

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
DEPARTMENT OF MARKET REGULATION

20050002689-02

TO: Department of Market Regulation
NASD

RE: Chardan Capital Markets, LLC Respondent
Broker/Dealer
CRD Number 120128

Pursuant to Rule 9216 of NASD Code of Procedure, Chardan Capital Markets, LLC ("CHDN") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against CHDN alleging violations based on the same factual findings.

CHDN understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and the National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against CHDN; and
3. If accepted:
 - a. this AWC will become part of CHDN's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about CHDN's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

- d. CHDN may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects CHDN's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

CHDN also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

The firm has been an NASD member since July 2002 and has no disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

CHDN specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against CHDN;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, CHDN specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

CHDN further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

In connection with CHDN's 2004 TMMS Examination, the staff reviewed the following:¹

- 312 sales in NNM securities for compliance with NASD Rule 6130.
- six persons engaged in the firm's trading and market making activities for compliance with NASD Registration rules for trading staff in the month of October 2004.
- 322 order/trade records prepared and maintained for the above samples for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.
- 322 trades reported to ACT for compliance with NASD Trade Reporting and ACT rules.
- The firm's establishment and implementation of a supervisory system and written supervisory procedures for compliance with NASD Rule 3010, based on written supervisory procedures in effect during the month of October 2004.

A. CHDN hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. The firm failed to report to Nasdaq Market Center the correct symbol indicating whether the transaction was a sell short or sell short exempt for 48 transactions in eligible securities.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning short sales, trade reporting, and record keeping. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) a statement of the supervisory step(s) to be taken by the identified person(s) as responsible for supervision; (2) a statement as to how often such person(s) should take such step(s); and (3) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

¹ All items reviewed are from trade dates October 14 and 15, 2004, unless noted otherwise above.

4. The conduct described in paragraph three constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. CHDN also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$10,000 (consisting of a \$5,000 fine for the short sales reporting violations and \$5,000 for a supervision violation).

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. CHDN understands that it may attach a Corrective Action Statement to this AWC, which is a statement by the Respondent of demonstrable corrective steps taken to prevent future misconduct. Respondent may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD nor does it reflect the views of NASD or its staff.
- B. CHDN agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and have attached the election of payment form showing the method by which it proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Chardan Capital Markets, LLC certifies that a duly authorized officer has read and understood all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce CHDN to submit it.

Chardan Capital Markets, LLC

Date:

9/21/05

By:

Name:

Title:

Steven Urban
[Signature]
President

Reviewed by:

John G. Melton

Counsel for Respondent

Accepted by NASD:

11/14/05
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

Signed on behalf of the Director of ODA
by delegated authority.

Attachments:

Standard Election of Payment Form