

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120344551-01**

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

RE: Ascendant Capital Markets, LLC, Respondent
Broker-Dealer
CRD No. 152912

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Ascendant Capital Markets, LLC (the "firm" or "Respondent") 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 Respondent alleging violations based on the same factual findings described herein.

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ACCEPTANCE AND CONSENT

- A. Respondent 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 Feb. 28, 2011, and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In Review No. 20120344551, the Department of Market Regulation's Offering Surveillance Group (the "staff") reviewed the firm's compliance with Rule 101 of Regulation M ("Rule 101") and regulatory notice and supervision requirements of FINRA and The Nasdaq Stock Market LLC ("Nasdaq") for distributions that priced in December 2011 and the first quarter 2012 (the "December 2011-IQ2012 review period"). As a result of the review, the staff determined that the firm violated Rule 101, FINRA Rule 5190(c)(1)(A)-(B), and Nasdaq Rule 4619(e)(1)(A) in connection with the At-the-Market offering in Netlist, Inc. ("NLST") that initially priced on December 1, 2011 (the "NLST offering"), and related supervisory requirements, as detailed below.¹

¹ A related AWC on behalf of Nasdaq also concurrently is being issued to the firm to resolve this matter.

In Review No. 20140410967, the staff reviewed the firm's compliance with Rule 101 and FINRA regulatory notice and supervisory requirements for distributions that priced during the first quarter 2013 (the "1Q2013 review period"). As a result of the review, the staff determined that the firm violated certain notification requirements of FINRA Rule 5190 and supervision requirements during the 1Q2013 review period, as detailed below.

FACTS AND VIOLATIVE CONDUCT

In connection with Review No. 20120344551:

1. During the restricted period of the distribution of securities in the first tranche of the NLST offering from November 30, 2011 through December 7, 2011, while the firm acted as a distribution participant for the offering, the firm: (1) published and maintained bids in NLST's common stock, and (2) purchased shares of NLST common stock on a principal basis on four occasions on December 2, 6 and 7, 2011. The conduct described in this paragraph constitutes separate and distinct violations of Rule 101.
2. Because the firm acted as a manager (or in a similar capacity) in the NLST offering, it was required to submit to FINRA, in timely fashion, notification pursuant to FINRA Rule 5190(c)(1)(A) ("Regulation M Restricted Period Notification"). Specifically, pursuant to FINRA Rule 5190(c)(1)(A), the firm was required to file its notice with FINRA "no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances." The firm, however, failed to submit a Regulation M Restricted Period Notification in connection with the NLST offering. The conduct described in this paragraph constitutes a violation of FINRA Rule 5190(c)(1)(A).
3. In addition, because the firm acted as a manager (or in a similar capacity) in the NLST offering, the firm was required to submit to FINRA, in a timely fashion, notification pursuant to FINRA Rule 5190(c)(1)(B) (Regulation M Trading Notification"). Specifically, pursuant to FINRA Rule 5190(c)(1)(B), the firm was required to file its notice with FINRA "no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances." The firm, however, failed to timely submit the Regulation M Trading Notification in connection with the NLST Offering. The conduct described in this paragraph constitutes a violation of FINRA Rule 5190(c)(1)(B).

In connection with Review No. 20140410967,

4. The firm acted as a manager (or in a similar capacity) in two distributions of common stock of Quantum Fuel Systems Technologies Worldwide, Inc. ("QTWW"), including with respect to a private placement of nonconvertible promissory notes and warrants to purchase shares of QTWW common stock that priced on January 24, 2013, and in connection with an At-the-Market offering of QTWW that priced on January 30, 2013.
5. The firm failed to timely submit the Regulation M Restricted Period Notifications for each of the above two distributions of QTWW stock. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 5190(c)(1)(A).
6. The firm also failed to submit the Regulation M Trading Notification for the above private placement of QTWW, and failed to timely submit the Regulation M Trading Notification for the above QTWW At-the-Market offering. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 5190(c)(1)(B).

In connection with both Review Nos. 20120344551 and 20140410967,

7. 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 during the December 2011-1Q2012 and 1Q2013 review periods. 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 failed to provide for the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: Rule 101 and FINRA Rule 5190 [(a), (b), (c), and (d)]. The conduct described in this paragraph constitutes violations of NASD Rule 3010 and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

A censure, a fine of \$12,500 (consisting of \$5,000 for the Rule 101 violations, \$2,500 for the FINRA Rule 5190 violations from the combined reviews, and \$5,000 for the combined supervisory findings from both reviews),² and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph LA.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 revised its written supervisory procedures to address the deficiencies described in paragraph LA.7; and, (3) the date the revised procedures were implemented.

Respondent 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.

Respondent 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

Respondent 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

² The above \$12,500 fine represents the portion of the firm's fine to be paid in this FINRA action, with an equivalent fine also assessed in a concurrent settlement on behalf of the Nasdaq Stock Market LLC for common conduct from the December 2011-1Q2012 review period.

- 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, Respondent 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.

Respondent 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

Respondent 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 Respondent; 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. Respondent 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. Respondent 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. Respondent 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.

2/24/16
Date

Respondent
Ascendant Capital Markets, LLC

By: [Signature]

Name: MARK BERGENDAHL

Title: CEO

Reviewed by:

Attorney Name
Counsel for Respondent
Firm Name
Address
City/State/Zip
Phone Number

Accepted by FINRA:

3/11/16
Date

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

James J. Nixon
James J. Nixon
Chief Litigation Counsel
FINRA Department of Market Regulation