

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110305098-03**

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

RE: Chardan Capital Markets LLC ("AABA" or the "firm"), Respondent
Broker-Dealer
CRD No. 120128

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Chardan Capital Markets LLC ("Respondent" or 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 since July 2, 2002, and its registration remains in effect. The firm does not have any relevant disciplinary history.

SUMMARY

In connection with Matter No. 20110305098, the Market Manipulations Investigation staff of the Department of Market Regulation (the "staff") reviewed the firm's compliance with supervisory requirements applicable to reviews for prohibited transactions and practices in proprietary accounts, including potential transactions to "mark" the closing prices of securities. As is described below, during October 2009 through February 2014 (the "review period"), the firm failed to conduct reviews for potential marking-the-close activities, as required by its written supervisory procedures. The firm relied upon reports to monitor for potential marking-the-close activities, but the reports utilized by the firm to monitor orders placed by its traders, as detailed below, did not include transactions in securities traded in two over-the-counter markets. As a result, the firm failed to enforce its supervisory system, including its written supervisory procedures, by failing to reasonably supervise the activities of its proprietary traders on the two OTC markets and, from October 2009 through February 2014, specifically failed

to detect and prevent potential marking-the-close activities by its proprietary traders. Thus, the firm violated NASD Rule 3010 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. On October 22, 2009, Trader A became registered as a General Securities Principal, General Securities Representative, and Equity Trader Limited Representative of Chardan Capital Markets LLC. Trader A's responsibilities included directing proprietary trading on behalf of the firm. Trader A remained a proprietary trader with the firm until his registration was terminated on May 8, 2012.
2. While he was registered with Chardan Capital Markets LLC, Trader A effected eleven purchases of securities for the firm's account shortly before the markets closed on the last trading day for the months of November 2011 through February 2012. Nine of the buy orders were placed within five minutes before the close, one was placed approximately seven minute before the close, and one was placed approximately forty minutes before the market close. In each instance, the resulting purchase was at a price higher than the previous trade, and nine of the eleven orders were the last trade before the market close. In addition, in each instance, the trades were effected at prices in excess of the inside or best offer, even though there was sufficient size, or shares available, at the inside offer to fill Trader A's entire purchase order.
3. In addition, the firm's trading systems put Trader A on notice that he was placing the nine orders at prices in excess of the inside offer. The firm's system further allowed Trader A to override the warnings, which he did to effect the nine purchases.
4. The purchases described above were effected in either OTCQB or OTCQX marketplace securities.
5. In February 2014, following inquiries from Market Regulation's staff, the firm discovered that the reports relied upon by the firm to monitor for prohibited transactions and practices in its proprietary accounts, including but not limited to potential marking-the-close transactions, did not capture transactions effected in OTCQB and OTCQX marketplace securities.
6. As a result, during the review period, the reports relied upon by the firm failed to identify potential prohibited transactions and practices in proprietary accounts, including potential marking-the-close transactions, involving OTCQB and OTCQX marketplace securities. Because the nine proprietary orders directed by the firm's trader, Trader A, were placed on those markets, the firm failed to surveil those orders and failed to detect and prevent potential marking-the-close activity as required by the Firm's written supervisory procedures.
7. During October 2009 through February 2014, the firm failed to enforce a supervisory system, including written supervisory procedures to supervise the activities of the firm's registered representatives and associated persons, that was reasonably designed to achieve compliance with applicable securities laws and regulations and rules of FINRA.

Although the firm's written supervisory procedures included procedures to detect prohibited transactions and practices in proprietary accounts, such as Trader A's marking-the-close activities, the firm failed to conduct order reviews for marking activities, as required by its written supervisory procedures. The firm relied upon reports to identify transactions that marked-the-close, but the reports failed to include over-the-counter securities transactions in the OTCQX and OTCQB marketplaces. Trader A's marking-the-close activities took place in those markets and, therefore, the firm failed to reasonably supervise for potential marking activities in OTCQX and OTCQB securities. The conduct described in this paragraph constitutes violations of FINRA Rule 2010 and NASD Rule 3010.

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

A censure; a fine of \$135,000; and an undertaking to address the deficiencies with respect to the areas described in paragraphs I.A.7. Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has addressed the deficiencies described in paragraphs I.A.7; and (3) the date the deficiencies were addressed.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments 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 sanctions 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 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: (i) testimonial obligations; or (ii) 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.

9-5-2017
Date

Respondent
Chardan Capital Markets LLC

By: [Signature]

Name: Steven Urbid

Title: CEO

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by FINRA:

9/28/17
Date

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

[Signature]
Robert A. Marchman
Executive Vice President, Legal Section
Department of Market Regulation