The Pulse of Finance

Newedge

BY E-MAIL AND OVERNIGHT MAIL

January 30, 2008

Ms. Barbara Z. Sweeney
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506
Pubcom@finra.org

Re: Newedge Group Comment Letter on "International Prime Brokerage," FINRA Regulatory Notice 07-58 (November 2007) ("RN")

Dear Ms. Sweeney:

We applaud the Financial Industry Regulatory Authority ("FINRA") for taking this important initiative to accommodate international prime brokerage. We believe it is critical that US broker-dealers have clear and consistent guidelines to follow in processing trades in US securities for foreign customers. Such best practices will, in our view, increase the amount of foreign investments in US securities and, consequently, help US broker-dealers and exchanges remain competitive in the international marketplace.

As we set forth below in more detail, however, we also encourage FINRA to consider taking this initiative one step further by including best practices that will facilitate international prime brokers' ("IPB") clearance and settlement of financial products other than just stocks (such as equity options and futures). We believe such best practices – such as the creation of a multi-asset class give-up agreement, account opening application and disclosure document – would (1) be consistent with the original intent of prime brokerage – i.e., to "facilitate the clearance and settlement" of trades "for substantial retail and institutional investors who are active market participants,"[1] (2) recognize the growing convergence as an asset class of all exchange-traded financial products, whether they be designated "futures" or "securities" under US law, and (3) allow for a more

[1] Securities and Exchange Commission ("SEC") No-Action Letter on Prime Brokerage to the Securities Industry Association ("SIA") Prime Brokerage Committee, 1994 SEC No-Act. LEXIS 466 * 2 (January 25, 1994) ("Prime Brokerage Letter").

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sensible, integrated treatment of such products by financial brokers, clearing agents and other intermediaries.

As background, Newedge[2] is one of the world's largest intermediaries of exchange-traded derivatives (both as an executing and clearing broker), and an increasingly significant intermediary for equities. Newedge is owned equally by Société Générale and Calyon, two French-based banking organizations.[3] Newedge companies are members of most of the world's largest derivatives and equity exchanges. In the US, Newedge Group is represented by, among other companies, Newedge USA, LLC ("Newedge USA") and Newedge Financial, Inc. ("Newedge Financial"), both of which are US-registered broker-dealers ("BD") and futures commission merchants ("FCM").[4]

As noted above, the Prime Brokerage Letter was designed to assist full-service US broker-dealers in clearing and settling the stock trades of active investors utilizing multiple executing brokers. By allowing for the processing of such transactions through a single "prime" broker, the SEC enabled brokers to, among other things, reduce their settlement risk and reduce the amount of documentation their customers had to sign (such as clearing agreements) and receive (such as confirmations and statements). In response to this relief, the SIA (now the Securities Industry Financial Markets Association or "SIFMA") created standardized executing and clearing agreements for the new prime brokerage industry (Forms 150 and 151) to help clarify the roles and responsibilities of the participants. Over the past thirteen years, prime brokerage has, by anyone's measure, been a great success. In our view, this success is primarily the result of making a previously cumbersome and somewhat obtuse process more simplified and transparent.

Since 1994, however, the financial industry has changed a great deal. First, the investment business has been further globalized. Foreign jurisdictions are challenging the US's once dominant position as the world's leading investment center. In our view, this loss of market share is due, in some degree, to the US's bifurcated approach to regulating financial products which, we believe, pushes some foreign investors toward more simplified and transparent financial marketplaces.[5] In addition, the overall amount of investing has increased, as well as the number and type of investments. Indeed, over the past five years the US equity options and futures markets have experienced a significant growth in trading volume. A third development is the emergence of hedge funds (including foreign funds) as significant market participants, many of which trade heavily across multiple asset classes. And finally, since the issuance of the Prime Brokerage Letter, some important steps have been taken toward the convergence of

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[2] Newedge refers to Newedge Group and all its worldwide branches and subsidiaries.

[3] Effective January 2, 2008, Société Générale and Calyon entered into a joint venture by which they each became 50% owners of Fimat International Banque, SA, which subsequently changed its name to Newedge Group. All members of the Fimat Group, as well as certain subsidiaries of the Calyon Financial Group, subsequently changed their name to Newedge.

[4] Newedge Financial is a wholly-owned subsidiary of Newedge USA. Both firms are FINRA members, and Newedge USA is also a member of the New York Stock Exchange ("NYSE").

[5] To our knowledge, the US is among the few major marketplaces in the world that still addresses securities and futures fundamentally differently from a regulatory perspective.

financial products in the US, such as the cross-margining and portfolio margining initiatives. Each of these developments has helped make the processing of active foreign investor business by IPBs more important – and more challenging – than ever.

Consequently, we urge FINRA, along with the Options Clearing Corporation ("OCC"), SIFMA and the Futures Industry Association ("FIA"), to take this opportunity to establish several additional best practices that, in our view, will assist IPBs and increase foreign investment in US products. First, we recommend the creation of an IPB multi-asset class give-up agreement. Indeed, foreign (and domestic) investors that trade different financial products may now be required to complete as many as four different give-up agreements: the OCC's Clearing Member Transfer Agreement or "CMTA" (for equity options); the International Uniform Brokerage Execution Services Agreement (for futures); the SIFMA Form 151 (for stocks), and the Principal Letter (for fixed income securities). Allowing brokers to use one clearing agreement for all products will, among other things, (a) reduce the amount of paperwork involved (and thus the amount of legal review time and cost), (b) clarify the roles of the participants across the different asset classes, and (c) harmonize any inconsistent legal provisions that may exist under the current agreements.[6] We believe establishing this document as a tri-party agreement between the prime broker, executing broker and the customer probably makes the most sense.[7]

Second, we recommend that an IPB multi-asset class disclosure document be created and provided to foreign customers along with the uniform give-up agreement. Such document would contain all of the required disclosures relating to equity options, futures and stock trading. Currently, these disclosures are, we believe, provided by many IPBs in separate documents, which can be cumbersome and confusing to foreign customers.

Third, we recommend that an IPB multi-asset class account opening application be created that would enable foreign customers to provide, on one document, all of the information required by IPBs to execute, clear and settle their trades in equity options, stocks and futures. Currently, we believe that foreign customers are required, in many cases, to complete at least three separate account opening documents (one each for stocks, options and futures).

Fourth, we urge FINRA, SIFMA and the FIA to lobby the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") for relief from certain securities and futures rules currently in existence that prevent full portfolio-margining from occurring.[8] For example, in order for portfolio-margining to

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[6] While there has long been a push within the financial industry to establish a multi-asset class give-up agreement, we believe this is an opportune moment to do so since FINRA has asked SIFMA, in connection with these proposed best practices, to review and, if necessary, revise its Forms 150 and 151 to better accommodate international prime brokerage.

[7] A four-party agreement would be appropriate where a commodity trading or investment advisor is involved.

[8] See e.g. SIA February 13, 2006 Comment Letter, and FIA February 13, 2006 Comment Letter submitted in connection with the NYSE's and the Chicago Board Options Exchange's ("CBOE") 2006 rule proposals

occur, (1) the CFTC will have to grant relief from the futures rule currently requiring customer funds (positions and cash) to be held in a segregated futures account, and (2) the SEC will have to amend its customer protection rules to allow futures positions to be closed out and converted into free credit balances which would be protected under the Securities Investor Protection Act in the event of an insolvency. With the advent of full portfolio-margining, IPBs will be able to compete on the same level as their foreign counterparts, for whom such margining has long been allowed.

In short, we believe this is an excellent opportunity to address some additional issues that have long impacted the IPB community and their customers negatively. Let's continue moving the US marketplace in a direction that will allow it compete more evenly with foreign marketplaces. Moreover, we believe all of the suggestions noted above are, as noted, consistent with the original intent of prime brokerage, and in furtherance of Section 6(b)(5) of the Securities Exchange Act of 1934, which mandates that self-regulatory organization rules:

> foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market .....

We appreciate the opportunity to comment on these proposed rules. If you have any questions, please do not hesitate to contact the undersigned at (646) 557-8458. Thank you.

Very truly yours,

Newedge USA, LLC

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

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to expand the products eligible for customer portfolio margining and cross-margining and to eliminate separate cross-margining accounts – SEC Release No.'s 34-53577 (NYSE) and 34-53576 (CBOE).