UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10560 / September 25, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 84277 / September 25, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18835

In the Matter of

SG Americas Securities, LLC, as successor entity to Newedge USA, LLC,

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 SG Americas Securities LLC ("Respondent" or "SG Americas").

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 improper practices by Newedge USA, LLC ("Newedge"), predecessor-in-interest to SG Americas, involving the pre-release of American Depositary Receipts ("ADRs").

2. ADRs are securities that allow U.S. investors to invest in foreign companies without having to purchase shares in foreign markets and allow foreign companies to get increased exposure to U.S. markets. Each ADR represents an ownership interest in a predetermined number of foreign shares.

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

4. Typically, a Depositary issues ADRs to a market participant who delivers the corresponding number of foreign securities to the Depositary's foreign custodian ("Custodian"). However, in certain situations, Deposit Agreements provide for a "pre-release" transaction, in which a Depositary issues new ADRs when the foreign securities have been purchased by a market participant but prior to their delivery to the Custodian.[2] Such pre-released ADRs can only be obtained by parties, typically brokers, that have entered into a pre-release agreement ("Pre-Release Agreement") with a Depositary. The Pre-Release Agreements, consistent with the Deposit Agreements, require the broker receiving the pre-released ADRs ("Pre-Release Broker") or the customer on whose behalf the Pre-Release Broker is acting to own the ordinary shares evidenced by the pre-released ADRs, and to assign all beneficial right, 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.

5. From at least June 2012 through March 2013, Newedge was a Pre-Release Broker that obtained pre-released ADRs directly from a Depositary pursuant to a Pre-Release Agreement. Contrary to certain provisions in the Pre-Release Agreement and the Deposit Agreements, associated persons on Newedge's securities lending desk regularly obtained pre-released ADRs from the Depositary and loaned them to customers or counterparties (collectively, "Borrowers") without taking reasonable steps to determine whether the requisite number of ordinary shares was

---

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

owned and custodied by Newedge or its Borrowers. The result of this conduct was the issuance of 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.

6. In addition, from at least June 2012 until July 2015, Newedge received pre-released ADRs from other Pre-Release Brokers when Newedge did not take reasonable steps to assure itself that the pre-released ADRs it received were backed by ordinary shares. Newedge's securities lending personnel understood that in many instances the ADRs they borrowed from certain Pre-Release Brokers were sourced from Depositaries pursuant to Pre-Release Agreements. Having themselves engaged in direct transactions in which Newedge was a Pre-Release Broker, these same individuals were aware of the obligations of the Pre-Release Agreements, and at a minimum should have understood that other Pre-Release Brokers similarly were acting as Pre-Release Brokers while not owning underlying ordinary shares. By engaging in these transactions in the manner described herein, the securities lending personnel violated Section 17(a)(3) of the Securities Act.

7. Newedge failed to establish and implement effective policies and procedures to reasonably address whether its associated persons on the securities lending desk were engaging in transactions in which pre-released ADRs were appropriately obtained. As a result, Newedge'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 Newedge failed reasonably to supervise its associated persons within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Respondent

8. SG Americas is a Delaware limited liability corporation and is registered with the Commission as a broker-dealer. SG Americas is an indirect wholly owned subsidiary of Société Générale S.A. and has its principal place of business in New York, New York. From the beginning of the relevant period, June 2012, until May 2014, Société Générale S.A. owned fifty percent of Newedge S.A., the parent company of Newedge. In or about May 2014, Société Générale S.A. acquired the other fifty percent of Newedge S.A. Newedge and SG Americas merged on January 2, 2015.

Background

ADRs and the Pre-Release of ADRs

9. ADRs are negotiable instruments that represent an ownership interest in a specified number of foreign securities that have been deposited with a Depositary. ADRs may be traded on U.S. stock exchanges or over-the-counter. The owner of an ADR has the right to obtain the underlying foreign securities by withdrawing them from the ADR facility.[3]

[3] In a more technical sense, ADRs evidence American Depositary Shares, or ADSs, which represent the specific number of underlying ordinary shares of the same company on

10. 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 Deposit Agreement is between a Depositary and the ADR holders.[4] In either case, the Deposit Agreement describes fees applicable to the ADRs and the party responsible for paying those fees, and the Depositary files a Securities Act registration statement on Form F-6 with the Commission to register the offer and sale of the ADRs, which includes the Deposit Agreement and form ADR as exhibits.

11. Form F-6 may be used to register the offer and sale of ADRs 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.

12. 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.

13. The traditional rationale for pre-release transactions, consistent with certain obligations described below, was to address settlement timing disparities that could delay delivery to the Custodian of recently purchased ordinary shares. In theory, 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.

14. 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.

15. 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

---

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.

4 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.

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.

16. 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 customer 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.

17. 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 customer 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.

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

18. From at least June 2012 through July 2015, Newedge (including SG Americas, as successor-in-interest to Newedge, from January 2015 through July 2015) operated a securities lending desk. The desk generated revenue by lending securities it borrowed or otherwise obtained for more than it paid to borrow or obtain the securities. The Newedge securities lending desk was a matchbook or conduit operation, meaning that the desk's goal was not to hold any position on the firm's books.

19. ADRs were among the securities the Newedge securities lending desk sourced for its customers. Newedge obtained its ADRs from a variety of sources, including by borrowing them from custodial banks and larger broker-dealers. In some cases, however, Newedge was unable to borrow the ADRs it needed from a custodial bank or large broker-dealer. In many such cases, Newedge sought to obtain pre-released ADRs from a Depositary or borrow ADRs from a

Pre-Release Broker that was sourcing the ADR from a Depositary through a pre-release transaction.

20. Newedge's pre-release transactions with the Depositary were governed by a Pre-Release Agreement Newedge entered into with the Depositary ("Depositary A") in April 2010. In connection with each transaction under this agreement, and consistent with the Deposit Agreement, Newedge represented that it would comply with the Pre-Release Obligations, including that the representation that either Newedge or its customer owned, and held in custody for Depositary A, the number of foreign shares corresponding to the pre-released ADRs it received.

21. Newedge further represented that it had adopted policies and procedures to ensure compliance with these obligations. However, the firm had no such policies and procedures in place.

22. From June 2012 through March 2013, Newedge engaged in thousands of pre-release transactions with Depositary A. At no time did Newedge take reasonable steps to comply with the Pre-Release Obligations, such as holding the ordinary shares on behalf of Depositary A, or ascertaining whether its Borrowers did. Instead, Newedge lent the pre-released ADRs to broker-dealer counterparties in ordinary securities lending transactions that their personnel understood included facilitation of ordinary trade settlement obligations.

23. Under the circumstances, Newedge personnel should have understood that Newedge was acting as a conduit through which a Depositary was issuing ADRs that in many instances were not backed by ordinary shares held by anyone for the benefit of Depositary A.

24. In January 2013, Depositary A requested that Newedge certify its ongoing compliance with the representations in the Pre-Release Agreement. The firm's securities lending personnel relayed the request for the certification to their supervisor, but it was never executed. Newedge nonetheless continued to engage in pre-release transactions until the Pre-Release Agreement was terminated in or about March 2013.

25. In addition to obtaining pre-released ADRs from Depositary A, from at least June 2012 through July 2015, Newedge obtained pre-released ADRs from certain Pre-Release Brokers. The Newedge securities lending personnel who engaged in these transactions understood that these Pre-Release Brokers had Pre-Release Agreements with Depositaries. The Newedge securities lending personnel, on occasion, also openly discussed the source of the ADRs with the Pre-Release Brokers. On numerous occasions, the Pre-Release Brokers indicated to the Newedge securities lending personnel that they were obtaining the ADRs from Depositaries, which the personnel would have understood meant that they were obtaining them through a Pre-Release Agreement. And, in some cases, the securities lending personnel suggested that the Pre-Release Broker obtain the stock from a particular Depositary or Depositaries with whom the Pre-Release Broker had a Pre-Release Agreement.

26. Based on their experience in pre-release transactions, including engaging in numerous transactions with Depositary A under the Newedge Pre-Release Agreement, the

Newedge securities lending personnel understood the Pre-Release Obligations, which were standard across the industry and derived from the Deposit Agreements. The Newedge employees knew that Newedge, a matchbook lender, did not have the underlying shares and therefore was not satisfying the obligations. They also knew, or should have known, that certain Pre-Release Brokers were similarly engaged in matchbook lending whose goal was not to hold any position on those firms' books, and should thus have known that the Pre-Release Brokers were not complying with their Pre-Release Obligations.

27. In fact, in early 2007 one of the Pre-Release Brokers ("Pre-Release Broker A") sent a letter to one of the Newedge employees on the securities lending desk stating as a general matter that Pre-Release Broker A, when it obtained pre-released ADRs, was relying on its customer owning the underlying ordinary shares to satisfy the Pre-Release Obligations. This letter, involving one of Newedge's largest sources of pre-released ADRs, also should have raised questions with the Newedge recipient as to whether other similarly situated Pre-Release Brokers were complying with their obligations.

28. In addition, Newedge on occasion used Pre-Release Brokers to obtain ADRs after institutional sources of supply had been exhausted. In light of the exhaustion of those institutional sources, Newedge securities lending personnel should have recognized the likelihood that the Pre-Release Brokers were obtaining the ADRs from Depositaries through pre-release transactions.

29. The Newedge securities lending personnel also had no basis to believe that any of Newedge's Borrowers were complying with the Pre-Release Obligations. To the contrary, one of Newedge's counterparties required the Newedge securities lending personnel to represent that Newedge was not providing it with ADRs obtained through pre-release, indicating a desire to avoid participating in a transaction subject to Pre-Release Obligations.

30. As a result of these transactions, in many instances, Newedge borrowed pre-released ADRs from Pre-Release Brokers that were not actually backed by ordinary shares held for the benefit of a Depositary in accordance with the Pre-Release Obligations and the terms of the relevant Deposit Agreements.

31. From June 2012 through July 2015, Newedge's net revenues from the securities lending transactions with the Depositary and Pre-Release Brokers described above totaled $486,672.14.

32. Newedge did not have reasonable supervisory policies and procedures in place governing the firm's borrowing of pre-released ADRs from either Depositary A or Pre-Release Brokers.

33. Newedge failed to establish and implement policies and procedures that would be reasonably expected to determine whether its associated persons on the securities lending desk were engaging in transactions in which pre-released ADRs were inappropriately obtained by Newedge, which then made money by lending the ADRs to its Borrowers.

34. Throughout the staff's investigation, SG Americas met with staff on multiple occasions, voluntarily highlighted documents likely to be of interest to the staff, and provided factual summaries of relevant information and analyses, both on its own initiative and at the staff's request. Throughout the staff's investigation, SG Americas entered into tolling agreements with the Commission.

Violations and Failure Reasonably to Supervise

35. As a result of the conduct described above, Respondent and its associated persons 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.

36. 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. Newedge was responsible for supervising its securities lending personnel to address whether they were borrowing and lending pre-released ADRs that were not backed by underlying ordinary shares. Newedge failed reasonably to fulfill such supervisory responsibilities within the meaning of Section 15(b)(4)(E) of the Exchange Act because Newedge 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 Newedge 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.

SG America's Cooperation

37. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff.

IV.

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

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

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

B. Respondent SG Americas is censured.

C. SG Americas shall, within ten (10) days of the entry of this Order, pay disgorgement of $486,672.14, prejudgment interest of $82,656.59, and a civil penalty of $250,000 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 and/or 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 SG Americas 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

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.

Brent J. Fields
Secretary