

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009019067702**

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

RE: Roth Capital Partners, LLC, Respondent
Broker-Dealer
CRD No. 15407

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, 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 the Respondent alleging violations based on the same factual findings described herein.

I.

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

Roth Capital Partners ("Roth Capital" or the "Firm") has been a FINRA member since October 18, 1985 and a Nasdaq member since July 12, 2006. It is an investment banking firm that focuses on the small-cap public market. It maintains 7 branch offices and employs 131 registered persons.

RELEVANT DISCIPLINARY HISTORY

On March 16, 2010, Roth Capital was censured and fined \$25,000 by FINRA for (i) failing to properly mark 26 short sale orders as short, in violation of SEC Rule 200(g) of Regulation SHO; (ii) transmitting 12 inaccurate Order Audit Trail System reports, in violation of NASD Rule 6955(a); (iii) failing to maintain complete and accurate records of 36 brokerage orders, in violation of SEC Rule 17a-3 and NASD Rule 3110; and (iv) failing to make publicly available a complete and accurate report on its routing of non-directed orders in covered securities, in violation of SEC Rule 606 of Regulation

NMS.

OVERVIEW

While acting as the managing underwriter in a public offering, Roth Capital failed to file advance notice of its intent to conduct a syndicate covering transaction, in violation of Rule 104 of Regulation M of the Securities Exchange Act of 1934. Roth Capital failed to make the required filing even though it anticipated that the syndicate covering transaction could have an impact on the price of the offered security. After it covered its short position, Roth incorrectly reported to FINRA that that it had not effected a syndicate covering transaction.

Roth Capital also violated NASD Rule 3010 by failing to establish or maintain adequate written supervisory procedures to ensure compliance with Rule 104 of Regulation M.

By virtue of these violations, Roth Capital also violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Roth Capital's Reporting Obligations for Syndicate Covering Transactions

Rule 104 of Regulation M of the Securities Exchange Act of 1934 makes it unlawful for any person effecting a syndicate covering transaction to fail to provide prior notice of the transaction to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected.¹ A syndicate covering transaction is a transaction through which a distribution participant or underwriter reduces a short position created in connection with an offering.² Syndicate covering transactions can influence aftermarket prices of the offered security.³ Rule 104(h) of Regulation M requires that these transactions be reported in advance in order to assist the exchanges in carrying out their surveillance responsibilities.⁴

Nasdaq Rule 4624 states, in relevant part, that:

A Nasdaq Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 [of Regulation M] shall provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid on syndicate

¹ See Regulation M of the Securities Exchange Act of 1934 Rules 104(a), 104(h), and 100(b).

² See Regulation M of the Securities Exchange Act of 1934 Rule 100(b). The exercise of an over-allotment option is not considered a "syndicate covering transaction." See SEC Division of Market Regulation: Staff Legal Bulletin No. 9, "Frequently Asked Questions About Regulation M," available at <http://www.sec.gov/interp/legals/mrslb9.htm>.

³ See Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (Adopting Release).

⁴ *Id.*

members or to conduct syndicate covering transactions pursuant to SEC Rule 104 [of Regulation M] prior to imposing the penalty bid or engaging in the first syndicate covering transaction.

Roth Capital Failed to Report its Syndicate Covering Transaction in Common Shares of ParkerVision, Inc.

Between January and March of 2009, Roth Capital acted as the lead manager in a public offering of (i) 3,484,309 shares of common stock of ParkerVision, Inc. (“ParkerVision”) at \$1.66 per share; and (ii) 2,156,600 units of ParkerVision consisting of one share of common stock and two-tenths of a warrant at \$1.875 per unit. In February of 2007, Roth Capital became a market maker in ParkerVision common stock. ParkerVision’s common stock was listed for trading on the NASDAQ Global Market. In order to comply with Rule 104 of Regulation M, Roth Capital was required to provide FINRA with advance notice of its intention to engage in any syndicate covering transactions in connection with the ParkerVision offering.¹ However, Roth Capital failed to do so.

Roth Capital obtained a cumulative short position of 492,191 shares of ParkerVision common stock in connection with the offering. On March 27, 2009, Roth Capital partially covered its short position in ParkerVision common stock by purchasing 242,191 shares in the market at \$1.65 per share, a price that was \$.11 higher than the price at which Roth Capital could have obtained shares by exercising its over-allotment option with the issuer. On March 31, 2009, Roth Capital covered its remaining short position by partially exercising its over-allotment option with the issuer to purchase 250,000 shares of ParkerVision at \$1.53 per share.

Roth Capital’s purpose in purchasing the ParkerVision shares in the market on March 27, 2009, and in not fully exercising its over-allotment option, was to support the price of ParkerVision’s common stock in the market and avoid the potential negative effect on the company’s share price if Roth Capital had fully exercised its over-allotment option and additional shares had stayed in the market.

Roth Capital failed to file advance notice of the March 27, 2009 syndicate covering transaction with FINRA. After it had already covered its short position, Roth Capital incorrectly reported to FINRA that it had exercised its over-allotment option and covered its short position by purchasing the shares from the issuer. Roth Capital failed to inform FINRA that it had also covered a portion of its short position by purchasing shares in the market.

¹ As described above, Nasdaq Rule 4624 requires that the notice of the syndicate covering transaction be provided to FINRA.

Roth Capital's Written Supervisory Procedures Failed to Address Compliance with Rule 104 of Regulation M

During the relevant period, Roth Capital's written supervisory procedures did not address compliance with Rule 104 of Regulation M. The Firm's supervisory procedures also failed to indicate who was responsible for ensuring compliance with Rule 104 of Regulation M or designate a principal to supervise that activity.

Violations

Rule 104(h) of Regulation M of the Securities Exchange Act of 1934 requires any person intending to effect a syndicate covering transaction to provide prior notice to the self-regulatory organization with direct authority over the principal market in which the syndicate covering transaction is effected. Nasdaq Rule 4624, in turn, requires that distribution managers notify FINRA of their intent to conduct syndicate covering transactions prior to engaging in the first syndicate covering transaction.

As described above, Roth Capital failed to inform FINRA that it intended to cover its short position by purchasing shares of ParkerVision in the market. Roth Capital thus failed to make the required notification with respect to a syndicate covering transaction. In fact, after it covered its short position, Roth incorrectly reported to FINRA that that it had not effected a syndicate covering transaction. By failing to provide notice of its intent to effect the syndicate covering transaction in ParkerVision shares, Roth Capital violated Rule 104 of Regulation M of the Securities Exchange Act of 1934.

In addition, as described above, Roth Capital failed to establish and maintain a supervisory system or procedures reasonably designed to ensure compliance with Rule 104 of Regulation M. Accordingly, Roth Capital violated NASD Rule 3010.

By virtue of its violations of Rule 104 of Regulation M and of NASD Rule 3010, Roth Capital also violated FINRA Rule 2010.

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

A censure and a fine of \$15,000.

In a simultaneous action, Nasdaq has censured Roth Capital and fined it \$15,000 for (i) failing to file advance notice of the March 27, 2009 syndicate covering transaction in ParkerVision common shares, in violation of Rule 104(h) of Regulation M of the Securities Exchange Act of 1934 and Nasdaq Rule 4624, and (ii) failing to establish and maintain a supervisory system or procedures reasonably designed to ensure compliance with Rule 104 of Regulation M, in violation of Nasdaq Rule 3010.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 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 it;
- 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 National Adjudicatory Council ("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 prejudice 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.

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 it; 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 it;
 - 2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about my 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. 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 Respondent’s 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. Respondent 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 its 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.

1/7/20
1/7/13
Date (mm/dd/yyyy)

Roth Capital Partners, LLC
Respondent

Roth Capital Partners, LLC

By: Richard L. Platt

Title: General Counsel

Accepted by FINRA:

Jan. 25, 2013
Date

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

Thomas B. Lawson

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