

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120315069-01

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

RE: ACAP Financial Inc., Respondent
Broker-Dealer
CRD No. 7731

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, ACAP Financial Inc. (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 December 12, 1978, and its registration remains in effect. The firm has no relevant prior disciplinary history.

SUMMARY

In connection with matter 20120315069, the 2012 Trading and Market Making ("TMMS") exam, the TMMS staff reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade dates February 6 through 17, 2012 (the "review period").

FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm transmitted to the Order Audit Trail System (“OATS”) 50 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, 50 of the reports contained inaccurate directed order (“DIR”) special handling codes. Further, two of the 50 reports that contained inaccurate DIR special handling codes also contained inaccurate Time-In-Force codes. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
2. The Firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - a. specific identification of the individual(s) responsible for supervision;
 - b. the supervisory steps and reviews to be taken by the appropriate supervisor;
 - c. the frequency of such reviews; and
 - d. how such reviews shall be documented.

The firm’s written supervisory procedures (“WSPs”) failed to provide for one or more of the above-cited minimum requirements for adequate supervisory procedures, in the following subject areas:

- **Sales Transactions:** Prompt Delivery of Sales Transactions by Settlement Date [a, b, c and d]; Accepting Short Sale Orders after a Fail Occurs [a, b, c and d]; Naked Short Selling [a, b, c and d];
- **Other Trading Rules:** Trading or Quoting During a Trading Halt [a, b, c and d];
- **OATS:** Clock Synchronization [c]; Accuracy of OATS data [a, b, c and d]; and
- **Other Rules:** Books and Records [a, b, c and d]; and Review of Electronic Communications [a, b, c and d].

The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and NASD Rule 3010.

3. The firm failed to provide documentary evidence on the trade date(s) reviewed in the TMMS examination it performed the supervisory reviews set forth in its written supervisory procedures concerning:
 - **Order Handling:** Order Protection Rules;
 - **Supervisory System, Procedures & Qualifications:** Ensuring Supervisors are Qualified;
 - **Best Execution:** Orders Executed as Principal; Orders Executed as riskless Principal; Orders Executed as Agent; and Regular and Rigorous Reviews;

- **Anti-Intimidation/Coordination:** Procedures to Help Prevent/Detect Coordination/Collaboration; Procedures to Detect/Prevent Threats, Coercion, and Intimidation; and Educating Personnel on Improper Conduct;
- **Trade Reporting:** Timely and Accurate Reporting of Transactions; Reporting Riskless Principal Trades; Accepting or Matching Trades Reported by Another Firm in a Timely Manner; and Trades Reported by a Third Party on the Firm's Behalf;
- **Sales Transactions:** Order Marking/SEC Rule 200(g); Review of Customer Locates/SEC Rule 203(b); and Short Indicator Reporting; and
- **Other Rules:** Use of Material Non-Public Information; and Breaches within Information Barriers.

The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 2010 and NASD Rule 3010.

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

A censure and fine of \$10,000 (\$5,000 fine for OATS reporting violations and \$5,000 fine for supervisory violations).

The firm also consents to and undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph IA2. Within 30 business days of acceptance of this AWC by the National Adjudicatory Counsel ("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 revised its written supervisory procedures to address the deficiencies described in paragraph IA2; and, (3) the date the revised procedures were implemented.

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 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 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.

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 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. 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.

Date

3/30/14

ACAP Financial Inc.

By:

Name:

Title:

Kirk Ferguson

Kirk Ferguson

Pres

Accepted by FINRA:

Date

4-7-14

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

Justin Chretien
Justin Chretien
Chief Counsel
Department of Market Regulation

Exhibit A
20120315069

<i>Sample Size</i>	<i>Sample Description</i>
25	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
0	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
63	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
0	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
0	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into Nasdaq OMX BX execution system for compliance with Nasdaq OMX BX Rule 4755 long/short reporting requirements
0	Sell orders entered into Nasdaq OMX PHLX execution system for compliance with Nasdaq OMX PHLX Rule 3305 long/short reporting requirements
0	Sell orders entered into DirectEdge Exchange execution system for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements
0	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equity Rule 7.16 long/short reporting requirements
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604, and Nasdaq Rule 3390
14	Orders for compliance with best execution requirements of NASD Rule 2320
	4 Held orders from the Held Order Protection Review
	0 Not Held orders from the Not Held Order Review
	0 Order executed with a .PRP (Prior Reference Price) trade modifier

	10	Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
4		Orders for compliance with order protection requirements of NASD Rules 2110, IM-2110-2, 2111, and Nasdaq Rules 2110, IM-2110-2, and 2111
0		Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0		Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
52		Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450, and Nasdaq Rules 6954 and 6955 requirements
34		Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
0		Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
0		Data sets published for Month Year monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
0		Quarterly Routing Report for compliance with SEC Rule 606 requirements
10		CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
6		Customer orders in OTC equity securities for compliance with NASD Rule 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
0		Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265 and Nasdaq Rule 4631
65		Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4, and NASD Rule 3110
131		Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330

All Provided		Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
N/A		Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
N/A		Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 or Nasdaq Rule 3010 requirements