

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20110284865-01**

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

RE: FM Partners Holdings LLC (f/k/a Lazard Capital Markets LLC), Respondent  
Broker-Dealer  
CRD No. 134736

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent FM Partners Holdings LLC (f/k/a Lazard Capital Markets LLC) (the "firm") submits 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 firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm hereby accepts and consents, 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**

The firm has been a member of FINRA, and its predecessor NASD, since April 15, 2005, and its registration remains in effect.

**RELEVANT DISCIPLINARY HISTORY**

The firm has no relevant disciplinary history.

**SUMMARY**

In connection with FINRA Matter No. 20110284865, the Short Sales Team of the Department of Market Regulation (the "staff") reviewed the firm's compliance with Rules 201 and 203(b)(1) of Regulation SHO during the period May 12, 2011 through May 13, 2011 (the "review period"), unless otherwise noted.

## FACTS AND VIOLATIVE CONDUCT

In connection with FINRA Matter No. 20110284865, the staff found that:

1. During the review period, the firm misapplied the domestic arbitrage exemption under Rule 201(d)(3) of Regulation SHO when it negotiated a pre-determined 0.25% fee, which resulted in the sole difference between the price at which the firm sold common stock and the price at which it purchased convertible bonds. The conduct described in this paragraph constitutes a violation of Rule 201(d)(3) of Regulation SHO.
2. During the review period, the firm executed one non-exempt short sale order and failed to properly mark the order as a non-exempt short sale. The conduct described in this paragraph constitutes a violation of Rule 200(g) of Regulation SHO.
3. During the review period, the firm executed 1,496 non-exempt short sale transactions in National Market System securities and reported each of these transactions to FINRA with a short sale exempt modifier in reliance upon the provisions set forth in Rule 201(d) of Regulation SHO, when such provisions were not applicable. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6182.
4. During the review period, the firm, on one occasion, accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, without: (i) borrowing the security, or entering into a bona-fide arrangement to borrow the security; or (ii) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (iii) documenting compliance with Rule 203(b)(1) of Regulation SHO. The conduct described in this paragraph constitutes a violation of Rule 203(b)(1) of Regulation SHO.

B. The firm also consents to the imposition of the following sanctions:

A censure and a **\$15,000** fine (\$7,500 for the violation of Rule 201(d)(3) of Regulation SHO; and \$7,500 for the violations of Rules 200(g) and 203(b)(1) of Regulation SHO, and FINRA Rule 6182).

The firm 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.

The firm 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 shall be effective on a date set by FINRA staff.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

The firm further specifically and voluntarily waives 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

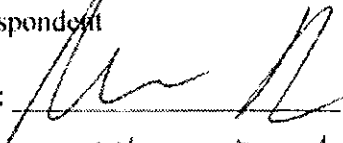
The firm understands that:

- 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 the firm; and
- C. If accepted:
  - 1. This AWC will become part of the firm’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. This AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  - 4. The firm 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. The firm 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 firm’s: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it 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.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

12/11/14  
Date

FM Partners Holdings LLC  
(f/k/a Lazard Capital Markets LLC),  
Respondent

By: 

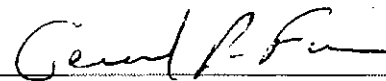
Name: William Rosenbely

Title: CFO

Accepted by FINRA:

1/8/15  
Date

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

  
Gerard P. Finn  
Chief Counsel, Legal Section  
Department of Market Regulation