

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
NO. 2006007424601

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

RE: James I. Black & Company, Respondent  
Member  
[CRD No. 1249]

Jess G. Tucker, Respondent  
General Securities Principal  
[CRD No. 450126]

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, James I. Black & Company ("JIB" or "the Firm") and Jess G. Tucker ("Tucker") submit 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 JIB or Tucker alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. JIB and Tucker hereby accept and consent, 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**

JIB became a FINRA (f/k/a National Association of Securities Dealers or NASD) member in 1964, and is headquartered in Lakeland, Florida. JIB is currently a FINRA member and conducts a general securities business, self-clearing the majority of its securities business. JIB has no relevant formal disciplinary history.

Tucker initially became registered with FINRA as a general securities representative in 1965. Subsequently, Tucker obtained Series 4, 5, 24, 27, 53 and 63 licenses. From 1965 through February 8, 2008, Tucker was associated with JIB. From February 2005 through March 2007, Tucker served as JIB's Anti-Money Laundering ("AML") Compliance Officer and Chief Compliance Officer. On February 8, 2008, JIB filed a Form U5 on

behalf of Tucker terminating his association with that firm as of that date. Tucker is not currently associated with any FINRA member firm. Tucker has no prior disciplinary history.

## **OVERVIEW**

At various times from February 2005 through March 2007 (“relevant period”), JIB, acting through Tucker, failed to adequately implement its Anti-Money Laundering (“AML”) compliance program. In several instances, the Firm, acting through Tucker, failed to detect, analyze, or report highly suspicious transactions. The Firm, acting through Tucker, also failed to conduct sufficient independent tests of its AML program and failed to provide proper AML training.

Throughout the relevant period, JIB’s clientele included, among others, approximately twenty stock promoters, some of whom had regulatory and/or criminal histories, including one who had been convicted of a felony fraud charge involving the sale of unregistered securities. By failing to adequately implement its AML compliance program, JIB and Tucker permitted these stock promoters (and numerous other customers they had referred) to open approximately 175 accounts at the Firm, in which the transactions conducted usually involved a pattern of deposits of large amounts of penny stock certificates followed by either third party journals or liquidations and wires to unrelated accounts, activity which, without additional explanation, may be consistent with the sale of unregistered securities or possibly market manipulation.

## **FACTS AND VIOLATIVE CONDUCT**

### **DEFICIENT ANTI-MONEY LAUNDERING COMPLIANCE PROGRAM**

#### **AML Requirements**

NASD Conduct Rule 3011, which became effective on April 24, 2002, requires FINRA members to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. §5311, et seq., and the regulations promulgated thereunder. Among other things, this rule directs member firms to establish and implement procedures reasonably designed to detect and cause the reporting of certain suspicious transactions. Firms must also provide for independent testing of their AML programs and provide relevant on-going training to appropriate personnel.

NASD Conduct Rule 3011(a) requires FINRA members to establish and implement policies and procedures “that can be reasonably expected to detect and cause the reporting of” suspicious activity and transactions. The United States Department of Treasury (“Treasury”) issued a regulation requiring suspicious transaction reporting for broker-dealers (31 CFR §103.19(a)(1)). It required all broker-dealers to file with Treasury’s Financial Crimes Enforcement Network “a report of any suspicious transaction relevant

to a possible violation of law or regulation.” Under Section (a)(2) therein, a transaction must be reported if:

it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least \$5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

- i. Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- ii. Is designed ... to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act;
- iii. Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- iv. Involves use of the broker-dealer to facilitate criminal activity.

It is not necessary for the broker-dealer to prove that the customer is engaged in illegal activities, or to have actual knowledge of illicit or unlawful trading by the customer. It is sufficient that the firm has “reason to suspect” that the transactions involve unlawful activity or lack an apparent lawful purpose.

Treasury’s release stated that broker-dealers should determine whether activities and transactions raise suspicions by looking for red flags. FINRA NtM 02-21 emphasized each firm’s duty to detect red flags and, if it detected any, to “perform additional due diligence before proceeding with the transaction.” NtM 02-21 also set forth examples of red flags, including but not limited to:

- a. The customer wishes to engage in transactions that lack business sense or apparent investment strategy, or are inconsistent with the customer’s stated business strategy;
- b. The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations;
- c. For no apparent reason, the customer has multiple accounts under a single name or multiple names, with a large number of inter-account or third-party transfers;

- d. The customer's account has unexplained or sudden extensive wire activity, especially in accounts that had little or no previous activity;
- e. The customer's account has a large number of wire transfers to unrelated third parties inconsistent with the customer's legitimate business purpose;
- f. The customer engages in excessive journal entries between unrelated accounts without any apparent business purpose;
- g. The customer's account shows an unexplained high level of account activity with very low levels of securities transactions; and
- h. The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities, for no apparent business purpose or other purpose.

Throughout the relevant period, JIB's procedures required Tucker to look for suspicious activities and red flags such as those identified above. Additionally, JIB's written procedures required the Firm to notify regulatory organizations and/or law enforcement of suspicious activities by filing suspicious activity reports. As further detailed below, however, JIB, acting through Tucker, failed to adequately enforce its own procedures or otherwise comply with the requirements of NASD Conduct Rule 3011.

#### **Failure to Implement AML Policies and Procedures**

During the relevant period, JIB, acting through Tucker, failed to implement an adequate AML compliance program, in that it failed to (1) adequately detect, investigate, and report potentially suspicious activity; (2) conduct sufficient independent tests of its AML program on an annual basis; and (3) conduct annual AML training for its personnel.

In accordance with NTM 02-21, the Firm's AML procedures identified as red flags multiple accounts under a single name or multiple names and large numbers of inter-account or third party transfers. The procedures also identified as AML red flags large numbers of wire transfers from accounts to unrelated third parties. Upon identification of AML red flags, the Firm's procedures required JIB and Tucker to assess whether further investigation of the activity was warranted and, if appropriate, required JIB to notify regulatory organizations and/or law enforcement of suspicious activities. JIB and Tucker, however, failed to identify red flags involving numerous instances of potentially suspicious activities, and thus failed to investigate and report them in accordance with the Firm's own procedures.

For example, JIB and Tucker permitted customer PD, the Chief Executive Officer of a company issuing thinly-traded penny stock, and several other company insiders, to open multiple accounts at the Firm. Prior to opening the accounts, PD had been convicted of, among other things, a felony fraud charge involving the sale of unregistered securities. After opening the accounts, JIB and Tucker allowed PD and other insiders to deposit millions of shares of the company stock, and subsequently permitted these customers to journal the shares back and forth between related and unrelated accounts. They then

permitted some of the accounts to liquidate the positions and wire the funds out to third parties.

Similarly, JIB and Tucker permitted customer JD, an individual who held an ownership interest in another broker-dealer, and who had filed for bankruptcy and was the subject of several civil lawsuits, to open multiple accounts at the Firm. These accounts then engaged in a pattern of deposits of penny stock certificates followed by either third party journals or liquidations and wires to unrelated accounts.

JIB and Tucker conducted insufficient reviews of these accounts and the activity within them, and failed to detect or adequately investigate the red flags. If JIB and Tucker had detected the related nature of the accounts, the deposits of penny stock, and the journaling activity, JIB and Tucker could have investigated to determine whether the activity warranted SAR filings. Furthermore, JIB's and Tucker's investigation would have revealed the felony conviction of PD and would have allowed JIB and Tucker to employ that factor in the Firm's risk analysis. Rather, JIB and Tucker permitted these suspicious activities to occur and failed to report them by filing suspicious activity reports.

In addition, during 2005 and 2006, JIB, acting through Tucker, failed to conduct sufficient independent tests of its AML program as required by NASD Conduct Rule 3011(c) and failed to conduct AML training for any of its personnel, which included approximately seven registered representatives, as required by NASD Conduct Rule 3011(e).

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 3011(a), (b), (c) and (e) and 2110, and MSRB Rule G-41 by Respondents JIB and Tucker.

B. We also consent to the imposition of the following sanctions:

Respondent JIB is censured.

Respondent Tucker is suspended from association with any FINRA member in any principal or supervisory capacity for three months.

Respondents JIB and Tucker are fined, jointly and severally, \$125,000.

An undertaking by Respondent JIB to have all of its personnel register for, within 60 days of the date of issuance of this AWC, sixteen hours of training concerning anti-money laundering, in a program that is acceptable to FINRA. The Firm shall provide FINRA with evidence of the registrations within ten days of registration. The Firm's personnel shall then attend and complete such training within six months of the issuance of this AWC, and shall provide FINRA with evidence that they have completed such training within ten days of completion of the training program.

Respondent JIB agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. Respondent JIB has submitted Election of Payment forms showing the method by which it proposes to pay the fines imposed.

Respondent Tucker's fine shall be due and payable either immediately upon reassociation with a member firm following the three-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

Respondent Tucker understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, Respondent Tucker may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, we specifically and voluntarily waive any right to claim bias or prejudgment 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.

We further specifically and voluntarily waive any right to claim that a person violated the *ex parte* prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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

We understand that:

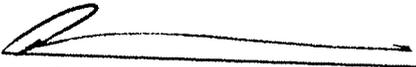
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against us; and
- C. If accepted:
  - 1. This AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against us;
  - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about our disciplinary record;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
  - 4. We 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. We 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 our right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. We may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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.

We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that we have 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 us to submit it.

James I. Black & Company  
Respondent

4/4/08  
Date

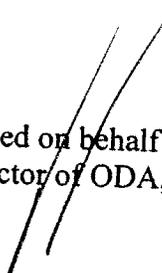
By:   
Gerald L. Black, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jess G. Tucker

Accepted by FINRA:

5/9/08  
Date

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

\_\_\_\_\_  
David B. Klafter  
Deputy Regional Chief Counsel  
FINRA Department of Enforcement  
2500 N. Military Trail, Suite 302  
Boca Raton, FL 33431  
(561) 443-8110

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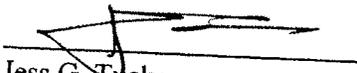
James I. Black & Company  
Respondent

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Gerald L. Black, President

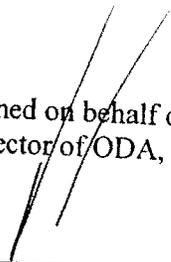
4/10/2008

Date

  
\_\_\_\_\_  
Jess G. Tucker

Accepted by FINRA:

5/9/08  
Date

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

\_\_\_\_\_  
David B. Klafter  
Deputy Regional Chief Counsel  
FINRA Department of Enforcement  
2500 N. Military Trail, Suite 302  
Boca Raton, FL 33431  
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