC, a provider of trading technology platforms. After Wedbush acquired Lime, about 20% of Wedbush’s sponsored access customers began using the Lime platform. The other 80% continued to receive sponsored access either through their own proprietary trading platform or through a third-party platform that the customer leased from a service bureau.

8. Wedbush described some risk management controls and supervisory procedures relating to market access in Chapter 31 of the firm's written supervisory procedures ("WSPs"), titled "Sponsored Access."

9. Bell and Fillhart, along with one other senior Wedbush employee in the Correspondent Services Division, had primary responsibility for preparing and adopting Wedbush's controls and procedures relating to market access.

10. Wedbush was aware of the requirements set forth in Rule 15c3-5 when they became effective. During the public comment period for the then-proposed Rule 15c3-5, Wedbush submitted a comment letter to the Commission on March 31, 2010.

11. On May 17, 2011, Commission staff from the Office of Compliance Inspections and Examinations ("OCIE") sent an Examination Deficiency Letter to Wedbush, which was addressed to Bell. Among other things, the letter advised Wedbush that the staff had identified deficient Wedbush controls relating to short sales, identified problems with internal controls over a third-party order management system, identified weaknesses in the firm's anti-money-laundering controls, and that Wedbush had failed to respond promptly to compliance issues when they arose.

12. On July 5, 2011, Wedbush representatives, including Bell and Fillhart, met with representatives of OCIE to discuss the impending effectiveness of Rule 15c3-5. During that meeting, the Commission's staff expressed concerns about Wedbush's largest sponsored non-broker-dealer client and its thousands of traders. Wedbush's presentation to the staff cited the Market Access Rule requirements relating to allocating compliance responsibilities to sponsored access broker-dealer clients and maintaining "direct and exclusive control" of risk settings in trading platforms.

### **Market Access Through Third-Party Trading Platforms**

13. Wedbush employees in the Correspondent Services Division received access from trading platform providers to view risk settings and trading activity in the platforms, but Wedbush did not have exclusive control over some of the regulatory risk settings in third-party or client-proprietary trading platforms because customers had access to set and revise the risk settings. On certain occasions, risk settings intended to prevent violations of rules relating to short sales<sup>1</sup> were not implemented in a trading platform according to Wedbush's instructions. On other occasions, a

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<sup>1</sup> Rule 203(b)(1) of Regulation SHO prohibits broker-dealers from accepting or effecting a short sale order unless the broker-dealer has borrowed the security or entered into an arrangement to borrow the security, or has reasonable grounds to believe that the security can be timely borrowed, and has documented its compliance with Rule 203(b)(1).

customer or platform provider was able to disable or circumvent risk settings intended to prevent wash trades and violations of rules relating to intermarket sweep orders (“ISOs”).<sup>2</sup>

14. Wedbush generally had no contractual relationship with third-party platform providers in that Wedbush’s customers, rather than Wedbush, leased the trading platforms from third parties.

15. Shortly before most provisions of the Market Access Rule took effect, Wedbush obtained email statements from many of the trading platform providers that the risk management settings in the platforms were under the direct and exclusive control of Wedbush, but Wedbush did not have exclusive control of all risk management settings in the platforms because Wedbush allowed customers to change certain risk settings in the platforms.

16. Wedbush’s WSPs stated that each new sponsored access customer would perform an initial “risk demonstration” to show Wedbush the customer’s trading platform settings for certain financial and regulatory risk controls. Wedbush had a checklist for the risk demonstration that included, among other things, settings to prevent clearly erroneous trades, wash trades, improper short sales, and, unless authorized by Wedbush, ISOs.

17. In June 2012, Wedbush conducted demonstrations of risk settings in the trading platforms used by sponsored access customers. Wedbush conducted these demonstrations for each platform provider, rather than for each sponsored access customer. During a demonstration, the provider would submit test orders as instructed by Wedbush and confirm that certain risk settings specified by Wedbush were in place and functioning at the time of the demonstration.

18. In these demonstrations, Wedbush did not typically receive demonstrations of the actual risk settings in effect for particular sponsored access customers. As stated above, customers had access to set and revise some of the risk settings in the platforms that were shown during the platform provider’s demonstration. Wedbush also did not maintain records of many of the actual risk settings in the platforms with respect to particular customers so that it could determine whether any settings had been changed without its consent.

19. In certain instances, customers or trading platform providers changed certain risk settings without Wedbush’s knowledge or consent. For example, a risk setting to prevent improper short sales failed on numerous occasions because the wrong list of securities that were easy to borrow was loaded into the customer’s third-party trading platform, and a customer repeatedly circumvented a risk setting that was designed to prevent the use of ISOs. For other risk settings, such as controls to prevent wash trades, Wedbush often did not require customers or platform providers to activate the settings.

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<sup>2</sup> Rule 611(c) of Regulation NMS requires the broker-dealer responsible for routing an ISO to take reasonable steps to establish that the order meets the requirements of Rule 600(b)(30) of Regulation NMS, which requires the broker-dealer routing the ISO to route simultaneously additional orders, as necessary, to execute against the full size of all better-priced protected quotations.



### **Attempts to Allocate Responsibility for Regulatory Controls and Procedures**

20. After the Market Access Rule took effect, Wedbush attempted to assign to other broker-dealers the responsibility for regulatory risk management controls and supervisory procedures for many of its sponsored access customers. In so doing, Wedbush did not conduct due diligence reviews specific to the other broker-dealer's market access controls and procedures and generally relied on the other broker-dealer's attestation that it had implemented appropriate controls and procedures.

21. Wedbush's agreements, which Bell approved, did not specify the particular controls or procedures that Wedbush purported to be allocating. The agreements instead referred generally to the categories of regulatory risk management controls and supervisory procedures required by subsection (c)(2) of the Market Access Rule. The agreements also did not specify the broker-dealer to which the controls or procedures purportedly were being allocated.

22. Wedbush did not conduct later reviews specific to market access controls and procedures to determine whether the other broker-dealers were adequately carrying out the responsibilities purportedly allocated.

23. For some registered broker-dealer customers trading their own capital on a proprietary basis, Wedbush entered into an allocation agreement directly with the customer to monitor its own trading. Wedbush did not have any written policies or procedures for determining whether a broker-dealer to which it claimed to have assigned responsibilities had better access than Wedbush to ultimate customers such that the other broker-dealer could more effectively implement the risk management controls and supervisory procedures relating to market access.

### **Regulatory Requirements That Must Be Satisfied On a Pre-Order Entry Basis**

24. Wedbush was responsible for ensuring that all short-sale orders submitted under a Wedbush MPID by its sponsored access customers complied with Regulation SHO. Among other things, Regulation SHO required Wedbush, prior to accepting or effecting a short sale order, to borrow the security or enter into an agreement to borrow the security, or have reasonable grounds to believe that the security could be timely borrowed (generally known as the "locate" requirement). Absent countervailing factors, "easy-to-borrow" lists may provide "reasonable grounds" for a broker-dealer to believe that the security sold short is available for borrowing without directly contacting the source of the borrowed securities (known as "easy-to-borrow securities").

25. Wedbush's WSPs stated that the firm sometimes relied on sponsored access customers to meet the short-sale requirements of Regulation SHO. Wedbush maintained a list of easy-to-borrow securities, and Wedbush relied on sponsored access customers or their platform providers to load that list into third-party trading platforms. Maintaining up-to-date lists in the trading platforms was a key step in the control process because the platforms relied on the lists to determine whether Regulation SHO had been satisfied before routing a short-sale order for execution. If a customer or platform provider failed to load the correct easy-to-borrow list, Wedbush had no controls or procedures to prevent the customer from submitting a short-sale order for a security that was not easy to borrow without first obtaining a locate.

26. On three occasions between July 2011 and November 2012, a platform provider loaded the wrong day's easy-to-borrow list, which resulted in Wedbush customers submitting short-

sale orders for securities that were not easy to borrow without first having located shares that it had reasonable grounds to believe could be timely borrowed as required by Regulation SHO. Bell and Fillhart knew that similar incidents had occurred several times before July 2011.

27. Wedbush was responsible for ensuring that all orders submitted under a Wedbush MPID and marked as ISOs by its sponsored access customers complied with Regulation NMS, which requires the broker-dealer responsible for routing an ISO to route simultaneously additional orders, as necessary, to execute against the full size of all better-priced protected quotations.

28. Wedbush's WSPs asserted that in order to comply with Regulation NMS, Wedbush did not permit a customer to use ISOs unless the customer swept the market of all better-priced protected quotations. However, if a non-broker-dealer customer used ISOs, Wedbush did not have any controls or procedures designed to ensure that the ISOs complied with Regulation NMS.

29. At least one Wedbush customer submitted ISOs without Wedbush's prior knowledge and without a broker-dealer acting to ensure compliance with the relevant regulatory requirements. In April 2011, one of Wedbush's largest non-broker-dealer sponsored access customers was submitting ISOs even though Wedbush did not authorize the customer to submit ISOs. Without Wedbush's knowledge, the customer and its third-party platform provider had enabled an order route that was configured to allow ISOs, even though the platform provider had previously informed Wedbush that the customer was not able to submit ISOs.

30. Because Wedbush had not authorized the customer to submit ISOs, Wedbush had not taken any steps to ensure that the ISOs complied with Regulation NMS. Fillhart instructed the platform provider to close the ISO route, but Wedbush did not directly close or disable the route. Wedbush relied on the assurances of the customer and third-party platform provider that the ISO route had been closed and did not have any controls or procedures to prevent a similar ISO route from being enabled again in the future.

31. In November 2011, the same customer's third-party platform provider again enabled an ISO route in its trading platform at the request of the customer, and the customer submitted ISOs without Wedbush's knowledge. As in April 2011, Wedbush had not taken any steps to ensure that the ISOs complied with Regulation NMS because Wedbush had not authorized the customer to submit ISOs.

### **Other Regulatory Requirements**

32. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping, and record retention requirements of the regulations adopted by the Department of the Treasury pursuant to the Bank Secrecy Act. Treasury regulations require, among other things, that broker-dealers file reports of any suspicious transactions relevant to a possible violation of law or regulation. 31 C.F.R. § 1023.320.

33. On numerous instances, Wedbush became aware of transactions or orders that were identified by exchanges as potentially representing wash or pre-arranged trading or other forms of potential market manipulation by Wedbush's sponsored access customers, but Wedbush did not file suspicious activity reports regarding the transactions or orders and Wedbush's controls and procedures did not cause Wedbush to file such reports.

34. Wedbush's WSPs asserted that Wedbush did not permit its customers to execute wash and pre-arranged trades. Wedbush's WSPs defined "wash trades" as "transactions which result in no beneficial change of ownership" and defined a "pre-arranged trade" as "an offer to sell coupled with an offer to buy back at the same or at an advanced price, or the reverse."

35. In most of the trading platforms used by Wedbush sponsored access customers, individual traders were identified by a unique trader ID. While most traders received a single trader ID, on some occasions a single trader had multiple trader IDs. Wedbush often did not implement controls or filters to prevent two different traders from trading with each other in a single customer firm's account, or to prevent a trader from trading with himself or herself by using different trader IDs.

36. Most trading platforms used by Wedbush's customers had risk settings to prevent potential wash trades, but for customers with hundreds or thousands of traders, Wedbush did not require the customers or their platform providers to activate the settings. Some exchanges offered functionality to block wash trades, but Wedbush did not require these customers to use the anti-wash trade functionality.

37. Wedbush's AML officer relied on employees in the Correspondent Services Division to review trading activity by sponsored access customers to determine whether it may be relevant to potential violations of securities laws or regulations. But Wedbush did not have written policies or procedures describing how Correspondent Services employees were to review trading to determine whether it was suspicious.

38. Wedbush requested and received from exchanges daily reports of potential wash or pre-arranged trades during the relevant period. For most of the trades on the reports identified as potential wash trades, which involved two trader IDs in a single customer account, Wedbush did not look into or report the trading as suspicious and typically assumed the two traders were independent. No one from Wedbush attempted to contact individual traders to determine whether they were pre-arranging their trades.

39. For trades with a single trader ID on both sides, Wedbush relied on the customer firm to follow up with the trader. On many occasions, the customer simply responded that it was not wash trading or was an error. On some occasions, the customer did not respond at all. Correspondent Services employees often did not report the trading to Wedbush's AML officer.

40. In February and March 2012, Wedbush learned of potential wash or pre-arranged trading in the account of one of its largest sponsored access customers, which had recently become a customer of a Wedbush correspondent broker-dealer. The customer and correspondent broker-dealer had not enabled pre-trade controls in the trading platform used by the customer to prevent potential wash trades, and Wedbush did not take steps to enable such controls. The customer and correspondent broker-dealer informed Wedbush that they would either enable the controls in the platform or send future orders through a route that blocked potential wash trades. Wedbush did not directly enable the controls and did not take any steps to ensure that the customer or correspondent broker-dealer either enabled the controls or sent future orders through a route that blocked potential wash trades.

41. The correspondent broker-dealer informed Wedbush that it had disabled one of the traders involved in the incidents, but Wedbush did not directly disable any of the traders. Wedbush

had no controls or procedures for preventing traders who had been disabled by a customer or correspondent broker-dealer from obtaining a new trader ID through the same or a different Wedbush customer account.

42. On multiple occasions between February 2011 and September 2012, Fillhart was informed by exchanges that traders in the same customer account appeared to be engaged in potentially manipulative trading referred to as “layering,” which involves submitting and cancelling large numbers of non-*bona fide* orders on one side of the market in order to obtain executions at more favorable prices for smaller *bona fide* orders on the other side.

43. Wedbush notified the customer of the potential layering activity in its account and requested an explanation, but Wedbush did not develop or acquire any tools to detect potential layering activity during the relevant period, and Wedbush did not warn the customer’s principals that the account would be disabled if the trading activity continued.

44. During the relevant period, Wedbush did not file any suspicious activity reports relating to potential layering and filed only two suspicious activity reports relating to potential wash or pre-arranged trading.

#### **Authorization of Traders**

45. When Wedbush opened a sponsored access account, Wedbush employees obtained identifying information and generally performed background checks only on the principals of the entity opening the account, not on other individuals that the entity authorized to trade through the account. While customers typically copied a Wedbush employee on their emails instructing platform providers to authorize new traders to trade through the customer’s account, Wedbush did not have any written policies or procedures for pre-approving or authorizing new traders for existing sponsored access accounts.

46. Wedbush’s WSPs asserted that sponsored access customers were required to provide authorized trader information to Wedbush “upon commencement of sponsored access and when a change occurs.” The WSPs also asserted that Wedbush would verify authorized trader information annually. For customer firms with hundreds or thousands of traders, Wedbush usually relied on the customer firms to maintain a list of authorized traders and their trader IDs. Some of these customer firms were not registered broker-dealers. Wedbush employees did not typically speak to any of the traders or take any steps to verify trader names or identities.

47. Wedbush provided sponsored market access to customer firms with hundreds or thousands of traders, but Wedbush did not have controls and procedures to restrict access to trading systems and technology that provide market access to individual traders who had been pre-approved and authorized by Wedbush.

#### **Review of Effectiveness of Market Access Controls and Procedures**

48. Wedbush did not have any written procedures for regularly reviewing the effectiveness of its controls and procedures specific to its market access business.

49. On Friday, March 23, 2012, in preparation for Wedbush’s required certification of supervisory controls, one of Wedbush’s Co-Chief Compliance Officers asked the two internal audit

employees at Wedbush to review five areas of Wedbush's business, including one described as "High Frequency Trading." The memorandum containing this request did not mention the Market Access Rule, any other Commission rules, or sponsored access.

50. The internal audit employees prepared a written report dated Monday, March 26, 2012, describing their review, including one page relating to "High Frequency Trading/Exchange Traded Funds." The report did not mention the Market Access Rule, any other Commission rules, sponsored access, Wedbush's WSPs, or any specific risk management controls or supervisory procedures that Wedbush had adopted to comply with the Rule.

51. According to the report, the employees reviewed documents, observed procedures, and spoke with three employees in the Correspondent Services Division as part of the review. The report cited two specific steps—reviewing the checklist for onboarding new customers and observing software applications used for monitoring customer buying power and trading activities. The report noted that the software applications included risk management settings, but did not state that any specific settings were reviewed or tested.

52. The report concluded that, based on the internal audit employees' review, management's controls in the "High Frequency Trading/Exchange Traded Funds" area were adequate and functioning as intended.

53. The Co-Chief Compliance Officer incorporated this section of the report verbatim in a report that he sent to Wedbush's President and the rest of Wedbush's management team and Board on March 30, 2012. Like the internal audit report, this report did not mention the Market Access Rule, any other Commission rules, sponsored access, Wedbush's WSPs, or any specific risk management controls or supervisory procedures that Wedbush had adopted to comply with the Rule. No other reviews of risk management controls and supervisory procedures relating to market access were conducted by Wedbush employees as part of the annual review process.

54. Based on the report, as well as conversations with and information previously provided by Bell and others, Wedbush's President signed a certification dated March 30, 2012 stating that the firm's risk management controls and supervisory procedures in connection with market access complied with Rule 15c3-5. In light of all the facts described above in this Annex A, that certification was inaccurate.

### **Preservation of Records**

55. Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder require broker-dealers to preserve for three years originals of all communications received and copies of all communications sent relating to its business as such. Wedbush did not preserve originals or copies of communications containing trading instructions relating to orders designated as ISOs submitted by at least one of its sponsored access customers through a third-party trading platform. As a result, Wedbush employees could not determine from the firm's records which orders submitted by that customer during the relevant period were ISOs.

## Conclusion

56. In connection with the conduct described in the foregoing Admissions, Webbush acted willfully.<sup>3</sup>

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<sup>3</sup> A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).