

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

Certified, Return Receipt Requested

**TO: Ascendant Capital Markets, LLC
Mr. Mark Bergendahl
Chief Executive Officer
18881 Von Karman
16th Floor
Irvine, CA 92612**

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

DATE: March 11, 2016

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20120344551-02

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **March 11, 2016** 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.

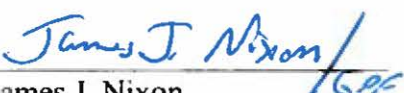
You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or NASDAQ if you are not a member of FINRA) in 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, Legal Section, Market Regulation Department, 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.

Ascendant Capital Markets, LLC
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If you have any questions concerning this matter, please contact Dawn E. Faris, Senior Counsel,
at (240) 386-6219.


James J. Nixon
Chief Litigation Counsel, Legal Section
Department of Market Regulation

Signed on behalf of NASDAQ

Enclosure

FINRA District 2 – Los Angeles
Donald K. Lopezi
Vice President and Regional Director
(Via email)

THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120344551-02

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

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC ("Nasdaq") 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, 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 has been a member of FINRA since Feb. 28, 2011, and a member of Nasdaq since March 7, 2011, and its registrations remain 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 Nasdaq for distributions that priced in December 2011 and the first quarter of 2012 (the "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

FACTS AND VIOLATIVE CONDUCT

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 (totaling 63,700 shares). 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 Nasdaq MarketWatch and FINRA's Market Regulation Department, in a timely fashion, notifications of excused withdrawal status or passive market maker status, pursuant to Nasdaq Rule 4619(e)(1)(A) ("Rule 4619(e)(1)(A) Notice"). Specifically, pursuant to Nasdaq Rule 4619(e)(1)(A), the firm was required to file its Rule 4619(e)(1)(A) Notice "no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances." The firm, however, failed to submit a Rule 4619(e)(1)(A) Notice in connection with the NLST offering. The conduct described in this paragraph constitutes a violation of Nasdaq Rule 4619(e)(1)(A).
3. The firm's supervisory system also did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of Nasdaq. 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.

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

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 Nasdaq Rule 4619(e) [(a), (b), (c), and (d)]. The conduct described in this paragraph constitutes violations of Nasdaq Rules 3010 and 2110.

B. The firm 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 Nasdaq Rule 4619(e)(1)(A) violation, and \$5,000 for the supervisory findings),² and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.3. Within 30 business days of acceptance of this AWC by the Nasdaq Review Council, 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 I.A.3; and, (3) 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;

² The above \$12,500 fine represents the portion of the firm's fine to be paid in this Nasdaq action, with an equivalent fine also assessed in a concurrent FINRA action that included, among other things, common conduct from the review period applicable to this matter.

- 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 prejudgment 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 Market Regulation 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.

2/24/16
Date

Ascendant Capital Markets, LLC
Respondent

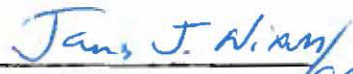
By: 
Name: MARK BERCE DAHL
Title: CEO

Reviewed by:

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

Accepted by Nasdaq:

3/11/16
Date


James J. Nixon
Chief Litigation Counsel
Department of Market Regulation

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;
- The installment payment plan.¹
 - Monthly
 - Quarterly

Respectfully submitted,

Respondent
Ascendant Capital Markets, LLC

2/24/16
Date

By: 
Name: MARK RERBEN
Title: CEO

¹ The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.