



BY OVERNIGHT MAIL AND E-MAIL

July 19, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: Newedge USA, LLC Comment Letter – File No. SR-FINRA-2010-032

Dear Ms. Murphy:

Newedge USA, LLC ("Newedge USA") appreciates this opportunity to comment on the Financial Industry Regulatory Authority, Inc.'s ("FINRA") proposal, and the related proposals of the other US securities self-regulatory organizations regarding the handling of clearly erroneous transactions.¹ As you may know, Newedge has been quite active over the years, both in the US and abroad, in working with regulators to develop rules and regulations designed to strengthen our financial markets. Among other things, Newedge provided testimony during the September 2, 2009 Securities and Exchange Commission ("SEC")/Commodity Futures Trading Commission ("CFTC") hearings on rule harmonization, and submitted a follow-up written response as requested by these two agencies.² Given our broad experience across asset classes as both an executing and clearing broker, we feel we are strongly positioned to provide such input and, as noted, welcome the opportunity to do so.

We applaud the SEC for directing the SROs, in response to the market "flash" crash of May 6, 2010, to propose rules that will strengthen and harmonize the process for reviewing and resolving clearly erroneous trades in the US equity markets. We believe the "unified" set of SRO procedures envisioned by the SEC will better enable the markets to deal with significant dislocations such as the one that occurred on May 6th. Indeed,

¹ FINRA and the other self-regulatory organizations are referred to herein as the "SROs".

² Indeed, Newedge personnel routinely sit on futures and securities industry committees and task forces, participate in industry conferences and seminars, and comment on proposed SEC, CFTC and SRO rules.

given that single equity orders are now frequently executed on multiple exchanges, requiring SROs to develop harmonized procedures relating to clearly erroneous trades – and mandating that they work together to enforce such procedures during times of crises – is, in our view, critical to improving investor confidence in the US equity markets. As stated by SEC Chairman Mary Schapiro, such consistency and cooperation will build investor confidence by “provid[ing] certainty in advance as to which trades will be broken, and allow[ing] market participants to better manage their risks.”

That being said, we believe the SEC’s current directive should go further. Specifically, we believe the SEC should direct the SROs to create rules:

1. mandating that (a) trades executed within enumerated price ranges (i.e., trades that are not clearly erroneous from a pricing perspective) will not be cancelled, and (b) trades executed outside of such price ranges will be cancelled absent a compelling public interest to the contrary;
2. allowing counterparties to undertake, as necessary and appropriate, different types of remedial actions in response to the execution of clearly erroneous transactions, but emphasizing that, in most cases, price adjustment is the preferred remedy;
3. clarifying the types of transactions resulting from clearly erroneous trades that may also be subject to cancellation, and;
4. requiring that information relating to the review and cancellation of clearly erroneous transactions be disseminated by SROs quickly and fairly to market participants.

We believe the addition of these provisions – which are often contained in the erroneous transaction procedures of other exchanges around the world – will strengthen and clarify the current SRO rule proposals (“SRO Proposals”), and thereby further the two primary objectives of any erroneous transaction policy; namely, to: (a) protect the integrity of the market by providing a mechanism for canceling those trades that are so clearly erroneous that they may adversely, and unacceptably, affect other market participants, and; (b) install confidence that, once executed, transactions will stand and will not be subject to cancellation arbitrarily.³

BACKGROUND

Newedge, which refers to Newedge Group SA, and all of its global subsidiaries, is one of the world’s largest brokerage organizations. Newedge offers its customers clearing and execution facilities across multiple asset classes including futures, securities (fixed

³ See SIFMA Policy Statement and Guidelines Regarding Error Trade Policies for Interdealer Brokers (March 2007) (“SIFMA Policy Statement”) at 3 (“[e]rror trade policies need to strike the proper balance between resolving trades that were clearly transacted in error and the expectation of market participants that once executed, trades will stand and will not be subject to arbitrary cancellation”).

income, options and equities), FX and various OTC instruments.⁴ Newedge maintains offices in over 15 countries, and is a member of over 80 exchanges worldwide. Newedge estimates that its customers -- who are principally institutional -- executed and cleared approximately 2.9 billion exchange-traded contracts in 2009. As of December 31, 2009, Newedge had an estimated global market share in listed derivatives of 12.1% (clearing) and 11.1% (execution), and over \$54.8 billion of client assets on deposit. Newedge USA is one of the leading broker-dealer ("BD")/futures commission merchants ("FCM") in the US. Indeed, according to CFTC statistics, Newedge USA holds the largest pool of customer "segregated" and "secured" assets of all US-based FCMs as of December 31, 2009. Newedge USA's primary function is that of a broker -- *i.e.*, to execute and clear customer transactions across multiple asset classes on either an agency or riskless principal basis. Newedge USA, which has been a joint BD/FCM since 1995, conducts only a very limited amount of proprietary trading, and then generally only to hedge positions acquired through customer facilitation. As a result, Newedge USA does not generally hold positions in inventory.

Newedge is very active in equity trading in the US and globally, as both an executing and clearing broker. Newedge USA conducts both "live" brokerage activities for and provides direct market access ("DMA") to its equity clients. The Firm's equity clients typically are other US BDs and FCMs, and large US and non-US institutional clients (such as hedge funds, private investment vehicles, banks and professional trading organizations). Newedge USA offers qualifying clients DMA trading through: its own order routing systems and infrastructure; independent internet service providers ("ISV"), and; sponsored access arrangements. Many of Newedge USA's DMA clients are algorithmic and high-frequency trading firms. Newedge USA also acts as a correspondent clearing firm and prime broker on equity trades executed by other US BDs. Newedge USA is a member of all major US securities exchanges.

DISCUSSION

A. SRO Rules Should Be More Definitive As To When Trades Will Be Cancelled.

Most, if not all SRO rules relating to clearly erroneous trades ("SRO Rules") contain "numerical guidelines" establishing the various price ranges within which a trade will not be considered "clearly erroneous." In addition, the current SRO Proposals extend such price range guidelines to market events involving twenty or more stocks and to stocks subject to individual trading halts. As noted above, we applaud these steps.

However, we also believe that SRO Rules are not definitive enough as to when clearly erroneous trades will actually be cancelled. For example, the SRO Proposals continue to allow SROs to break trades executed at prices that fall within the numerical guidelines (*i.e.*, trades that are not clearly erroneous from a pricing perspective).⁵ Indeed, SROs

⁴ "Newedge" refers to Newedge Group, a 50%-50% joint venture between Credit Agricole (formerly Calyon) and Societe Generale, headquartered in Paris, France, and all of its worldwide branches, subsidiaries and other units.

⁵ See, *e.g.*, NYSE Rule 128(c)(3); BATS Rule 11.17(c)(3); Nasdaq Rule 11890(a)(C)(3).

appear to be able to cancel trades for many reasons other than significant price discrepancies – including, for example, systems malfunctions, news released regarding a security, whether a security was subject to a stock split or reorganization, etc. – that may not necessarily involve matters of significant public interest.

We believe that in order to strengthen investor confidence in the integrity of our markets, SRO Rules should mandate that trades executed at prices that fall inside of the numerical guidelines will not be broken absent a compelling public interest reason to the contrary; *i.e.*, SRO Rules should create firm “no-bust” zones (which are common in the US futures markets and in financial services markets worldwide). As stated by the Futures Industry Association (“FIA”) in its Exchange Error Trade Procedures Recommendations for Best Practices (September 2004) (“FIA Best Practices”) at 3:

one component of market integrity is the assurance that, except in extraordinary circumstances, once executed, a trade will stand and will not be subject to cancellation. In this regard, therefore, it is essential that trades that do not have an adverse effect on the broader marketplace should not be able to be cancelled, even if executed in error.

Indeed, FIA recommends that all US futures exchanges adopt a “Preferred Adjust-Only Policy” in which all trades executed at prices inside of a product-specific “no-adjust” range are ineligible for adjustment.⁶ We believe such a requirement would increase investor confidence in the integrity of the US securities markets as well, and thereby help lead to an increase in trading volume.

Similarly, we believe SRO Rules provide SROs with too much discretion not to cancel trades that fall outside of the numerical price ranges. Indeed, SRO Rules generally provide that price is only one of the factors that may be considered in determining whether to cancel a transaction. However, we believe that, again, in order to increase investor confidence and allow individual participants to better manage their risks, SRO Rules should mandate that transactions executed outside of pre-set price ranges will be deemed null and void absent a compelling public interest to the contrary. Such a requirement (like the implementation of “no-bust” zones) will also help to ensure that certain market participants are not favored over others. As noted by the International Organization of Securities Commissions (“IOSCO”) in its Final Report Policies on Error Trades (October 2005) (“IOSCO Report”) at 10:

The IOSCO *Principles* [regarding the handling of clearly erroneous trades] contemplate that exchange rules will be applied consistently and fairly and that no market user should be favored over others. A comprehensive policy that eliminates ambiguities and contemplates in advance the necessary processes and probable consequences of invoking and canceling a trade helps to achieve these goals by allowing market users to understand in advance the circumstances under which a trade may be cancelled, the type of trades that may be cancelled, the

⁶ See FIA Market Access Risk Management Recommendations (April 2010) (“FIA Recommendations”) at 14.

parties who may challenge the trade and the scope of all exchange actions once the policy is invoked.

Stated another way:

[i]f the policies concerning trade cancellation are not known with certainty, then traders may act in a manner that adds to volatility during periods when ‘erroneous trading’ is affecting market prices.

IOSCO Report at 8.⁷ While a certain amount of discretion must be afforded to SROs to allow them to address unique circumstances, absent a compelling public interest to the contrary, trades executed inside of established price ranges should not be cancelled and trades executed outside of such price ranges should be cancelled.

B. SRO Rules Should Address Potential Remedial Actions, Contingency Trades and the Dissemination of Information Relating to Clearly Erroneous Transactions.

SRO Rules generally do not identify the different remedial actions that counterparties may undertake in resolving clearly erroneous trades. We believe different remedial options should be made available to investors given that different types of transactions can require different resolutions.⁸ That being said, we also believe the preferred method for resolving clearly erroneous transactions, in general, should be price adjustment, as a policy of breaking trades can cause traders to withdraw liquidity during times of market stress which can further compound a market dislocation. Finally, rules relating to the resolution of erroneous transactions should be consistent among SROs and stated clearly in their procedures.⁹

It also appears that most SRO Rules do not address the types of contingent transactions that may be cancelled if an erroneous trade is cancelled – *i.e.*, trades triggered by a clearly erroneous transaction (such as stop orders) that are themselves executed at clearly

⁷ See also Testimony of Mary L. Schapiro Concerning the Severe Market Disruption on May 6, 2010 (May 11, 2010) (“Schapiro Testimony”) at 16 (the SEC must “work with the various exchanges and other trading venues to assure that the process and policies for dealing with the correction of erroneous trades are fair for investors and consistently applied”); SIFMA Policy Statement at 4 (“[p]olicies and procedures that eliminate uncertainty and ambiguity, and that will be applied consistently and fairly so that no market participant will be favored over any other, will enhance a sense of fairness. Such policies and procedures will also provide the ability for market participants to understand and evaluate risks and to price and manage that risk”); FIA Recommendations at 14 (“subjectivity or ambiguity in an error trade policy amplifies risk through uncertainty”).

⁸ In our view, some of the different resolutions SRO Rules should provide for include: adjusting positions; adjusting prices; cancelling trades; reversing trades, and; allowing pre-arranged off-setting transactions. See SIFMA Policy Statement at 8 (the “types of remedies that may be prescribed should be articulated in an error trade policy” and may include options in which: a trade can be “broken or modified;” the “price or size of the trade may be adjusted;” the “trade may be reversed;” positions “may be transferred between market participants;” “[c]ash/price adjustments may be made” and “prearranged offsetting transactions” may be executed).

⁹ See, e.g., SIFMA Policy Statement at 5 (“any lack of transparency and certainty concerning how cancelled trades are treated is a source of operational risk ...”).

erroneous prices. Again, such provisions are relatively standard in exchange procedures worldwide relating to erroneous transactions and, in our view, are clearly relevant to the US securities markets. Indeed, Chairman Schapiro, in her testimony regarding the flash crash on May 6, noted that some of the clearly erroneous transactions that took place triggered customer stop loss orders that themselves were then executed at clearly erroneous prices. Schapiro Testimony at 8. While Newedge does not at this time offer a view as to when contingent trades should be subject to cancellation, we do believe that SRO Rules should address the issue and that such rules should be consistent.¹⁰

Finally, based upon our review, we note that SRO Rules generally do not state how news or information regarding the review and cancellation of clearly erroneous trades will be disseminated to the market. Without question, such information can be of significant interest to market participants, and thus, the prompt and fair disclosure of such information is critical to the efficient and transparent operation of the US equity markets.¹¹ Consequently, in our view, SRO Rules should, in a harmonized and consistent fashion, mandate that such information be disseminated quickly and in a non-discriminatory fashion to market participants in order to minimize market impact and not favor any one group of market participants over another.¹²

*

*

*

Thank you again for allowing us to provide our views on this matter. To the extent you would like to discuss these comments with us, do not hesitate to contact the undersigned at (646) 557-8458.

Sincerely,

Newedge USA, LLC



Gary DeWaal,
Senior Managing Director and
Group General Counsel, Newedge

¹⁰ FIA recommends that contingent orders executed as a result of an error trade be eligible for compensation from the party that made the error. See FIA Recommendations at 14.

¹¹ See IOSCO Report at 13 (“[b]ecause error trades can have an immediate effect on price formation (e.g., through reliance by traders on such information or the triggering of contingency trades), knowledge that a trade has been *challenged* by a party and *taken under review* by an exchange and/or subsequently deemed to be a valid error trade and in fact *cancelled* could be, depending upon the circumstances, highly material to the accuracy of the price formation process and to the trading decisions of market users”).

¹² See FIA Best Practices at 2 (to “assure that market participants are aware that an erroneous trade may be cancelled, exchanges should implement procedures to provide prompt notice to the marketplace of both a request to cancel a trade and the exchange’s decision with respect to such request”).