UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10650 / June 18, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86133 / June 18, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19205

In the Matter of **WEDBUSH SECURITIES, INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Wedbush Securities, Inc., ("Wedbush" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of Wedbush's improper practices with respect to securities lending transactions involving pre-released American Depositary Receipts ("ADRs").[2]

2. ADR facilities, which provide for the issuance of ADRs, are established by a depositary bank ("Depositary") pursuant to a deposit agreement ("Deposit Agreement").

3. Typically, a Depositary issues ADRs to a market participant that has delivered the corresponding number of foreign securities to the Depositary's foreign custodian ("Custodian").[3] However, in certain situations, Deposit Agreements may provide for "pre-release" transactions in which a market participant can obtain newly issued ADRs from the Depositary before delivering ordinary shares to the Custodian. Only brokers (or other market participants) that have entered into pre-release agreements with a Depositary ("Pre-Release Agreements") can obtain pre-released ADRs from the Depositary. The Pre-Release Agreements, consistent with the Deposit Agreements, require the broker receiving the pre-released ADRs ("Pre-Release Broker"), or its customer on whose behalf the Pre-Release Broker is acting, to beneficially own the ordinary shares represented by the ADRs, and to assign all beneficial rights, title, and interest in those ordinary shares to the Depositary while the pre-release transaction is outstanding. In effect, the Pre-Release Broker or its customer becomes the temporary custodian of the ordinary shares that would otherwise have been delivered to the Custodian.

4. From at least November 2011 until approximately September 2013, Wedbush was a Pre-Release Broker that obtained pre-released ADRs directly from four Depositaries pursuant to Pre-Release Agreements. Contrary to certain provisions in the Pre-Release Agreements and the Deposit Agreements, associated persons on Wedbush's securities lending desk regularly obtained pre-released ADRs from Depositaries and loaned them to counterparties without taking reasonable steps to determine whether the requisite number of ordinary shares was owned and custodied by Wedbush or its counterparties. The result of this conduct was the issuance of

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1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2 ADRs are securities that allow U.S. investors to invest in foreign companies without having to purchase shares in the foreign markets and allow foreign companies to get increased exposure to U.S. markets.

3 The securities deposited typically are equity securities, but debt securities may also underlie ADRs.

ADRs that in many instances were not backed by ordinary shares as required by the Deposit Agreements. This conduct violated Section 17(a)(3) of the Securities Act.

5. In addition, Wedbush failed to establish and implement effective policies and procedures to address whether Wedbush's associated persons complied with the firm's obligations in connection with pre-release transactions, such as determining ownership of the underlying ordinary shares. As a result, Wedbush's supervisory policies and procedures were not reasonably designed and implemented to provide effective oversight of associated persons to prevent and detect their violations of Securities Act Section 17(a)(3), and Wedbush failed reasonably to supervise its associated persons within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Respondent

6. Wedbush 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.

Background

ADRs and the Pre-Release of ADRs

7. ADRs are negotiable instruments that represent an ownership interest in a specified number of foreign securities that have been deposited with a Depositary.[4] ADRs may be traded on U.S. stock exchanges or over-the-counter.

8. An ADR is either "sponsored" or "unsponsored." If the ADR is sponsored, the Deposit Agreement is among the foreign issuer whose securities are represented by the ADRs (*i.e.*, the sponsor), the Depositary, and ADR holders. If the ADR is unsponsored, the agreement is between the Depositary and the ADR holders.[5] In either case, the Deposit Agreement or ADR describes fees applicable to the ADRs and the party responsible for paying those fees. In addition, the Depositary files a Securities Act registration statement on Form F-6 with the

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[4] In a more technical sense, ADRs evidence American Depositary Shares, or ADSs, which represent the specific number of underlying securities of the same company on deposit with the Custodian in the foreign issuer's home market. In addition, an ADR for a particular company may actually represent one ordinary share, more than one ordinary share, or a fraction of an ordinary share. The ADR-to-ordinary share ratio varies by ADR facility, based on pricing in the foreign and U.S. markets.

[5] An unsponsored ADR is created by the Depositary and does not involve the formal participation (or require the agreement) of the foreign company whose securities the ADRs represent.

Commission to register the offer and sale of the ADRs, which includes the Deposit Agreement and the form of ADR as exhibits.

9. Form F-6 is used to register the offer and sale of ADRs under the Securities Act if certain conditions are met, including that the ADR holder must be entitled to withdraw the deposited securities at any time, subject to certain limited exceptions inapplicable to the matters here. Typically, when ADRs are issued, a specified number of the ordinary shares represented by the ADR are contemporaneously delivered to the Custodian. In this way, those underlying ordinary shares are in effect removed from the market and the total number of securities in the markets — ADRs plus ordinary shares — is unaffected.

10. In some situations, a person may seek to obtain ADRs through a "pre-release" transaction pursuant to a Pre-Release Agreement with a Depositary, as provided for in the Deposit Agreements and in the ADR itself. In a pre-release transaction, a market participant obtains newly issued ADRs from the Depositary (as opposed to purchasing existing ADRs on the market) without simultaneously delivering the corresponding ordinary shares to the Custodian.

11. The traditional rationale for pre-release transactions was to address settlement timing disparities that could delay delivery to the Custodian of recently purchased ordinary shares. In theory, following the traditional rationale, the pre-release transaction would be closed within a few days after the purchased ordinary shares were received by the Pre-Release Broker. Once issued, pre-released ADRs are indistinguishable from other ADRs of the same issuer and can be freely traded, even while the pre-release transaction remains open.

12. Deposit Agreements, the ADR itself, and Pre-Release Agreements govern the terms of pre-release transactions. Pre-Release Brokers may obtain pre-released ADRs directly from Depositaries with which they have entered into Pre-Release Agreements.

13. Deposit Agreements, the ADR itself, and Pre-Release Agreements typically require a representation that at the time of each pre-release and for the duration such pre-release remains outstanding, the Pre-Release Broker or its customer (i) beneficially owns corresponding ordinary shares, (ii) assigns all beneficial right, title, and interest in the shares to the Depositary, and (iii) will not take any action with respect to such shares that is inconsistent with the transfer of beneficial ownership (collectively, the "Pre-Release Obligations"). In effect, the Pre-Release Broker or the customer on whose behalf the Pre-Release Broker is acting must maintain the ordinary shares for the benefit of ADR holders, similar to how the Depositary, through its Custodian, maintains the ordinary shares when it issues ADRs that are not pre-released.

14. Deposit Agreements, the ADR itself, and Pre-Release Agreements also include provisions addressing the situation where ADRs have been pre-released over a dividend record date. The provisions typically require the Pre-Release Broker or its counterparty to ensure that foreign withholding taxes, to the extent due in connection with the dividend on the corresponding ordinary shares, are paid to the foreign jurisdiction at the rate required for ADR holders, to forward to the Depositary all dividends received on the ordinary shares, net of any foreign withholding tax paid, and to pass through any tax credits or refunds from the dividends to the Depositary. In this way, the rights and obligations of all ADR holders (including those who

hold pre-released ADRs) will be protected, and the flow of dividend and tax payments will not be altered by the fact that the ordinary shares were not simultaneously deposited with the Custodian when the pre-released ADRs were issued.

15. Significantly, these agreements are intended to ensure that, at all times until the pre-release position is closed by delivery of ordinary shares to the Custodian (or delivery of an equivalent number of ADRs to the Depositary), the Depositary and the Pre-Release Broker or its counterparty are collectively maintaining, for the benefit of ADR holders, the number of ordinary shares that corresponds to the number of outstanding ADRs. This ensures that the total number of ordinary shares plus shares represented by ADRs available in the markets is unaffected by the fact that ADRs were pre-released, and that any economic or tax impact related to holding the ordinary shares flows to the Depositary and the ADR holders for whose benefit the Depositary custodies ordinary shares.

Wedbush's Practices with Respect to Securities Lending Transactions Involving Pre-Released ADRs

16. From 2011 through 2013, Wedbush operated a matchbook or conduit securities lending desk, meaning that the desk's goal was not to hold any position on the firm's books. The desk generated revenue by lending securities it borrowed or otherwise obtained for more than it paid to borrow or obtain the securities.

17. ADRs were among the securities that the Wedbush securities lending desk sourced for its counterparties. Wedbush obtained its ADRs from a variety of sources, including by borrowing them from custodial banks and larger broker-dealers. In many cases, however, when Wedbush was unable to borrow the ADRs it needed from such sources, Wedbush sought to obtain pre-released ADRs from Depositaries.

18. Wedbush had Pre-Release Agreements with each of the four Depositaries. In addition, three of the Depositaries required Wedbush to sign certifications ("Certifications") stating that it was complying with the terms of the Pre-Release Agreements. For the period 2011 through 2013, Wedbush representatives signed a total of 7 such Certifications.

19. Despite the obligations provided for in the Deposit Agreements, Pre-Release Agreements, and Certifications, Wedbush failed to take reasonable steps to determine whether it complied with the Pre-Release Representations.

20. Wedbush itself did not own ordinary shares in connection with any pre-release transactions with Depositaries. Nor did Wedbush take reasonable steps to determine whether the broker-dealer counterparties to whom it lent the pre-released ADRs (or their customers) owned corresponding ordinary shares.

21. Instead, Wedbush securities lending desk personnel routinely obtained pre-released ADRs through the Pre-Release Agreements and then lent them to counterparties pursuant to standard master securities loan agreements ("MSLAs"). The MSLAs did not address pre-released ADRs, and did not contain any provisions requiring compliance with any of the Pre-Release Representations.

22. In effect, Wedbush securities lending desk personnel treated the pre-released ADRs as if they were ordinary shares used in typical securities lending transactions. Accordingly, Wedbush securities lending desk personnel routinely obtained pre-released ADRs without taking sufficient steps to comply with the Pre-Release Representations. Moreover, given the circumstances in which Wedbush obtained and lent pre-released ADRs, Wedbush securities lending desk personnel should have recognized the likelihood that Wedbush was acting as a conduit through which its counterparties were obtaining and the Depositaries were issuing ADRs that were not evidenced by any ordinary shares held for the benefit of the Depositary.

23. Wedbush securities lending desk personnel typically sought pre-released ADRs from Depositaries for two primary reasons.

24. First, Wedbush securities lending desk personnel obtained, on a regular basis, pre-released ADRs of numerous securities and lent them to other broker-dealers that were looking to fulfill settlement obligations. Based on the nature of the broker-dealers' requests to borrow from Wedbush, and the fact that the requests often were for ADRs that were hard-to-borrow at the time, Wedbush securities lending desk personnel should have recognized that the requests at times may have arisen from circumstances involving broker-dealers needing to obtain ADRs in order to comply with Regulation SHO's locate, delivery, and close-out requirements. None of those circumstances would indicate that the broker-dealers to whom Wedbush was lending the pre-released ADRs owned or had custody of the underlying ordinary shares. As a result, Wedbush failed to take reasonable steps to comply with the Pre-Release Representations in connection with these transactions.

25. As a result of this conduct, Wedbush, at times, facilitated short selling and enabled the settlement of trades with ADRs that were not actually backed by ordinary shares held for the benefit of the Depositary in accordance with the terms of the Pre-Release Agreements.

26. Second, Wedbush securities lending desk personnel engaged in hundreds of pre-release transactions involving the sponsored ADRs of foreign issuers that were scheduled to pay dividends. Wedbush's counterparties (the brokers to whom Wedbush lent the pre-released ADRs) and other parties (such as the counterparties' customers or counterparties' counterparties) sought to profit by holding ordinary shares in a tax advantaged situation if the tax savings were higher than the costs of borrowing or acquiring the ordinary shares at dividend time. Wedbush, in turn, profited from these transactions by lending the pre-released ADRs at a higher rate than the rate at which it obtained ADRs from the Depositary.

27. Pursuant to the Deposit and Pre-Release Agreements, the payment of dividends to ADR holders, and any resulting taxes due to foreign tax authorities, should not have been affected by the pre-release of ADRs if all relevant parties were fulfilling their obligations under those agreements. Under these agreements, the dividend payments on ordinary shares that would otherwise have been received by the Depositaries' Custodians (*i.e.,* in those circumstances where there was no pre-release transaction) generally should have been forwarded by Wedbush's counterparty to Wedbush and on to the Depositaries. In addition, the Pre-Release Agreements provided that the applicable foreign tax withholding on that dividend payment should have been calculated as though the Depositaries owned and held the underlying ordinary shares for the

benefit of a U.S. resident holder of ADRs, consistent with the transfer of beneficial ownership of the shares to the Depositaries. In that situation, the Pre-Release Agreement would have required the Pre-Release Broker or its counterparty to pay any applicable withholding tax to the foreign jurisdiction. Thus, despite the existence of pre-released ADRs in the marketplace, all ADR holders on the record date would have been entitled to (a) receive the appropriate dividend amount, minus any withholding for foreign taxes, and (b) rely on the representations concerning transfer of beneficial ownership and, by extension, payment of any foreign taxes.

28. Wedbush forwarded the correct net dividend amounts to the Depositaries. However, Wedbush's securities lending desk personnel should have understood from the circumstances of many of the transactions that those amounts may not have originated from ordinary shares held at the time of the pre-release transaction, and that its borrowers may not have been making tax payments that, under the Pre-Release Agreements, should have been paid to the foreign jurisdiction.

29. For example, Wedbush securities lending desk personnel were, or should have been, aware that Wedbush's borrowing counterparties at times returned the pre-released ADRs to the Depositaries in exchange for ordinary shares – a fact indicating the possibility that their counterparty was going to forward dividend payments received from the ordinary shares that Wedbush's counterparty obtained from converting the pre-released ADRs, rather than from any ordinary shares previously owned by the borrower.

30. In addition, the potential profit in these transactions was the difference between the dividend net of taxes that a standard U.S. taxpayer would receive and the amount of dividend that a borrower could receive if it had a tax advantaged status. For example, if a standard U.S. taxpayer would only receive a net 85% of a dividend based on applicable tax treaties, with 15% being paid as withholding tax to the foreign jurisdiction, but the borrower (or its customer) qualified for 0% withholding, the borrower might be willing to pay total lending fees equal to an amount between 0% and 15% of the dividend in order to borrow the pre-released ADRs. In other words, the economics of the transaction indicated that the borrower would pay some portion of the ordinary withholding amount to Wedbush, so that it could keep the remainder as its profit. Because the pre-release obligations required the borrower to also pay 15% withholding to the foreign tax authority, that should have raised questions about whether the transaction would have been profitable for the borrower if it fulfilled those obligations.

31. Under the circumstances described above, Wedbush's securities lending desk personnel should have known that Wedbush's borrowers may not have been paying withholding taxes that may have been owed to the foreign jurisdiction on dividends received on ordinary shares, and that ordinary shares were not properly custodied for the benefit of ADR holders.

32. Inmid-2013, senior officers at Wedbush recognized that there was a problem with its pre-release ADR business as a result of an internal review of its pre-release practices over dividend record date. That internal review was prompted by a letter that Wedbush received in June 2013 from Depositary A stating that the Depositary had been claiming a higher percentage of dividends from Pre-Release Brokers on behalf of ADR holders than such ADR holders were entitled to under various tax treaties. As a result, Depositary A informed Wedbush that it would

be returning to Wedbush the excess amount of $1,965,589. This payment caused Wedbush to immediately conduct an internal review of its pre-release practices, which shortly thereafter led Wedbush to voluntarily discontinue its pre-release activity.

33. Prior to that internal review, Wedbush failed to establish and implement policies and procedures that would be reasonably expected to determine whether its associated persons on the securities lending desk complied with the Pre-Release Representations in connection with pre-release transactions.

34. From November 2011 until approximately September 2013, Wedbush's revenues from the securities lending transactions with Pre-Release Brokers described above totaled approximately $2,903,483, and Wedbush also received the cash payment from Depositary A in the amount of $1,965,589, for a total amount of $4,869,072.

35. Wedbush cooperated with the staff's investigation, including by entering into tolling agreements with the Commission.

Violations and Failure Reasonably to Supervise

36. As result of the conduct described above, Respondent violated Section 17(a)(3) of the Securities Act, which prohibits, in the offer or sale of securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

37. Under Section 15(b)(4)(E) of the Exchange Act, broker-dealers are responsible for supervising, with a view to preventing and detecting violations of the federal securities laws, persons subject to their supervision. Wedbush was responsible for supervising its securities lending desk personnel to address whether they were borrowing and lending pre-released ADRs that were not backed by underlying ordinary shares. Wedbush failed reasonably to fulfill such supervisory responsibilities within the meaning of Section 15(b)(4)(E) of the Exchange Act because Wedbush failed to establish reasonable policies and procedures, and a system for implementing such policies and procedures, that would reasonably be expected to prevent and detect the violations of Section 17(a)(3) of the Securities Act by the associated persons on the securities lending desk described above. If Wedbush had developed reasonable policies and procedures and systems to implement those procedures, it is likely that the firm would have prevented and detected the violations of its associated persons on the securities lending desk.

Wedbush's Cooperation and Remediation

38. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff and its voluntary remediation efforts in discontinuing pre-release activity before the start of the staff's investigation.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b)(4) of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

B. Respondent is censured.

C. Wedbush shall, within 30 days of the entry of this Order, pay disgorgement of $4,869,072 (which includes the $1,965,589 amount from Depositary A) and prejudgment interest of $805,641 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Wedbush shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $2,434,536 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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) Respondent 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 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of $2,434,536 based upon its cooperation and agreement to cooperate in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Acting Secretary