

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of

Newedge USA, LLC,

Respondent.

)
) **CFTC Docket No: 12-06**
)
) **ORDER INSTITUTING PROCEEDING**
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, MAKING FINDINGS AND**
) **IMPOSING REMEDIAL SANCTIONS**
)
)

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Respondent Newedge USA, LLC (“Newedge USA” or “Respondent”), has violated Section 4g of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6g (Supp. III 2009) and Commission Regulation (“Regulation”) 17.00, 17 C.F.R § 17.00 (2011), and Section 6(c) of the Act, 7 U.S.C. § 9 (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Newedge USA 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 USA has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Newedge USA 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 USA consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Newedge USA does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, 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 USA consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

A. SUMMARY

Each business day, the Commission collects and processes about 600,000 “reportable position” records regarding “Special Accounts” from about 200 clearing members, futures commission merchants (“FCM”) and foreign brokers pursuant to Section 4g of the Act, 7 U.S.C. § 6g (2006 and Supp. III 2009), and Regulations 15.01(b) and 17.00, 17 C.F.R. §§ 15.01(b) and 17.00 (2011). These reports are referred to as “Series ’01 Reports,” “large trader reports” or “large trader position reporting.” The Commission uses the reported information for a variety of purposes, including assessing individual traders’ activities and potential market power and risk, as well as monitoring compliance with Commission or exchange speculative position limit rules. In addition, the Commission publishes aggregated data concerning large trader reported positions in its weekly Commitment of Trader’s Report (“COT Report”) and monthly Bank Participation Report (“BPR”). Consequently, it is critical that large trader position reports from the industry are accurate.

From at least 2009 to February 2011, the Commission’s Division of Market Oversight (“DMO”) was frustrated in its efforts to perform its duties due to the continuing inability of Respondent to file accurate and timely large trader reports. Newedge USA is registered with the Commission as an FCM and is an affiliate of Newedge Group, SA, a global financial services company with twenty one affiliates around the world. Newedge USA files large trader reports concerning its customers and also handles all large trader reporting errors for Newedge Group, SA’s affiliates. Newedge USA’s large trader submissions included numerous errors that occurred across multiple contract markets and accounts, and handling and resolving these errors and the errors committed by other Newedge Group SA affiliates have resulted in a considerable drain on Commission resources. Additionally, Newedge USA consistently failed to timely correct specific errors after the DMO staff brought them to Newedge USA’s attention, and failed to timely undertake satisfactory steps to ensure that the same or similar types of errors did not reoccur.

In an attempt to address this conduct, on February 7, 2011, the Commission entered an administrative Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“February 7th Order”) against Newedge USA. The February 7th Order found, among other things, that from June 2009 to December 10, 2010, Newedge USA engaged in multiple large trader reporting errors in violation of Regulation 17.00, and ordered Newedge USA to cease and desist from committing those violations. *See In re Newedge USA, LLC*, CFTC Docket No. 11-07, 2011 WL 439048, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 31,905(CFTC Feb. 7, 2011).

Notwithstanding the February 7th Order, from at least February 2011 to July 2011, (the “relevant period”), Newedge USA continued to make a significant number of errors in large trader reports to the Commission. Consequently, Respondent has failed to file accurate and timely reports with the Commission and failed to report certain large trader information to the Commission, in violation of Section 4g of the Act, 7 U.S.C. § 6g (2006 and Supp. III 2009), and Regulation 17.00, 17 C.F.R § 17.00 (2011), and violated the February 7th Order, in violation of Section 6(c) of the Act, 7 U.S.C. § 9 (2006).

B. RESPONDENT

Newedge USA, LLC is a wholly-owned subsidiary of Newedge Group, SA, a diversified, global financial services group. Newedge USA is Newedge Group, SA's only Commission-registered affiliate and maintains offices in New York and Chicago. It has been registered with the Commission as an FCM since 1989 (formerly known as Fimat USA, LLC), pursuant to Sections 4d and 4f of the Act, and at all relevant times was a member firm of the CME Group, Inc. Newedge USA handles all large trading reporting errors for all of Newedge Group, SA's affiliates.

C. FACTS

1. Statutory Background

The Commission operates a comprehensive system of collecting information on market participants as part of its market surveillance program. Under Regulation 15.00(p) and (r), "Special Accounts" are commodity futures or options accounts in which there are "reportable positions" of futures or options owned or controlled by traders that equal or exceed reporting levels as designated in Regulation 15.03(b). If, at the daily market close, an FCM, clearing member or foreign broker carries a Special Account with a reportable position in any single futures or option expiration month, then pursuant to Sections 4g and 4i of the Act and Regulations 15.01(b) and 17.00(a), that firm is required to report to the Commission that trader's entire position in all futures or options expiration months in that commodity, regardless of size, in accordance with the format and coding provisions set forth in Regulation 17.00(g). Each business day, the Commission collects and processes about 600,000 "reportable position" records from about 200 FCMs, clearing members and foreign brokers. The aggregate of all traders' positions reported to the Commission usually represents 70 to 90 percent of the total open interest in any given market.

Regulation 17.00(a) requires that large trader reports shall show, among other things, each futures position, separately for each reporting market and for each future, and each put and call options position, separately for each reporting market, expiration and strike price, in each Special Account as of the close of the market on the day covered by the report. Regulation 17.00(g) specifies the required media and file characteristics of required reports, identifying, among other things, the account number, report date, exchange code to identify the exchange on which a position is held, put or call, the exchange-assigned commodity code for futures or options contract, expiration date or delivery date of the reported futures or options contract, strike price, and exercise style.

The Commission uses the information contained in large trader reports to support market surveillance, such as assessing individual trader's activities, market power and risk, as well as monitoring compliance with Commission or exchange speculative position limits. The

Commission also uses the reported large trader information it collects to publish aggregated data in its weekly COT Report and monthly BPR.

During the relevant period, DMO used various processes to check the accuracy and completeness of the large trader data it received. Among other things, DMO used an automated error checking system, which checks to ensure that the commodity code, strike price, expiration dates, exchange code, and report date of each report, among other things, are correct.

In addition to the automated error checking system, during the relevant time, DMO staff compared the large trader reporting they receive from the firms to the daily reports received from the exchanges regarding their clearing members' aggregate positions to check for errors that are not detected by the automated error checking system. This procedure is called the "OO-01 Check" and consists of a report detailing possible reporting discrepancies, which are then further researched and confirmed by staff.

2. Newedge USA's Large Trader Reporting Violations

Using the Commission's automated error checking system, DMO identified a significant number of large trader reporting errors attributable to Newedge USA through the automated error checking system from February 7, 2011 to June 21, 2011. The vast majority of the errors are categorized as "commodity code errors." These errors were caused by Newedge USA submitting records to the Commission for contracts traded on ICE Futures Europe and ICE OTC that are not required to be reported. Specifically, pursuant to provisions added by the Farm Bill in 2008, and Commission implementing rules adopted in April 2009, exempt commercial markets ("ECMs") with significant price discovery contracts ("SPDCs"), such as ICE OTC, are subject to self-regulatory and reporting requirements. Not all ICE OTC products were declared SPDCs, and ICE OTC breaks down its contracts by SPDCs and non-SPDCs. Firms are only required to report SPDCs to the Commission. *See* Regulation 36.3 ("Exempt commercial markets"), 17 C.F.R. § 36.3.

DMO staff advised Newedge USA of the "commodity code" error problem on March 23, 2011, and Newedge USA informed the DMO staff that they were working on correcting the problem. However, in late May 2011, Newedge USA reported numerous erroneous commodity codes to the Commission for ICE OTC and ICE Futures Europe positions. The Commission provided Newedge USA with a list of ICE OTC SPDCs on May 25, 2011, and instructed Newedge USA that it was only to report SPDCs to the Commission. Two days later, Newedge USA reported numerous non-SPDCs to the Commission, which caused a significant number of "commodity code not recognized" errors in the Commission's automated error checking system. The DMO staff ultimately contacted Newedge USA at least six times since March 23, 2011, concerning its continued failure to correct the persisting commodity code errors. Newedge USA undertook various steps to fix the errors, but the errors recurred until July 11, 2011.

In addition, DMO staff discovered the following other types of errors received from Newedge USA through its 00-01 Check process: (1) overstating and understating positions in omnibus accounts, (2) overstating and understating large trader positions, (3) overstating and understating open interest, (4) issuing erroneous delivery notices, (5) reporting positions as net when they should be reported as gross, (6) reporting exchange of futures for physicals or cash

(“EFP”) positions and exchange of futures for swaps (“EFS”) positions that do not exist, and (7) failing to report positions.

3. The February 7, 2011 Speaking Order

Based upon an offer of settlement, the Commission simultaneously filed and settled an action against Newedge USA on February 7, 2011. The February 7th Order identifies five areas of reporting problems: (1) overstatement of positions in omnibus accounts, (2) reporting exchange for physicals and exchange for swaps transactions that did not occur, (3) both reporting and not reporting positions because of incorrect internal reporting level, (4) improperly reporting delivery notices and stops, and (5) reporting positions for accounts as net when they should be reported as gross. The February 7th Order requires Newedge USA to cease and desist from violating Regulation 17.00, and to comply with certain undertakings including implementing and maintaining a program designed to prevent and detect reporting violations of the Act and Regulations. Most of the areas of reporting problems persisted through the relevant period.

Following entry of the February 7th Order, Newedge USA, on its own initiative, engaged a national consulting firm to recommend improvements to its large trader reporting to the exchanges and the CFTC, with specific reference to the February 7th Order. Since July 2011, the accuracy of Newedge USA’s large trader reporting to the Commission has greatly improved.

IV. LEGAL DISCUSSION

A. Newedge USA violated Section 4g of the Act and Regulation 17.00 By Failing to File Timely and Accurate Reports with the Commission and By Failing to Report Certain Large Trader Information to the Commission

Section 4g of the Act and Regulation 17.00 govern the obligation of FCMs, clearing members, and foreign brokers to make large trader reports. Regulation 17.00(a) requires, in pertinent part:

Each futures commission merchant, clearing member, and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member, or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. The report shall show each futures position separately for each contract market and for each future, and each put and call options position separately for each contract market, expiration, and strike price 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 of that same commodity on the same contract market for which the special account is reportable.

Section 4g(a) of the Act provides, in pertinent part:

Every person registered ... as a futures commission merchant ... shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

During at least the relevant period, Newedge USA's large trader position reports submitted to the Commission have included incorrect commodity codes, strike prices, expiration dates, exchange codes, and report dates, and overstated and understated positions in omnibus accounts, overstated and understated large trader positions, overstated and understated open interest, erroneously reported or failed to report Newedge USA's delivery notices, reported positions as net when they should have been reported as gross, reported EFP and EFS positions that did not exist, and failed to report positions. Consequently, by inaccurately reporting or failing to include reportable information on numerous occasions across multiple contract markets and accounts, Newedge USA violated Section 4g of the Act and Regulation 17.00.

B. Newedge USA Violated the February 7, 2011 Commission Order By Continuing to Submit Inaccurate Large Trader Reports, in Violation of Section 6(c) of the Act

The February 7th Order required Newedge USA to cease and desist from violating Regulation 17.00. Newedge USA violated the February 7th Order by submitting reports containing numerous large trader reporting errors, in violation of Regulation 17.00. This failure constitutes the violation of a Commission order pursuant to Section 6(c) of the Act, 7 U.S.C. § 9 (2006).

Prior to amendment by the Dodd-Frank Act, Section 6(c) of the Act, 7 U.S.C. § 9 (2006), provided that, in proceedings before the Commission –

If the Commission has reason to believe that any person . . . is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect . . .

The Commission has relied upon this section of the Act in instituting administrative actions for violations of a Commission Order. *E.g., In re Grossfeld*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,726 at 40,367 (CFTC May 20, 1993) (affirming an administrative law judge's determination that a failure to comply with a Commission order amounted to a violation of current Section 6(c)'s predecessor, Section 6(b)), *aff'd in part, dismissed in part, Grossfeld v. CFTC*, 137 F.3d 1300 (11th Cir. 1998); *Lawrence v. CFTC*, 759 F.2d 767, 771 (9th Cir. 1985) (Respondent's failure to pay a civil monetary penalty assessed by the Commission in an administrative enforcement action constituted a violation of a Commission order).

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Newedge USA violated Section 4g of the Act, 7 U.S.C § 6g (2006 and Supp. III 2009) and Regulation 17.00, 17 C.F.R. §17.00 (2011), by submitting inaccurate large trader reports, and thereby also violated the February 7, 2011 Order and Section 6(c) of the Act 7 U.S.C. § 9 (2006).

VI. OFFER OF SETTLEMENT

Newedge USA has submitted an Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- 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 the Commission's 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. (2011), 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 claims 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.
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Newedge USA has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order, that:
1. makes findings by the Commission that Newedge USA violated Sections 4g and 6(c) of the Act, 7 U.S.C. §§ 6g and 9 (2006 and Supp. III 2009) and Regulation 17.00, 17 C.F.R. §17.00 (2011);
 2. orders Newedge USA to cease and desist from violating Sections 4g and 6(c) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6g and 9 and Regulation 17.00, 17 C.F.R. §17.00 (2011);
 3. orders Newedge USA to pay a civil monetary penalty in the amount of seven-hundred thousand dollars (\$700,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order;
 4. orders Newedge USA to comply with the undertakings consented to in its Offer and as set forth below in Section VII of this Order.

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

VII. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Newedge USA shall cease and desist from violating Sections 4g and 6(c) of the Act, as amended by the Dodd-Frank Act, to be codified 7 U.S.C. §§ 6g and 9 and Regulation 17.00, 17 C.F.R. §17.00 (2011);

- B. Newedge USA shall pay a civil monetary penalty in the amount of seven-hundred thousand dollars (\$700,000) (the "CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue beginning on the date of entry of this 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 USA 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: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

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

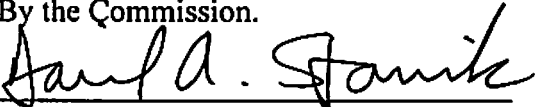
- C. Newedge USA and its successors and assigns shall comply with the following undertakings set forth in the Offer with respect to their large trader reporting pursuant to Regulation 17.00, 17 CFR § 17.00:
1. Other than systemic issues identified in Part 2 of Section C below, Newedge USA shall correct all large trader reporting errors (a) within two business days after Newedge USA discovers the errors or is notified of them if the discovery or notification occurs before 12:00 pm Central Time or (b) within three business days after Newedge USA discovers the errors or is notified of them if the discovery or notification occurs after 12:00 pm Central Time. The CFTC will notify Newedge USA of any futures large trader reporting errors by contacting the following email address: RegulatoryRequestsFutures@newedge.com. If such email address changes, Newedge USA will contact the CFTC within one business day.

If Newedge USA is not able to correct a particular error within two or three business days, respectively, Newedge USA will advise the CFTC in writing of that inability to correct, within the two or three business day deadline, and shall provide a written explanation as to why the error has not been corrected, the amount of time estimated to correct the error, not to exceed two weeks from the date the error was identified, and why the additional time is needed. If Newedge USA needs more than two weeks to correct a particular large trader reporting error, its Chief Compliance Officer, Chief Legal Officer, or other designated senior level officer shall provide a written explanation to the CFTC stating how much additional time is needed to correct the error, why the additional time is needed to correct the error, the steps Newedge USA has taken and intends to take to correct the error, and the date Newedge USA expects the error to be corrected. Newedge USA's Chief Compliance Officer, Chief Legal Officer, or other designated senior level officer shall provide the written explanation within two weeks from the time the error is identified.

2. Newedge USA shall fix any large trader reporting systemic issues (e.g. those requiring software modifications) that are causing or have caused one or more large trader reporting errors within two weeks from the time it discovers or is notified of them. If more than two weeks is needed to fix a particular large trader reporting systemic issue, Newedge USA shall provide a written explanation to the CFTC signed by Newedge USA's Chief Compliance Officer, Chief Legal Officer, or other designated senior level officer. The explanation shall state why the additional time is needed, the steps Newedge USA has taken and intends to take to fix the systemic issue so that it does not cause the same or similar types of large trader reporting errors to reoccur, and the date Newedge USA expects the systemic issue to be fixed. Newedge USA's Chief Compliance Officer, Chief Legal Officer, or other designated senior level officer shall provide the written explanation within two weeks of the time the reporting issue is identified.

3. Public Statements: Newedge USA agrees that neither Newedge USA 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 USA's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Newedge USA shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

By the Commission.

A handwritten signature in black ink, appearing to read "David A. Stawick", written over a horizontal line.

David A. Stawick

Secretary of the Commission

Commodity Futures Trading Commission

Dated: January 9, 2012