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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of

WEDBUSH SECURITIES INC.,  
JEFFREY BELL, and  
CHRISTINA FILLHART,

Respondents.

Admin. Proc. File No. 3-15913

**ANSWER OF RESPONDENT  
WEDBUSH SECURITIES INC. TO  
ORDER INSTITUTING PROCEEDINGS**

Pursuant to Rule 220 of the Commission’s Rules of Practice, 17 C.F.R. § 201.220, and in compliance with the Prehearing Order issued by the Court on June 20, 2014, Respondent Wedbush Securities Inc. (“Wedbush Securities”), respectfully submits this Answer to the allegations in the Commission’s June 6, 2014 Order Instituting Proceedings herein (“OIP”).

As more fully set forth below, Wedbush Securities denies the allegations of the Division of Enforcement that it violated certain of the federal securities laws and rules adopted by the Commission thereunder, and denies that any remedial action is appropriate in the public interest and that any order to cease and desist should be issued. All allegations not expressly admitted herein are denied.

## ANSWER TO SPECIFIC ALLEGATIONS OF OIP

Wedbush Securities responds to the substantive allegations in the OIP, in order below according to the numbered paragraphs of Section II of the OIP, as follows:

**Paragraph 1:** Wedbush Securities admits this proceeding involves its market access business; that between July 2011 and January 2013 (the “Relevant Period”), Wedbush Securities provided market access to dozens of its correspondent broker-dealers and customers; that some of those firms were registered as broker-dealers with the Commission (correspondent broker-dealers, also known as “correspondents”) and some were not registered as broker-dealers with the Commission (“customers”); that some of them were organized in the United States and some of them were organized under the laws of other countries; that such customers and correspondents in turn collectively had thousands of individual traders; and that the overall market access business of Wedbush Securities was among the U.S. market leaders, if measured by trading volume. Wedbush Securities denies the remainder of the allegations in Paragraph 1.

**Paragraph 2:** Wedbush Securities admits that it received fees and/or commissions as a result of business conducted by its market access customers and correspondents. Wedbush Securities denies the remainder of the allegations in Paragraph 2.

**Paragraph 3:** Wedbush Securities admits that it had communications and meetings with the Commission’s staff regarding Wedbush Securities’s compliance procedures. Wedbush Securities denies the remainder of the allegations in Paragraph 3.

**Paragraph 4:** Wedbush Securities denies the allegations in Paragraph 4.

**Paragraph 5:** Wedbush Securities denies that it became registered with the Commission as a broker-dealer in 1966. Except as denied, Wedbush admits the remainder of the allegations in Paragraph 5.

**Paragraph 6:** Wedbush Securities denies that Respondent Jeffrey Bell (“Bell”) was a member of its Board of Directors, denies that Mr. Bell is 39 years old, and admits the remainder of the allegations in Paragraph 6.

**Paragraph 7:** Wedbush Securities admits the allegations in Paragraph 7.

**Paragraphs 8 through 12:** Paragraphs 8 through 12 contain only recitations of legal propositions regarding Rule 15c3-5, 17 C.F.R. § 240.15c3-5, and the Commission’s adopting release for that rule as published in the Federal Register, not allegations to be admitted or denied. As such, no response is necessary to Paragraphs 8 through 12.<sup>1</sup>

**Paragraph 13:** Wedbush Securities denies that it allowed its “sponsored” market access customers or correspondents or their traders “to send orders that bypassed Wedbush[ Securities]’s systems” under a Wedbush Securities MPID during the Relevant Period, in that Wedbush Securities asserted direct and exclusive control over the trading platforms used by its market access customers and correspondents to send orders under a Wedbush Securities MPID during the Relevant Period. Wedbush Securities admits the remainder of the allegations in Paragraph 13.

**Paragraph 14:** Wedbush Securities admits that, during the Relevant Period, it had as many as 50 sponsored access customers and aggregate monthly trading volume across the entire market access business may have reached approximately 30 billion shares in parts of the Relevant Period. Wedbush Securities also admits that it had several sponsored access customers with more than 1,000 authorized traders each. Wedbush Securities also admits that the Correspondent Services Division was at certain times the most profitable division of Wedbush, Inc. Wedbush Securities also admits that Bell and Respondent Christina Fillhart (“Fillhart”) were awarded bonus compensation based on various factors, one of which sometimes included profitability of the Correspondent Services Division. Wedbush Securities objects to the reference to its individual employees’ compensation in the OIP as not relevant and violative of their privacy, but admits the allegations of the last sentence of Paragraph 14. Wedbush Securities denies the remainder of the allegations in Paragraph 14.

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<sup>1</sup> With respect to such legal propositions, including those set forth in Paragraphs 8 through 12, 27, 37, 38, 42, 47, 48, 49, 64, 70, 77, and 78 through 83 of the OIP, Wedbush Securities does not admit that the OIP accurately characterizes the relevant requirements of the cited laws and rules; to the extent any response is deemed necessary to these portions of the OIP, Wedbush Securities denies them.

**Paragraph 15:** Wedbush Securities admits the allegations in the first three sentences of Paragraph 15. Wedbush Securities denies the allegations in the last sentence of Paragraph 15.

**Paragraph 16:** Wedbush Securities denies that Chapter 31 of its WSPs described Wedbush Securities' "primary" risk management controls and supervisory procedures relating to market access. Wedbush Securities admits the remainder of the allegations in Paragraph 16.

**Paragraph 17:** Wedbush Securities admits the allegations in the first sentence of Paragraph 17, and admits that Bell and Fillhart were among the individuals who had certain authority to adopt and revise Wedbush Securities's controls and procedures relating to market access. Wedbush Securities denies the remainder of the allegations in Paragraph 17.

**Paragraph 18:** Wedbush Securities denies the allegations in the first sentence of Paragraph 18. Wedbush Securities admits that the Commission filed an action against an individual named Nagaciev (the "Latvian trader") in 2012 but lacks sufficient information to admit or deny the remainder of the allegations in Paragraph 18 and on that basis denies them.

**Paragraph 19:** Wedbush Securities admits that the Commission filed an administrative proceeding entitled *In the Matter of Alchemy Ventures, Inc., et al.*, A.P. File No. 3-14720, in which it obtained relief against various persons, but lacks sufficient information to admit or deny the remainder of the allegations in Paragraph 19 and on that basis denies them.

**Paragraph 20:** Wedbush Securities admits that it was aware of Rule 15c3-5 and the statements by the Commission about it in its proposing and adopting releases, and that Bell wrote a comment letter to the Commission on behalf of Wedbush Securities dated February 23, 2009, the content of which speaks for itself. Wedbush Securities denies the remainder of the allegations on Paragraph 20.

**Paragraph 21:** Wedbush Securities admits that it received a letter dated May 17, 2011 from Commission staff in the Office of Compliance Inspections and Examinations, the content of which speaks for itself. Wedbush Securities denies the remainder of the allegations in Paragraph 21.

**Paragraph 22:** Wedbush Securities admits the allegations in the first and last sentences of Paragraph 22. Wedbush Securities admits that, during the July 5, 2011 meeting, the Commission’s staff expressed certain concerns related to the business of World Trade Securities (Cayman) Limited (“WTS”), a Cayman Islands broker-dealer that was not registered as a broker-dealer with the Commission, which was then a market access customer of Wedbush Securities. Wedbush Securities denies the remainder of the allegations in Paragraph 22.

**Paragraph 23:** Wedbush Securities denies the allegations in Paragraph 23.

**Paragraph 24:** Wedbush Securities admits that certain of its market access customers and correspondents used third-party and/or proprietary trading platforms (as permitted under Rule 15c3-5). Wedbush Securities denies the remainder of the allegations in Paragraph 24.

**Paragraph 25:** Wedbush Securities admits that employees in its Correspondent Services Division had access to the trading platforms used by market access customers and correspondents of Wedbush Securities to risk view settings and trading activity, among other things. Wedbush Securities denies the remainder of the allegations in Paragraph 25.

**Paragraph 26:** Wedbush Securities admits the allegations in the first sentence of Paragraph 26. Wedbush Securities denies the remainder of the allegations in Paragraph 26.

**Paragraph 27:** Wedbush Securities admits the allegations in the first two sentences of Paragraph 27, and denies the allegations in the last sentence of Paragraph 27. The footnotes to Paragraph 27 contain only recitations of legal propositions regarding portions of the Commission’s Regulation SHO and Regulation NMS, not allegations to be admitted or denied. As such, no response is necessary to the footnotes to Paragraph 27.

**Paragraph 28:** Wedbush Securities admits that trading platform providers, as well as customers and correspondents, provided risk demonstrations of their trading platforms’ settings as and when required by Wedbush Securities during the Relevant Period. Wedbush Securities denies the remainder of the allegations in Paragraph 28.

**Paragraph 29:** Wedbush Securities denies the allegations in Paragraph 29.

**Paragraph 30:** Wedbush Securities admits that certain anti-internalization risk settings were not enabled for WTS; that a third-party trading platform provider, Sterling Trader (“Sterling”), inadvertently used an outdated list from Wedbush Securities of easy-to-borrow securities on several occasions; that Sterling in November 2011 enabled an ISO order route for WTS against Wedbush Securities’ instructions; and that Wedbush Securities personnel including Fillhart became aware of these facts through their ongoing surveillance and reviews. Wedbush Securities denies the remainder of the allegations in Paragraph 30.

**Paragraph 31:** Wedbush Securities admits that the Commission’s adopting release for Rule 15c3-5 contains the language excerpted in Paragraph 31.

**Paragraph 32:** Wedbush Securities admits that it sought to reasonably allocate, by written contract, control over certain regulatory risk management controls and supervisory procedures to certain correspondents, in accordance with Rule 15c3-5(d)(1). Wedbush Securities denies the remainder of the allegations in Paragraph 32.

**Paragraph 33:** Wedbush Securities admits that it entered into allocation agreements pursuant to Rule 15c3-5(d)(1) with certain of its correspondents; that certain of its correspondents in turn had separate customers of their own; and that certain of its correspondents owned or controlled proprietary trading platforms. Wedbush Securities denies the remaining allocations in Paragraph 33.

**Paragraph 34:** Wedbush Securities admits that its allocation agreements pursuant to Rule 15c3-5(d)(1) were based on a form that was approved by Wedbush Securities personnel, including Bell, the content of which speaks for itself. Wedbush Securities denies the remainder of the allegations in Paragraph 34.

**Paragraph 35:** Wedbush Securities admits that its allocation agreements pursuant to Rule 15c3-5(d)(1) included a statement by the correspondent that its regulatory risk management controls and supervisory procedures were reasonably designed to ensure compliance with all regulatory requirements, including the four requirements described in Rule 15c3-5(c)(2)(i)-(iv). Wedbush Securities denies the remainder of the allegations in Paragraph 35.

**Paragraph 36:** Wedbush Securities admits that the Commission’s adopting release for Rule 15c3-5 discusses “better access to [an] ultimate customer” as part of the basis for an allocation of control over regulatory risk management controls and supervisory procedures to a correspondent. Wedbush Securities denies the remainder of the allegations in Paragraph 36.

**Paragraph 37:** The first sentence of Paragraph 37 recites legal propositions regarding the requirements of Rule 15c3-5(c)(2)(i), not allegations to be admitted or denied. Rule 15c3-5 speaks for itself. As such, no response is necessary thereto. Wedbush Securities admits that the adopting release for Rule 15c3-5 referred to portions of Regulation SHO and Regulation NMS as examples of regulatory requirements that must be satisfied on a pre-order entry basis. Wedbush Securities denies the remainder of the allegations in Paragraph 37.

**Paragraph 38:** Wedbush Securities denies the allegations in the first sentence of Paragraph 38. The remainder of Paragraph 38 recites legal propositions regarding certain aspects of the requirements of Rule 203(b)(1) of Regulation SHO, 17 C.F.R. § 242.203(b)(1), also known as the “locate rule,” not allegations to be admitted or denied. As such, no response is necessary thereto.

**Paragraph 39:** Wedbush Securities admits that its WSPs stated, in part, that Wedbush Securities may rely upon sponsored access customers and/or correspondents to meet locate requirements, to the extent allowed under applicable rules; that Wedbush maintained and continuously updated a list of easy-to-borrow securities (“ETB list”) and required that trading platform providers upload the current ETB list each day before the beginning of trading; and that maintaining the current ETB list in the trading platforms was a step in the control process reasonably designed to achieve compliance with Rule 203(b)(1) of Regulation SHO. Wedbush Securities denies the remainder of the allegations in Paragraph 39.

**Paragraph 40:** Wedbush Securities admits the allegations in the first sentence of Paragraph 40, with respect to direct customers of Wedbush Securities, and denies the remainder of the allegations in Paragraph 40.

**Paragraph 41:** Wedbush Securities admits that, on three occasions between July 2011 and November 2012, a trading platform provider inadvertently loaded an outdated Wedbush Securities ETB list into its system, with the result that the control process for compliance with Rule 203(b)(1) of Regulation SHO in effect on that trading platform temporarily would not require separate documentation of a “locate” for short sales in securities that were no longer on the current ETB list. Wedbush Securities admits that Fillhart became aware of these incidents as a result of Wedbush Securities’s ongoing surveillance and review; and that Fillhart and Bell were aware of or had been told about similar issues involving the ETB list which had arisen on several occasions prior to July 2011. Wedbush Securities denies the remainder of the allegations in Paragraph 41.

**Paragraph 42:** Wedbush Securities denies the allegations in the first clause of the first sentence of Paragraph 42. The remainder of Paragraph 42 recites legal propositions regarding certain aspects of the requirements of Regulation NMS and Rule 611(c) thereof, 17 C.F.R. § 242.611(c), regarding intermarket sweep orders (“ISOs”), not allegations to be admitted or denied. As such, no response is necessary thereto.

**Paragraph 43:** Wedbush Securities admits that its WSPs stated, in part, that ISOs were “not permitted unless the market is swept to ensure that all better priced protected quotes are satisfied prior to sending the ISO order.” Wedbush Securities denies the remainder of the allegations in Paragraph 43.

**Paragraph 44:** Wedbush Securities admits that, in April 2011, it learned that Sterling had opened an order route for WTS that allowed the submission of orders marked as ISOs to one exchange; that this had occurred without Wedbush Securities’s authorization; that Sterling had previously informed Wedbush Securities that WTS could not submit ISOs; and that Fillhart became aware of or was told about these facts. Wedbush Securities denies the remainder of the allegations in Paragraph 44.

**Paragraph 45:** Wedbush Securities admits the allegations in the first sentence of Paragraph 45, and that Fillhart instructed Sterling to close the relevant order route that could



allow ISOs in April 2011. Wedbush Securities denies the remainder of the allegations in Paragraph 45.

**Paragraph 46:** Wedbush Securities admits that, in November 2011, Sterling enabled an order route to an exchange for WTS that permitted orders marked as ISOs; that this had occurred without Wedbush Securities's authorization; and that certain orders were placed on that route by WTS. Wedbush Securities admits the allegations in the second sentence of Paragraph 46, and denies the remainder of the allegations in Paragraph 46.

**Paragraph 47:** The first sentence of Paragraph 47 recites legal propositions regarding the requirements of Rule 15c3-5(c)(2), not allegations to be admitted or denied. Rule 15c3-5 speaks for itself. As such, no response is necessary thereto. Wedbush Securities denies the remainder of the allegations in Paragraph 47.

**Paragraph 48:** Paragraph 48 recites legal propositions regarding portions of the requirements of the Commission's Rule 17a-8, 17 C.F.R. 240.17a-8, the Bank Secrecy Act, 31 U.S.C. § 5318(h), and Department of Treasury regulations thereunder, not allegations to be admitted or denied. The cited rules, statutes, and regulations speak for themselves. As such, no response is necessary thereto.

**Paragraph 49:** The first sentence of Paragraph 49 recites legal propositions regarding portions of the requirements of FINRA Rule 3310, not allegations to be admitted or denied. FINRA Rule 3310 speaks for itself. As such, no response is necessary thereto. Wedbush Securities denies the remainder of the allegations in Paragraph 49.

**Paragraph 50:** Wedbush Securities admits the allegations in Paragraph 50.

**Paragraph 51:** Wedbush Securities admits the allegations in the first two sentences of Paragraph 51 and denies the remainder of the allegations in Paragraph 51.

**Paragraph 52:** Wedbush Securities admits that most trading platforms used by Wedbush Securities's customers had risk controls that could be implemented so as to attempt to prevent potential wash trades under certain circumstances, and that some exchanges offered anti-internalization functionality that could be implemented to attempt to block potential wash trades

under certain circumstances. Wedbush Securities denies the remainder of the allegations in Paragraph 52.

**Paragraph 53:** Wedbush Securities admits that Fillhart and other employees in the Correspondent Services Division from time to time referred various activity by sponsored access customers to the firm's AML Compliance Officer for review, which could include determination by the AML Compliance Officer whether to file a suspicious activity report. Wedbush Securities denies the remainder of the allegations in Paragraph 53.

**Paragraph 54:** Wedbush Securities admits the allegations in Paragraph 54.

**Paragraph 55:** Wedbush Securities admits that a Wedbush Securities employee who reported to Fillhart received reports from exchanges, which Wedbush Securities had requested, regarding potential wash sales or pre-arranged trades by Wedbush Securities customers and correspondents. Wedbush Securities admits that Fillhart typically did not ask for follow up to be conducted with WTS regarding certain activity that appeared to lack indicia potentially warranting further review, such as where the two sides of a transaction identified as a potential wash trade originated from different WTS trader IDs. Wedbush Securities denies the remainder of the allegations in Paragraph 55.

**Paragraph 56:** Wedbush Securities admits that it followed up with the principals of its customers and correspondents regarding transactions identified as potential wash trades; that with respect to trades initiated by WTS, on many occasions the principals of WTS and/or SMF Trading, Inc. (the broker-dealer of which WTS was a customer after January 2012), as applicable, advised Wedbush Securities that the trades in question were not wash trades or were erroneous; and that sometimes Wedbush Securities did not receive a full response to its inquiries regarding WTS's trades. Wedbush Securities denies the remainder of the allegations in Paragraph 56.

**Paragraph 57:** Wedbush Securities denies the allegations in Paragraph 57.

**Paragraph 58:** Wedbush Securities denies the allegations in Paragraph 58.

**Paragraph 59:** Wedbush Securities denies the allegations in Paragraph 59.

**Paragraph 60:** Wedbush Securities admits that Fillhart had communications with personnel at two exchanges during the Relevant Period regarding potential “layering”; and that the term “layering” was used by the Commission in the *Hold Brothers* settled order in September 2012 to describe a potentially manipulative practice involving “submitting and cancelling large numbers of non-bona fide orders on one side of the market in order to obtain executions at more favorable prices for smaller bona fide orders.” Wedbush Securities denies the remainder of the allegations in Paragraph 60.

**Paragraph 61:** Wedbush Securities admits that Fillhart had a communication with WTS in February 2011 in which she relayed a report of potential “layering” from an exchange, including that the exchange had described layering as a “manipulative activity.” Wedbush Securities denies the remainder of the allegations in Paragraph 61.

**Paragraph 62:** Wedbush Securities admits that Wedbush Securities personnel in the Correspondent Services Division, including Bell and Fillhart, met to discuss risks posed by WTS and other sponsored access customers during the Relevant Period. Wedbush Securities also admits that it had earlier decided before the Relevant Period not to expand or take on new market access business involving potential customers with business models similar to WTS. Wedbush Securities denies the remainder of the allegations in Paragraph 62.

**Paragraph 63:** Wedbush Securities admits that Wedbush Securities filed suspicious activity reports related to potentially suspicious trading activity during the Relevant Period, including potential wash sales and pre-arranged trading. Wedbush Securities denies the remainder of the allegations in Paragraph 63.

**Paragraph 64:** The first two sentences of Paragraph 64 contain only recitations of legal propositions regarding portions of Rule 15c3-5, not allegations to be admitted or denied. As such, no response is necessary thereto. Wedbush Securities observes, however, that the second sentence of Paragraph 64 mischaracterizes Rule 15c3-5(c)(2)(iii). Wedbush Securities denies the remainder of the allegations in Paragraph 64.

**Paragraph 65:** Wedbush Securities admits that the first two sentences of Paragraph 65 fairly paraphrase a portion of Wedbush Securities' WSPs. Wedbush Securities denies the remainder of the allegations in Paragraph 65.

**Paragraph 66:** Wedbush Securities admits that it performed pre-account-opening procedures to verify identity and backgrounds of all persons for whom such procedures were required to be performed pursuant to all existing laws and regulations. Wedbush Securities denies the remainder of the allegations in Paragraph 66.

**Paragraph 67:** Wedbush Securities admits that some sponsored access customers or trading platform providers may have had their own internal forms regarding individual traders; Wedbush Securities generally did not use its customers' or trading platform providers' forms. Wedbush Securities denies the remainder of the allegations in Paragraph 67.

**Paragraph 68:** Wedbush Securities admits that it required each sponsored access customer to maintain a list of its authorized traders and their ID numbers; that Wedbush Securities employees who reported to Fillhart began to perform OFAC checks on individual traders for certain sponsored access customers, including WTS, shortly after Rule 15c3-5 became effective; and that such OFAC checks were typically performed shortly after the issuance of new trader IDs. Wedbush Securities denies the remainder of the allegations in Paragraph 68.

**Paragraph 69:** Wedbush Securities admits that neither Bell nor Fillhart generally instructed Wedbush Securities employees to speak to individual traders at Wedbush Securities customers that had "hundreds or thousands of traders"; and that Fillhart on one occasion had temporary difficulty locating a list of trader information for one client. Wedbush Securities denies the remainder of the allegations in Paragraph 69.

**Paragraph 70:** The first sentence of Paragraph 70 contains only recitations of legal propositions regarding Rule 15c3-5(e), not allegations to be admitted or denied. As such, no response is necessary thereto. Wedbush Securities admits that Bell and Fillhart were among the Wedbush Securities employees responsible for designing and/or overseeing the implementation of certain aspects of Wedbush Securities's controls and procedures relating to its market access

business, not including the system for regularly reviewing and conduct of regular reviews of the business. Wedbush Securities denies the remainder of the allegations in Paragraph 70.

**Paragraph 71:** Wedbush Securities admits the allegations in Paragraph 71.

**Paragraph 72:** Wedbush Securities admits the allegations in the first sentence of Paragraph 72. Wedbush Securities denies that the report dated March 26, 2012 did not mention any specific risk management controls or supervisory procedures that Wedbush Securities had adopted to comply with Commission rules including Rule 15c3-5.

**Paragraph 73:** Wedbush Securities admits the allegations in the first two sentences of Paragraph 73. Wedbush Securities admits that the March 26, 2012 report included reference to certain risk management settings, and denies the remainder of the allegations in Paragraph 73.

**Paragraph 74:** Wedbush Securities admits the allegations in Paragraph 74.

**Paragraph 75:** Wedbush Securities admits the allegations in the first sentence of Paragraph 75. Wedbush Securities denies that the report dated March 26, 2012 did not mention any specific risk management controls or supervisory procedures that Wedbush Securities had adopted to comply with Commission rules including Rule 15c3-5. Wedbush Securities denies the allegations in the last sentence of Paragraph 75.

**Paragraph 76:** Wedbush Securities admits the President of Wedbush Securities signed a certification dated March 30, 2012 concerning compliance with the Market Access Rule relying, in part, on the March 26, 2012 report and conversations with Wedbush Securities personnel including Bell. Wedbush Securities denies the remainder of the allegations in Paragraph 76.

**Paragraph 77:** The first sentence of Paragraph 77 contains only recitations of legal propositions regarding Exchange Act Section 17(a) and Rule 17a-4 thereunder, not allegations to be admitted or denied. As such, no response is necessary thereto. Wedbush Securities denies the remaining allegations in Paragraph 77.

**Paragraph 78:** Wedbush Securities denies the allegations in Paragraph 78.

**Paragraph 79:** Wedbush Securities denies the allegations in Paragraph 79.

**Paragraph 80:** Wedbush Securities denies the allegations in Paragraph 80.

**Paragraph 81:** Wedbush Securities denies the allegations in Paragraph 81.

**Paragraph 82:** Wedbush Securities denies the allegations in Paragraph 82.

**Paragraph 83:** Wedbush Securities denies the allegations in Paragraph 83.

### **III. and IV.**

Sections III and IV of the OIP do not contain any factual allegations against Respondents and no response is necessary thereto. To the extent any response is required, Wedbush Securities asserts that these administrative and cease-and-desist proceedings are unfounded and the essential charging allegations in the OIP are legally and factually groundless. Wedbush Securities asserts that it and its personnel properly discharged their obligations in accordance with the federal securities laws, and existing regulations and guidance. Wedbush Securities requests a hearing at which it may have a full and fair opportunity to contest the allegations and present its additional defenses.

### **ADDITIONAL AFFIRMATIVE DEFENSES**

In asserting the following additional affirmative defenses, Wedbush Securities does not assume the burden of proof on any issue on which it does not have such burden.

#### **FIRST AFFIRMATIVE DEFENSE**

The OIP fails to state a claim for violation of the federal securities laws or the Commission's rules thereunder for which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Wedbush Securities and its personnel relied in good faith on the available guidance provided by the Commission and its Staff regarding Rule 15c3-5, including, without limitation, the Adopting Release.

#### **THIRD AFFIRMATIVE DEFENSE**

On information and belief, the Commission and/or Division of Enforcement failed to comply with federal statutory deadlines in initiating this proceeding, and the OIP is therefore untimely and should accordingly be treated as null and void.

#### **FOURTH AFFIRMATIVE DEFENSE**

The claims and proposed relief in the OIP are barred by the doctrine of fair notice. Among other things, the relevant portions of Rule 15c3-5 are impermissibly vague, unclear, ambiguous, and uncertain, both in general and as sought to be applied to Wedbush Securities in this proceeding, such that Rule 15c3-5 failed to give fair notice to Respondents of the requirements that the OIP contends it imposed.

#### **FIFTH AFFIRMATIVE DEFENSE**

As of the date of this Answer, Respondents have not yet had an opportunity to review the vast majority of the documents in the Commission staff's investigative file, despite the requirement of Rule 230 of the Commission's Rules of Practice that such materials be made available to Respondents within 7 days of service of the OIP, *i.e.*, at least 13 days before an Answer is due; and despite Respondents' requests for access to such materials. The staff of the Division of Enforcement has represented that such materials are voluminous and include more than 110,000 separate documents. As a result, Respondents may have additional affirmative defenses that are presently unknown to them. Respondents reserve the right to seek to raise any such additional or further defenses that may be supported by the record to be developed in this case before or at the hearing.

**PRAYER**

Wedbush Securities respectfully requests that this proceeding be dismissed and that Wedbush Securities be awarded such costs and fees of this proceeding to which it may be entitled under applicable law, and such other and further relief as may be just and proper.

Date: July 1, 2014

Respectfully submitted,



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