

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2009015974701**

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

RE: Pointe Capital, Inc. (n/k/a JHS Capital Advisors, Inc.)  
BD No! 112097

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Pointe Capital, Inc. (n/k/a JHS Capital Advisors, Inc.) (hereinafter, "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 or conduct 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**

Pointe Capital, Inc. ("PCI"), headquartered at 4800 T-Rex Avenue in Boca Raton, Florida, became a member of FINRA on October 25, 2001. On December 18, 2009, PCI was acquired by JHS Capital Holdings, Inc. Subsequent to the change in ownership, PCI was renamed JHS Capital Advisors, Inc. ("JHS") and, over the course of the following months, an entirely new management team was installed. None of the principals formerly associated with PCI are currently associated with JHS. JHS, headquartered at 501 East Kennedy Blvd. in Tampa, Florida, is engaged in a general securities business. JHS currently operates 26 registered branch locations and has 109 registered individuals.

## **RELEVANT DISCIPLINARY HISTORY**

On October 21, 2010, JHS executed a Consent Order with the State of Connecticut, Department of Banking (Consent Order No. CO-10-7780-S) in which it agreed to pay an administrative fine in the amount of \$10,000, and to reimburse Connecticut customers, for improperly charging "postage and handling" fees in connection with securities trades executed during the period from January 1, 2008 through March 31, 2010.

## **OVERVIEW**

Between January 2007 and December 2009, PCI routinely charged its customers a "handling fee", in addition to a commission, on equity security trades. The handling-fee charge varied in amount from trade to trade, in some cases reaching as high as \$95 per trade. Although reflected on customer trade confirmations as a charge for "handling", the charge was not reasonably related to any direct handling-related services performed by the firm, or handling-related expenses incurred by the firm, in processing the transaction, but rather, was effectively an additional commission. The characterization of the charge as being for "handling" was therefore inaccurate and improper.

In addition, during the period from January 1, 2008 through February 25, 2010, Respondent failed to establish, maintain, and enforce adequate procedures for the supervisory review of commission charges, in violation of NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010. Further, during the period from January 1, 2008 through February 25, 2010, Respondent failed to report a number of customer complaints on time and accurately, in violation of NASD Conduct Rules 3070 and 2110 and FINRA Rule 2010. Additionally, for the period November 2006 to March 2007, PCI lacked adequate supervisory procedures addressing the conduct of due diligence in connection with private placement offerings, in violation of NASD Conduct Rules 3010 and 2110.

## **FACTS AND VIOLATIVE CONDUCT**

### ***Charging Unreasonable Handling Fees and Improper and Inaccurate Disclosure of Such Fees***

NASD Conduct Rule 2430 (Charges for Services Performed) requires charges, if any, for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

Exchange Act Rule 10b-10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. Pursuant to Rule 10b-10, it shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing, among other things, if the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

FINRA Rule 2010 (formerly NASD Conduct Rule 2110) (Standards of Commercial Honor and Principles of Trade) requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Between January 2007 and December 2009, PCI routinely charged its customers a "handling fee", in addition to a commission, on equity security trades. The handling-fee charge varied in amount from trade to trade, in some cases reaching as high as \$95 per trade. The particular dollar amount charged was not attributable to any specific cost or expense incurred by the firm in executing the trade, or determined by any formula applicable to all customers. Rather, it was determined by the individual representative executing the order, who had discretion to set the dollar amount of the fee within a particular range set by the firm. Moreover, the range authorized by the firm varied from branch to branch; consequently, customers of different branches might be assessed substantially different amounts for "handling" on otherwise identical trades.

Although reflected on customer trade confirmations as a charge for "handling", the fee actually served as a source of additional transaction-based remuneration or revenue to the firm, in the same manner as a commission, and was not directly related to any specific handling services performed by the firm, or handling-related expenses incurred by the firm, in processing the transaction. PCI's characterization of the charge as being for "handling" was therefore improper. By designating the charge as a handling fee on customer trade confirmations, PCI understated the amount of the total commissions charged by the firm and misstated the purpose of the handling fee.

By reason of the foregoing, PCI violated NASD Conduct Rule 2430, Exchange Act Rule 10b-10 and NASD Conduct Rule 2110 and FINRA Rule 2010.

***Inadequate Supervisory System and Written Procedures Relating to Fairness of Commission Charges***

NASD Conduct Rule IM-2440-1 identifies several factors that firms should consider in determining the fairness of a charge for a securities trade. These factors include: the type of security involved; the availability of the security in the market; the price of the security; and the amount of money involved in the transaction. During the period from January 1, 2008 through February 25, 2010, PCI gave its representatives discretion to determine the commission to charge a customer for a particular transaction, and PCI's supervisory review of commission charges consisted solely of ensuring that no commission exceeded five percent of the principal cost of the purchase or sale.

By failing to establish, maintain, and enforce a supervisory system, including written procedures, that was reasonably designed to achieve compliance with NASD Conduct Rules 2440 and IM-2440-1, with respect to the fairness of commission charges, PCI violated NASD Conduct Rules 3010 and 2110 and FINRA Rule 2010.

***Failure to Report Customer Complaints***

NASD Conduct Rule 3070(c) requires, in part, that "[e]ach member shall report to the Association statistical and summary information regarding customer complaints in such detail as the Association shall specify." FINRA-registered firms must provide statistical and summary information regarding customer complaints in such detail as FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the firm. This rule assists FINRA in monitoring, on a real-time basis, the ongoing compliance of member firms and associated persons with applicable securities laws and regulations.

During the period from January 1, 2008 through February 25, 2010, PCI failed to file summary and statistical information for 38 customer complaints by the 15th day of the month following the calendar quarter in which the complaints were received by the firm. In addition, during the stated period, PCI inaccurately reported three customer complaints, providing a descriptive problem code for each that was less egregious than the misconduct actually alleged by the customer.

By reason of the foregoing, PCI violated NASD Conduct Rules 3070 and 2110 and FINRA Rule 2010.

***Inadequate Supervisory System and Written Procedures Relating to Due Diligence in Connection with Private Placement Offerings***

During the period from November 2006 to March 2007, PCI failed to establish, maintain, and enforce an adequate supervisory system, including written procedures, for the conduct of due diligence in connection with private placement offerings.

By reason of the foregoing, PCI violated NASD Conduct Rules 3010 and 2110.

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

- A censure;
- A fine of \$300,000; and
- An undertaking by Respondent to certify, within 90 days of FINRA's acceptance of this AWC, that it has implemented corrective action, to remedy the handling fee-related violations set forth above. Such corrective action shall include, but not be limited to: (1) identifying as commissions or mark-ups (mark-downs), as the case may be, and not as postage, handling, or any other miscellaneous fee, all transaction-based remuneration and any other fees which do not constitute reasonable fees under NASD Rule 2430 and do not comply with subsection (2) of this undertaking; (2) for any charges or fees for services (such as postage costs and clearing firm charges), other than commissions or mark-ups (mark-downs), fully and accurately disclosing on confirmations, as well as any communication with a customer or the public where fees are discussed (including fee schedules, if any, or new account documentation that contains fee information), the specific service performed or to be performed or the specific use, and the amount of the fee paid or to be paid in connection with each service or use, and retaining detailed records to substantiate such services and uses and the fee amounts; and (3) revising the firm's written supervisory procedures and providing training to the firm's registered representatives and associated persons to address this undertaking related to transaction-based remuneration, reasonable fees, their appropriate disclosure to customers, and retention of related records.

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

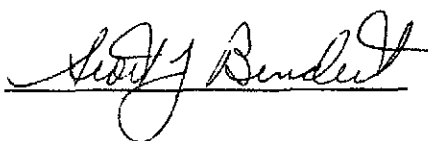
the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216.

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent.
- C. If accepted:
1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
  2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about Respondent’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. 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 Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 Respondent to submit it.

August 1, 2011  
Date

Respondent JHS Capital Advisors, Inc.

By: 

Reviewed by:

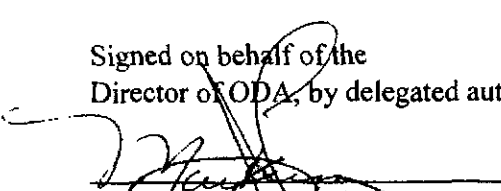
  
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Counsel for JHS Capital Advisors, Inc.

Accepted by FINRA:

September 6, 2011  
Date

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

  
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FINRA Department of Enforcement  
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