

**THE NASDAQ STOCK MARKET LLC  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: Chardan Capital Markets LLC  
Mr. Daniel Smith  
Co-Chief Compliance Officer  
17 State Street  
Suite 1600  
New York, NY 10004**

**FROM: The NASDAQ Stock Market LLC ("Nasdaq")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Enforcement  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: July 2, 2018**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20160511376-01**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **July 2, 2018** by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

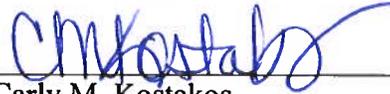
You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Department of Enforcement, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking.

You will be notified by the Registration and Disclosure Department regarding sanctions if a suspension has been imposed and by NASDAQ's Finance Department regarding the payment of any fine if a fine has been imposed.

Chardan Capital Markets LLC  
Page 2

If you have any questions concerning this matter, please contact me at (240) 386-5059.



Carly M. Kostakos  
Senior Counsel  
Department of Enforcement, FINRA

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Senior Vice President and Regional Director  
(Via email)

Robert Rabinowitz, Esq.  
Counsel for Respondent  
Becker & Poliakoff  
331 Newman Springs Road  
Suite 225  
Red Bank, NJ 07701

**THE NASDAQ STOCK MARKET LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20160511374-01**

**TO:** The NASDAQ Stock Market LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

**RE:** Chardan Capital Markets LLC, Respondent  
Broker-Dealer  
CRD No. 120128

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") Code of Procedure, Chardan 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, Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

**BACKGROUND**

The firm became a member of FINRA on July 2, 2002 and of Nasdaq on July 12, 2006. The firm's registrations remain in effect.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

On June 11, 2013, Nasdaq accepted an AWC in which the firm was censured and fined \$17,500 for Nasdaq quoting and related supervision violations for conduct that occurred from January 9, 2012 through January 17, 2012.

**SUMMARY**

The staff of the Market Analysis Section of the Department of Market Regulation at FINRA (the "staff") conducted a review of the firm's compliance with Nasdaq Rule 4613(a) during the periods January 1, 2015 through September 30, 2015 and April 1, 2016

through June 30, 2016 (the “review period”). Based on its review, the staff determined that the firm violated Nasdaq Rules 4613(a), 3010, and 2010A, as set forth below.

## **FACTS AND VIOLATIVE CONDUCT**

### **Market Maker Quoting Obligations**

1. Pursuant to Nasdaq Rule 4613(a), for each National Market System (“NMS”) security in which a Nasdaq member is registered as a market maker, the member is required to maintain a continuous two-sided trading interest, during regular market hours, at prices within certain parameters expressed as a percentage referenced from the National Best Bid or Offer (“NBBO”).
2. During the review period, the firm, in 190 instances,<sup>1</sup> failed to maintain a continuous two-sided trading interest during regular market hours at prices within certain percentages away from the NBBO. The violations occurred because the firm failed to set up the automated quote refresh function in its order management system for each security that the firm was a market maker in. The conduct described in this paragraph constitutes separate and distinct violations of Nasdaq Rule 4613(a).

### **Supervision**

3. Nasdaq Rule 3010(a) provides, “Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations with applicable” Nasdaq rules.
4. Nasdaq Rule 3010A provides, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”
5. During the review period, the firm’s supervisory system was not reasonably designed to achieve compliance with Nasdaq quoting obligations. Specifically, the firm’s supervisory system did not include written supervisory procedures providing for: (a) the identification of the person(s) responsible for supervision with respect to the applicable rules; (b) a statement of the supervisory step(s) to be taken by the identified person(s); (c) a statement as to how often such person(s) should take such step(s); and (d) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of Nasdaq Rules 2010A and 3010.

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

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<sup>1</sup> This is the number of validated violations based on a sample.

1. A censure;
2. A fine of \$30,000 (comprised of \$10,000 for the market maker quoting obligation violations and \$20,000 for the supervision violation); and
3. An undertaking to revise the firm's written supervisory procedures with respect to the area described in paragraph 1.A.5, above. Within 30 business days of acceptance of this AWC, a registered principal of the firm shall submit to the **COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 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](mailto:MarketRegulationComp@finra.org), providing the following information: (a) a reference to this matter; (b) a representation that the firm has revised its written supervisory procedures to address the deficiency described in paragraph 1.A.5, above; and (c) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

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 Nasdaq's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal 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 Nasdaq Review Council 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 prejudice of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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 Rule 9143 or the separation of functions prohibitions of 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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq 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 Nasdaq or any other regulator against the firm;
  - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
  - 3. 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

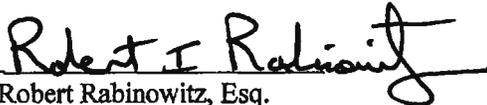
The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, 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.

6/20/2018  
Date

Chardan Capital Markets LLC  
Respondent

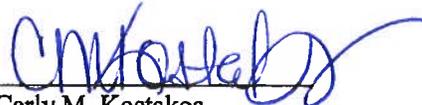
By:   
Name: DANIEL SMITH  
Title: Co-CCO

Reviewed by:

  
Robert Rabinowitz, Esq.  
Counsel for Respondent  
Becker & Poliakoff  
331 Newman Springs Road  
Suite 225  
Red Bank, NJ 07701  
(732) 842-1662

Accepted by Nasdaq:

7/2/18  
Date

  
Carly M. Kostakos  
Senior Counsel  
Department of Enforcement

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

### ELECTION OF PAYMENT FORM

The firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A firm check or bank check for the full amount  
 Wire transfer

Respectfully submitted,

Respondent  
Chardan Capital Markets LLC

6/20/2018  
Date

By:   
Name: DANIEL SMITH  
Title: Co-CCO

### Billing and Payment Contact

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. *Please DO NOT submit payment until Nasdaq has sent you an invoice.*

Billing Contact Name: DANIEL SMITH  
Billing Contact Address: 17 STATE ST, SUITE 1600, NY NY 10004  
Billing Contact Email: DSMITH@CHARDAN.COM  
Billing Contact Phone Number: (646) 465-9082