

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090165813-01**

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Institutional Capital Management, Inc., Respondent
Broker-Dealer
CRD No. 41055

Daniel Lee Ritz Jr., Respondent
CRD No. 1977521

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Institutional Capital Management, Inc. ("ICMH" or the "Firm") and Daniel Lee Ritz Jr. ("Ritz") (collectively, "Respondents") submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondents hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA 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 FINRA:

BACKGROUND

ICMH has been a member of FINRA since 1997 and its registration remains in effect.

Ritz has been in the securities industry since 1989. Ritz was, at all times relevant to this matter, a principal of ICMH. Ritz was also, at all times relevant to this matter, a principal of Capnet Securities Corp. ("Capnet Securities"), a FINRA member broker-dealer, and of Capnet Advisors Inc. ("Capnet Advisors"), a registered investment advisor. Ritz's employment with Capnet Advisors ended as of December 31, 2011.

RELEVANT DISCIPLINARY HISTORY

On September 29, 2011, in Matter No. 20100226798, FINRA accepted an AWC in which Ritz and ICMH were both censured, Ritz was suspended for four months in all principal capacities, and ICMH was fined \$65,000 for violations of NASD Rules 2110, 3010 and 3110 and SEA Rule 17a-4 arising out of their failure to: (i) supervise a registered representative in ICMH's Nashville branch office, and (ii) supervise and review outside email communications from that office for the period of November 2008 through June 2010. Ritz's suspension is from November 21, 2011 to March 21, 2012.

SUMMARY

In Review No. 20090165813 the Department of Market Regulation's Trading Analysis Team (the "Staff") conducted a review of Respondents' trading for the period of August 15, 2008 through December 23, 2008 (the "Review Period"). As described in more detail below, in its review Staff identified a total of 18 pre-arranged trades executed by Ritz through ICMH during the Review Period where the purchasing party did not fund the transaction prior to the sale of the same securities, also known as "free-riding".

FACTS AND VIOLATIVE CONDUCT

1. "Free-riding", or permitting an account to sell stock before the purchase is funded, violates the credit extension provisions of Federal Reserve Board Regulation T. In addition, a borrower who willfully causes credit to be extended in contravention of Reg. T violates Federal Reserve Board Regulation X. Sections 7(c), (d) and (f) of the Securities Exchange Act of 1934, as amended ("SEA") apply the credit requirements of the Federal Reserve Board to securities accounts.
2.
 - (a) Prior to executing the trades identified by Staff, Ritz held positions in Adino Energy Corporation (symbol: ADNY) (1,879,000 shares), Telemedicus, Inc. (symbol: TDSI) (515,335 shares) and Virtra Systems, Inc. (symbol: VTSI) (7,686,286 shares) in a Pledge Account as collateral for a letter of credit from the Bank of Texas on which he was the guarantor. On or around August 15, 2008, Ritz received a collateral call on the letter of credit in the amount of \$1,251,816.59. To satisfy the collateral call, Ritz executed a series of 18 unfunded securities transactions that induced ICMH's clearing firm to improperly extend credit to Ritz and to other ICMH customers.
 - (b) The trades were executed between related accounts, some held and/or controlled by Ritz himself, structured as though there were legitimate buyers intending to fund each purchase; however, none of the purchases was funded until the last round of trades at the end of the scheme. Each unfunded transaction was executed internally at ICMH by Ritz as the executing broker. Ritz set the price at which the unfunded transactions were booked and completed all of the trade tickets himself. Most of the trades were priced at or near the market at the time they were executed so that the impact on the

market price, if any, was minimal. The purchases and sales were booked at the same price so that there was no transfer of or exposure to economic risk to the participants. Significantly, none of the accounts held sufficient funds to finance the time the purchases when they were executed. The sizes of the transactions were significantly greater than the Average Daily Trade Volume ("ADTV") for each security and created a false appearance of volume in the market for these securities, representing between 90-100% of the volume in each security on each trade date.

- (c) The series of unfunded transactions effectively created a loan from ICMH's clearing firm, which cleared the initial purchase of the securities in the amount of approximately \$175,000, under false pretenses. The loan allowed Ritz to partially satisfy the collateral call from the Bank of Texas while retaining control and ownership of the stock in the Pledge Account. In addition, at least \$40,000 in profits booked on the unfunded transactions was wired to personal accounts held by Ritz at other financial institutions.

The conduct described in this paragraph constitutes violations by Ritz of NASD Rules 2110 (prior to December 15, 2008) and 2520(f)(9), FINRA Rule 2010 (on or after December 15, 2008), Federal Reserve Board Regulation X, and SEA Sections 7(d) and (f).

- 3. *Eight of the transactions in the scheme were executed by Ritz between personal accounts he held and the accounts of other ICMH customers controlled and/or owned by Ritz and thus involved no change of beneficial ownership (i.e. wash trades). The conduct described in this paragraph constitutes violations by Ritz of NASD Rule 2120.*
- 4. *In order to further his scheme, Ritz created inaccurate and/or incomplete order tickets, which were retained by ICMH. By the conduct described in this paragraph, Ritz violated NASD Rule 2110 (prior to December 15, 2008) and FINRA Rule 2010 (on or after December 15, 2008), and caused ICMH to violate NASD Rule 3110 and SEA Rule 17a-3.*
- 5. *During the Relevant Period, ICMH's supervisory systems and procedures, including written supervisory procedures ("WSPs"), did not provide for supervision reasonably designed to achieve compliance with NASD/FINRA Rules or applicable federal securities laws and regulations concerning improper trading activity and wash trades. The conduct described in this paragraph constitutes a violation by ICMH of NASD Rules 2110 and 3010.*

SANCTIONS

- B. Respondents also consent to the imposition of the following sanctions:

1. ICMH

A censure and fine of \$25,000.¹

ICMH agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

ICMH specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein upon ICMH shall be effective on a date set by FINRA staff.

2. Ritz

A suspension from associating with any member of FINRA in any capacity for a period of 18 months.²

The sanctions imposed herein upon Ritz shall be effective on a date set by FINRA staff.

Ritz understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of the FINRA By-Laws, incorporating SEA Section 3(a)(39). Accordingly, he may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the suspension (*see* FINRA Rules 8310 and 8311).

II.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against them;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

¹ Pursuant to the General Principles Applicable to all Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine on ICMH in this case after it considered, among other things, ICMH's revenues and financial resources. *See* NASD Notice to Members 06-55 (September 2006).

² On December 31, 2009, Ritz filed a Chapter 7 bankruptcy petition pursuant to Title 11, United States Code. *See* Case No. 09-39895 (S.D. Texas). Accordingly, no monetary sanction is being assessed on Ritz in this matter.

- 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 National Adjudicatory Council (“NAC”) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

III.

OTHER MATTERS

Respondents understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondents; and
- C. If accepted:
 - 1. this AWC will become part of the Respondents’ permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about the firm’s disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondents 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 finding in this AWC or create the impression that the AWC is without factual basis. Respondents may not take any position in any proceeding

brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondents' right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 FINRA, nor does it reflect the views of FINRA or its staff.

[continued]

5-7-2012
Date

By: Douglas B. Younger III
Name: Douglas B. Younger III
Title: CEO, ECO

Counsel for Respondent(s)

6/1/12
Date

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

5-18-2012
Date

Alfred J.

6/1/12
Date