

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

_____)
In the Matter of)

Newedge USA, LLC)

Respondent.)
 _____)

) **CFTC Docket No: 11-07**
)
) **ORDER INSTITUTING PROCEEDINGS**
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, MAKING FINDINGS AND**
) **IMPOSING REMEDIAL SANCTIONS**
)

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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Respondent Newedge USA, LLC (“Newedge”) has violated Section 4a(e) of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § 6a(e), and Commission Regulation 17.00, 17 C.F.R § 17.00 (2010). The Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Newedge engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Newedge has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Newedge consents to the entry of and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ Newedge consents to the use by the Commission of the findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party. Newedge does not consent to the use of the Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Newedge consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

III.

A. SUMMARY

On Friday, October 9, 2009, Newedge purchased 4,495 October 2009 live cattle futures contracts on the Chicago Mercantile Exchange (“CME”) from their client, JBS USA, LLC (“JBS”), a meat packing company, and sold to JBS an over the counter swap (“OTC”) in live cattle on October 9. Newedge’s purchase of 4,495 October 2009 futures contracts on October 9 gave Newedge a long position of 4,495 October futures contracts. That long position exceeded the 450 contract speculative limit for trading live cattle futures on the CME in the current delivery month by 4,045 contracts, and Newedge did not have a hedge exemption. Therefore, Newedge violated Section 4a(e) of the Act, as amended, to be codified at 7 U.S.C. § 6a(e), which prohibits, *inter alia*, any person from holding futures positions in excess of established speculative position limits that have been approved by the Commission. Additionally, from June 2009 to December 10, 2010, Newedge engaged in multiple large trader reporting violations in violation of Commission Regulation 17.00, 17 C.F.R § 17.00 (2010). Newedge has now undertaken a global restructuring of its large trader reporter system to prevent further reporting violations of the Act and Commission Regulations.

B. RESPONDENT

Newedge USA, LLC is headquartered in Chicago and is a wholly owned subsidiary of Newedge Group. It has been registered with the Commission as a futures commission merchant (“FCM”) since 1989 (formerly known as Fimat USA, LLC) and at all relevant times was a member firm of the CME.

C. FACTS

1. CME’s Position Limits

The CME is a registered entity as defined in Section 1a(29) of the Act, and a designated contract market for trading live cattle futures contracts pursuant to Section 5 of the Act.² The CME is a wholly owned subsidiary of the CME Group, Inc.

During the relevant time and continuing to the present, the CME has had Commission-approved speculative limits for trading live cattle futures contracts. CME Rule 10102.E.b. provides that no person shall own or control a position in live cattle futures contracts of more

² Under the CME rules, a live cattle futures contract consists of 40,000 pounds of United States Department of Agriculture (USDA) estimated Yield Grade 3, 55% Choice, 45% Select, quality grade live steers, with no individual animal weighing less than 1,050 pounds or no more than 1,550 pounds, with certain adjustments for steers weighing more than 1,475 pounds. Live cattle futures contracts are traded on the CME floor by open outcry and on CME Globex, the CME’s electronic trading platform. The minimum price fluctuation, or tick size, for trading live cattle futures contracts is \$0.00025 per pound, which is equivalent to \$10 per futures contract.

than 450 contracts long or short in the expiring contract month beginning as of the close of business on the first business day following the first Friday of the contract month. The Commission approved the 450-contract limit on trading live cattle in the spot month on February 24, 2003. Any person desiring to own or control a position in excess of this speculative limit is required to obtain from the CME a bona-fide hedge exemption or other exemption pursuant to CME Rule 559.

2. Newedge's Violations of CME's Position Limits

On Friday, October 9, 2009, Newedge and JBS, a live cattle end user, agreed that JBS would sell Newedge its 4,495 contract long October 2009 live cattle futures position. Newedge would hedge the purchase with a short position in an underlying swap in live cattle and sell JBS a live cattle swap.

Newedge agreed to conduct the transactions to assist its client, JBS, and to make a profit from the fees and commissions it charged. Newedge charged JBS commissions of \$5 per futures contract and a one tick mark-up per contract. Newedge made approximately \$80,910 total profit and commissions on related transactions with JBS.

Newedge did not have a hedge exemption in October live cattle on October 9, 2009, when it exceeded the speculative position limit by 4,045 contracts. Newedge apparently planned to file a hedge exemption, but the CME informed Newedge that it could not file a hedge exemption in the spot month. Newedge did not satisfy the requirements of CME Rule 559, which do not permit hedge exemptions when the underlying transaction is a swap. Newedge liquidated its 4,495 long position on October 12, 2009.

3. Newedge's Large Trader Reporting Violations

Between June 2009 and December 10, 2010, Newedge engaged in multiple large trader position reporting violations. Examples of Newedge's reporting violations include: overstatement of positions in omnibus accounts; reporting exchange for physicals and exchange for swaps transactions that did not occur; both reporting and not reporting positions because of incorrect internal reporting level; improperly reporting delivery notices and stops; and reporting positions for accounts as net when they should be reported as gross. These reporting violations occurred across multiple contract markets and accounts.

The Commission's Division of Enforcement sent Newedge a warning letter pertaining to these reporting violations in July 2009. Commission staff has communicated with Newedge on numerous occasions in an effort to correct the reporting issues. In response to the Commission's staff's communications, Newedge has undertaken a global effort to correct problems within their recordkeeping and reporting systems, and to date has either corrected or is in the process of correcting the causes of all the reporting violations since July 2009.

D. LEGAL DISCUSSION

Newedge Exceeded CME's Position Limits In Violation of Section 4a(e) of the Act, as amended, to be codified at 7 U.S.C. § 6a(e)

Section 4a(e) of the Act, as amended, provides, in relevant part, that:

[i]t shall be a violation of this Act for any person to violate any bylaw, rule, regulation or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission or electronic trading facility with respect to a significant price discovery contract fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such by law, rule, regulation or resolution has been approved by the Commission.

Section 4a(e) of the Act, as amended, to be codified at 7 U.S.C. § 6a(e).

The plain language of Section 4a(e) of the Act “unambiguously imposes liability for violations of contract market position limit rules such as [CME Rule 10102.E].” *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007) (rejecting trader’s contention that the Commission was required to prove that he intended to violate the speculative limits in frozen pork bellies futures set forth in CME Rule 8032.E (citing *CFTC v. Hunt*, 591 F.2d 1211, 1219 (7th Cir. 1979)). Exceeding position limits rules is sufficient to constitute a violation of Section 4a(e) of the Act; the Commission does not need to establish scienter, or intent to violate position limits, in order to prove a violation. *Saberi*, 488 F.3d at 1212 n.4; *Hunt*, 591 F.2d at 1218.

The Commission approved the CME rules and relevant amendments fixing limits on positions of the relevant contracts, and Newedge violated this rule by over 4,000 contracts. By exceeding the limits fixed by this rule, Newedge violated Section 4a(e) of the Act, as amended.

2. Newedge Submitted to the Commission Large Trader Reports with Inaccuracies or Failures In Violation Of Commission Regulation 17.00

Commission Regulation 17.00(a) requires that, for reportable futures and options positions, delivery notices and exchanges of futures:

[e]ach futures commission merchant . . . shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant . . . except for accounts carried on the books of another futures commission merchant on a fully-disclosed basisThe report shall show each futures position . . . and each put and call options position . . . in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for commodities or for derivatives positions and the number of delivery notices issued for each such account by the clearing organization of a contract market

and the number stopped by the account. The report shall also show all positions in all futures months and option expirations . . . for which the special account is reportable.

Commission Regulation 17.00, 17 C.F.R § 17.00 (2010).

Between June 2009 and July 2010, Newedge's large trader position reports submitted to the Commission inaccurately reported or failed to include reportable information on numerous occasions across multiple contract markets and accounts, thereby violating Commission Regulation 17.00.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Newedge violated Section 4a(e) of the Act, as amended, to be codified at 7 U.S.C. § 6a(e), and Commission Regulation 17.00, 17 C.F.R. §17.00 (2010).

V.

OFFER OF SETTLEMENT

Newedge has submitted an Offer in which, without admitting or denying the findings herein it (A) acknowledges service of this Order; (B) admits the jurisdiction of the Commission to all the matters set forth herein; and (C) waives: (1) the filing and service of a complaint and notice of hearing; (2) a hearing; (3) all post-hearing procedures; (4) judicial review by any court; (5) any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; (6) any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to, or arising from, this proceeding; (7) any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and (8) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

Further, Newedge stipulates that the record basis upon which this Order is entered shall consist solely of the findings in this Order to which Newedge has consented; and consents to the entry of this Order, which:

- (1) makes findings by the Commission that Newedge violated Section 4a(e) of the Act, as amended, to be codified at 7 U.S.C. § 6a(e), and Commission Regulation 17.00, 17 C.F.R. §17.00 (2010);

- (2) orders Newedge to cease and desist from violating Section 4a(e) of the Act, as amended, to be codified at 7 U.S.C. § 6a(e), and Commission Regulation 17.00, 17 C.F.R. § 17.00 (2010);
- (3) directs Newedge to pay a civil monetary penalty in the amount of \$140,000, plus post-judgment interest, within ten (10) days of the date of the entry of this Order;
- (4) orders Newedge to comply with the undertakings consented to in its Offer and set forth below in Section VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Newedge shall cease and desist from violating Section 4a(e) of Act, as amended, to be codified at 7 U.S.C. § 6a(e), and Commission Regulation 17.00, 17 C.F.R. § 17.00 (2010);
- (2) Newedge shall pay a civil monetary penalty in the amount of \$140,000, plus post-judgment interest, within ten (10) days of the date of this Order. Post-judgment interest shall accrue beginning eleven (11) days after the entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961. Newedge shall pay this civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

If payment by electronic funds transfer is chosen, Newedge shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Newedge shall accompany payment of the penalty with a cover letter that identifies the Newedge, and the name and docket number of this proceeding. Newedge shall simultaneously

transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Newedge shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made; and

(3) Newedge shall comply with the following undertakings:

- a. Disgorgement: Newedge shall pay disgorgement in the amount of eighty thousand nine hundred and ten thousand dollars (\$80,910), plus post-judgment interest, within ten (10) days of the date of entry of this Order. Post-judgment interest shall accrue beginning eleven (11) days after the entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961. Newedge shall pay this disgorgement by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

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If payment by electronic funds transfer is chosen, Newedge shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Newedge shall accompany payment of this disgorgement with a cover letter that identifies the Newedge, and the name and docket number of this proceeding. Newedge shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address.

- b. Newedge shall implement and maintain a program designed to prevent and detect reporting violations of the Act and Commission Regulations. In this regard, Newedge agrees to:
- (1) to the extent it has not already done so, review all Newedge European and Asian customer accounts to confirm that all customer accounts have been established in compliance with Commission Regulations;
 - (2) restructure its large trader reporting system in Europe and Asia to relate each customer account to Newedge global omnibus accounts through new customer reporting identification and reference numbers. On a daily basis, Newedge's United Kingdom affiliate shall manually review offsets of customer accounts in Newedge's omnibus accounts, update and correct any reconciliation deficiencies, and electronically submit its large trader reports to the Commission by 9:00 a.m. (Central Standard Time);
 - (3) have a statistically relevant sample of all new customer accounts reviewed by Newedge's Compliance department, in addition to Newedge's Credit and Sales Facilitation departments already existing review of all new accounts, to confirm that customer accounts are established in compliance with Commission Regulations;
 - (4) establish at least three new daily exception reports to monitor Newedge's global reporting process. The first exception report shall be a detailed large trader reporting analysis that shows all reportable positions under the restructured large trader reporting system. The second exception report shall be a large trader and omnibus account report that compares Newedge customer reportable positions to Newedge global omnibus accounts to assure that customer reportable positions are properly offset. The third exception report shall compare large trader positions to total exchange open interest; and
 - (5) have its Static Data Team in Operations perform, on a quarterly basis, a permanent supervision test, in which a sample of internal and external customer accounts are reviewed to ensure that Newedge is establishing customer accounts in compliance with Commission Regulations. The results of the permanent supervision tests will be reviewed by Newedge's Operational Risk Department, which will summarize its results and report its findings to Newedge's Executive Committee.
- c. Public Statements: Neither Newedge nor any of its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Newedge's (i) testimonial obligations; or (ii) right to take legal

positions in other proceedings to which the Commission is not a party. Newedge shall undertake all steps necessary to ensure that all of its agents and employees under its authority or control understand and comply with this agreement.

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: February 7, 2011