

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94247 / February 15, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20770

In the Matter of

**The Winning Edge Financial
Group, Inc.,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against The Winning Edge Financial Group, Inc. (“Winning Edge Financial” 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 Sections 15(b) and 21C 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 that:

Summary

1. This matter involves Winning Edge Financial’s failure to file with the Commission and to deliver to retail investors a Form CRS that complies with the requirements of Rule 17a-14. Winning Edge Financial was required to file its initial Form CRS with the Commission and to begin delivering its Form CRS to prospective and new retail investors, as applicable, by June 30, 2020. Winning Edge Financial was further required to deliver its Form CRS to existing retail investor customers by July 30, 2020. The firm failed to file and deliver Form CRS by these deadlines. Although Winning Edge Financial filed a Form CRS on January 20, 2021, the Form CRS failed to include certain information and language required by Rule 17a-14. Winning Edge Financial did not file, deliver, and post an updated Form CRS with the additional information until January 14, 2022. As a result, Winning Edge Financial violated Exchange Act Section 17(a)(1) and Rule 17a-14 thereunder.

Respondent

2. Winning Edge Financial is a New Jersey corporation with its principal place of business in Clifton, NJ. Winning Edge Financial is registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act. Winning Edge Financial offers services to retail investors.

Facts

3. On June 5, 2019, the Commission adopted Form CRS and rules creating new requirements—the Form CRS Filing Requirement and the Form CRS Delivery Requirement (collectively, the “Requirements”)—for Commission-registered broker-dealers offering services to a retail investor.¹ See *Form CRS Relationship Summary; Amendments to Form ADV*, Release Nos. 34-86032 & IA-5247 (June 5, 2019) (effective September 10, 2019) (“*Form CRS Adopting Release*”).

4. *The Form CRS Filing Requirement.* First, Rule 17a-14 under the Exchange Act requires all Commission-registered broker-dealers offering services to a retail investor (“Retail BDs”) to electronically file on the Central Registration Depository (“Web CRD”) operated by the Financial Industry Regulatory Authority, Inc. (“FINRA”) an initial Form CRS satisfying the requirements of Rule 17a-14 no later than June 30, 2020.

5. *The Form CRS Delivery Requirement.* Second, Rule 17a-14 under the Exchange Act requires Retail BDs to deliver their current Form CRS to each retail investor. Specifically, under Rule 17a-14 under the Exchange Act, the Retail BD must deliver:

- (1) to each retail investor its current Form CRS before or at the earliest of:

¹ For purposes of Form CRS, the term “retail investor” means “a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.” Rule 17a-14(e)(2) under the Exchange Act.

- a recommendation of an account type, a securities transaction, or an investment strategy involving securities;
- placing an order for the retail investor; or
- the opening of a brokerage account for the retail investor.

(2) to each retail investor who is an existing customer the Retail BD's current Form CRS before or at the time the firm:

- opens a new account that is different from the retail investor customer's existing account(s);
- recommends that the retail investor customer roll over assets from a retirement account into a new or existing account or investment; or
- recommends or provides a new brokerage service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

See Rule 17a-14(c)(1) & (c)(2). Rule 17a-14 also requires Retail BDs to post their current Form CRS prominently on their website, if they have one, in a location and format that is easily accessible to retail investors. The deadline for Retail BDs to begin complying with the Form CRS Delivery Requirement was June 30, 2020 for prospective and new retail investors and July 30, 2020 for the initial delivery to existing retail investor customers. *See* Rule 17a-14(f)(3); *Form CRS Adopting Release* at 239, 242, 406-407; Instructions to Form CRS, General Instruction 7.C (Sept. 2019).

6. Rule 17a-14(b)(1) requires Retail BDs to prepare their Forms CRS by following the instructions in the form. The Instructions to Form CRS identify specific information and language to be included in Form CRS. *See* Instructions to Form CRS (Sept. 2019).

7. Winning Edge Financial did not file its Form CRS by June 30, 2020 and did not deliver its Form CRS to retail customers by July 30, 2020 and thus failed to comply with the Requirements by its regulatory deadlines. Winning Edge Financial filed its Form CRS, delivered Form CRS to its existing retail investor customers, and posted its Form CRS on its website on January 20, 2021. Moreover, the Form CRS filed by Winning Edge Financial on January 20, 2021 failed to include certain language and information specified in the Instructions to Form CRS and required by Rule 17a-14. On or about January 14, 2022, Winning Edge Financial filed an updated Form CRS with additional information and language required by Rule 17a-14, delivered the updated Form CRS to existing retail investor customers, and posted the updated Form CRS on its website.

Violations

8. As a result of the conduct described above, Winning Edge Financial willfully² violated Exchange Act Section 17(a)(1) and Rule 17a-14 thereunder.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C 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 Exchange Act Section 17(a)(1) and Rule 17a-14 thereunder.

B. Respondent is censured.

C. Respondent shall pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Securities Exchange Act of 1934 Section 21F(g)(3). Payment shall be made in the following installments: \$2,500 to be paid within 10 days of the entry of the Order; \$2,500 to be paid within 120 days of the entry of the Order; \$2,500 to be paid within 240 days of the entry of the Order; and \$2,500 to be paid within 350 days of entry of the Order. Payments shall be applied first to post-Order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under the Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission and without further application to the Commission.

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 “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

- (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 Winning Edge Financial as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jennifer S. Leete, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F. St. NE, Washington, DC 20549, or such other person or address as the Commission staff may provide.

D. 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.

By the Commission.

Vanessa A. Countryman
Secretary