

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO: 2015044393901**

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

**RE: Dawson James Securities, Inc., Respondent
Member Firm
BD No. 130645**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Dawson James Securities, Inc. ("Dawson James" or 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, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Dawson James 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

On August 6, 2004, Dawson James first became registered with FINRA. Dawson James is a Florida corporation that was incorporated on July 30, 2002. The Firm maintains its headquarters in Boca Raton, Florida. Dawson James acts as an introducing broker effecting securities transactions on a fully disclosed basis through two unaffiliated clearing firms. The Firm operates five branch offices and has approximately 50 registered individuals. The Firm generates most of its revenue through investment banking and retail sales of emerging biotechnology and healthcare companies. As part of its business, the Firm provides research analyst coverage on multiple companies in the healthcare and biotechnology industry.

RELEVANT DISCIPLINARY HISTORY

The Firm has relevant disciplinary history as follows:

In October 2011, FINRA approved an Offer of Settlement from the Firm (No. 2009016158501) in which it consented to findings that it violated NASD Rules 2711(d)(2), 2711(i), and 2110 and FINRA Rule 2010 by failing to document the basis of research analyst compensation and by filing false annual attestations in which the senior officer certified that the compensation committee had documented the basis of research analyst compensation. For these and other violations, the Firm was censured and fined \$90,000.

In March 2006, FINRA approved an AWC (No. E072005007803) in which the Firm consented to findings that it violated various provisions of NASD Rules 2711(h) and 2110 by issuing multiple research reports that did not contain adequate disclosures. The Firm was censured and fined \$25,000.

OVERVIEW

From 2009 through 2016, the Firm had supervisory failures in two areas of its business: research and private offerings. These supervisory failures led to substantive rule violations in both areas.

More specifically, during that timeframe, the Firm violated NASD Rule 2711(i) and FINRA Rules 3010(b) and 2010 when it failed to adopt and implement written supervisory procedures reasonably designed to ensure that its research analysts did not participate in efforts to solicit investment banking business and that its research reports contained all required disclosures. Dawson James also violated NASD Rule 3010(a)(5) and FINRA Rules 3110(a)(5) and 2010 when it failed to implement a reasonably designed system to supervise its research analysts. In particular, it allowed its Director of Research, who authored the vast majority of the Firm's research and was also a research principal, to supervise himself. Substantive violations of NASD Rule 2711 and FINRA Rules 2241 and 2010 followed. Specifically, the Firm's Director of Research participated in a publicly available advertising video intended to attract investment banking business. In addition, the Firm improperly issued research reports that lacked required disclosures

On the private offering side, from October through December 2013, Dawson James participated in the distribution of securities in connection with a best-efforts part-or-none contingency offering (the "Offering"). Dawson James was a selected dealer participating in the sale of this offering. The Firm's written supervisory procedures required that it conduct a reasonable investigation into this contingency offering. However, Dawson James failed to confirm that bona-fide sales were used to calculate the minimum contingency requirement in the Offering. Thus, the Firm was unaware that the minimum contingency had been met using sales made to insiders. Dawson James' failure to supervise its participation in the Offering and its failure to enforce its written procedures violated NASD Rules 3010(b) and FINRA Rule 2010.

Further, from October through December 2013, the Offering's issuer failed to designate an independent bank escrow agent for the receipt of investor funds. In contravention of Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 15c2-4 promulgated thereunder, the issuer's attorney was designated as the escrow agent and used its Interest on Lawyer's Account ("IOLA") as the escrow account for the Offering. Dawson James accepted subscriber funds in connection with the sale of this Offering and transferred those funds to the IOLA escrow account. Therefore, Dawson James violated Exchange Act Section 15(c), Rule 15c2-4 thereunder and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Violations Relating to Research Analysts and Research Reports

1. Deficient Supervisory Procedures Governing Research

NASD Rule 2711(i), which was in effect until December 23, 2015, required member firms to adopt and implement WSPs reasonably designed to ensure that the firm and its employees comply with the applicable rules governing research analysts and research reports. FINRA Rule 3110(b), which has been in effect since December 1, 2014, requires member firms to establish and maintain written procedures reasonably designed to achieve compliance with applicable securities laws and regulations. Among those regulations is FINRA Rule 2241, which has been in effect since December 24, 2015 and governs research analysts and research reports as the successor rule to NASD Rule 2711.¹

From June 22, 2009 through June 9, 2016, Dawson James provided research analyst coverage on multiple companies in the healthcare and biotechnology industry. Some of the covered companies were also the Firm's investment banking clients. The majority of the Firm's research reports were drafted by the Firm's Director of Research. In the same period, Dawson James had WSPs in accordance with NASD Rule 2711(c)(4) and FINRA Rule 2241(b) that prohibited research analysts from participating "in any manner in the solicitation of investment banking business" and "engag[ing] in communications with customers about investment banking transactions in the presence of investment banking personnel." NASD Rule 2711 and FINRA Rule 2241 are intended to foster objectivity in research reports by, among other things, ensuring that research analysts are not inappropriately influenced by their member firms' interest in attracting and maintaining investment banking business.

The Firm's WSPs were, in essence, a recitation of NASD Rule 2711 without regard to the specific activities of its research personnel. For example, the Firm did not adopt or implement procedures or training defining the circumstances, if any, under which a research analyst could meet with an issuer that may be a

¹ The supervision provisions of NASD Rule 2711 are not mirrored in FINRA Rule 2241. Supervision relating to research analysts and research reports is now governed by FINRA Rule 3110(b).

potential investment banking client or communicate with an issuer in the presence of investment bankers. Moreover, the WSPs did not specifically address how research analysts' communications with issuers should be supervised or who research analysts should consult about any potential concerns regarding communications with issuers. This lack of reasonable procedures and guidance limited the Firm's ability to identify and manage the conflict of interest between its research and investment banking departments that the research rules are intended to address.

Robust procedures in this area were important because between 2009 and 2016, there were several meetings between the Firm's research staff and current or potential investment banking clients. For example, the Firm's Director of Research and an investment banking staff member attended biotech conferences together and jointly met with potential investment banking clients. The Director of Research also contacted and met with a representative from a venture capital firm to discuss, in part, the Firm's history of capital raising. The Firm did not maintain reasonable procedures governing those interactions, nor did anyone at the Firm supervise or review the communications that took place at those meetings.

From June 22, 2009 through June 9, 2016, Dawson James also had WSPs governing the disclosures in its research reports that mirrored the language of NASD Rule 2711(h) and FINRA Rule 2241(c). However, those WSPs were not tailored to reflect the Firm's research business and did not reflect relevant guidance from FINRA regarding the application of the disclosure requirements. As a result, the Firm issued multiple reports that did not include sufficient disclosures regarding the Firm's ownership of subject company securities, did not include appropriate ratings distributions charts, and contained reference to ratings that were not defined.

By failing to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with regulations regarding the supervision of research activity, Dawson James violated NASD Rule 2711(i) and FINRA Rule 2010, during the period from June 22, 2009 through December 23, 2015, and FINRA Rules 3110(b) and 2010, during the period from December 24, 2015 through June 9, 2016.

2. Deficient Supervisory System Overseeing Research Analysts

NASD Rule 3010(a), which was in effect until November 30, 2014, and FINRA Rule 3110(a), which replaced Rule 3010(a) and has been in effect since December 1, 2014, require member firms to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations. Further, NASD Rule 3010(a)(5) required, and FINRA Rule 3110(a)(5) requires "[t]he assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be

responsible for supervising that person's activities."

From June 22, 2009 through June 9, 2016, the Firm's Director of Research also acted as a research analyst, drafting the majority of the research reports issued by the Firm. As the Firm's primary designated research principal, the Director of Research also reviewed the Firm's research reports, including the ones he himself authored, to ensure that they included the required disclosures. While the Firm did employ other research personnel, some with principal and supervisory licenses, who occasionally reviewed research reports between 2009 and 2016, no person was formally assigned to supervise the activities of the Director of Research, including review of his research reports, nor was there systematic or regular review of his reports.

Pursuant to NASD Rule 3011(a)(5) and FINRA Rule 3110(a)(5), a member's supervisory system must provide, at a minimum, that each registered person be assigned to an appropriately registered representative or principal to supervise that person's activities. Because the Director of Research supervised his own activities as a research analyst, the Firm did not have a reasonable supervisory system consistent with NASD Rule 3010(a)(5) and FINRA Rule 3110(a)(5).

By the above conduct, Dawson James violated NASD Rule 3010(a)(5) and FINRA Rule 2010, during the period from June 22, 2009 through November 30, 2014, and FINRA Rules 3110(a)(5) and 2010, during the period from December 1, 2014 through June 9, 2016.

3. Solicitation of Investment Banking Business by a Research Analyst

NASD Rule 2711(c)(4), which was in effect until December 23, 2015, and its successor rule, FINRA Rule 2241(b)(2)(L), which has been in effect since December 24, 2015, prohibit research analysts from participating in efforts to solicit investment banking business. Both Rules prohibit research analysts from participating in any "pitches" for investment banking business to prospective investment banking clients.

In January 2011, four Firm executives appeared in a video discussing the Firm and its investment banking business. The video was publicly available on an industry website through June 2016. In this video, the Firm's then CEO, its Director of Research, and its Senior Managing Director of Investment Banking, advertise the Firm's services, including those provided to its investment banking customers. The Director of Research, who is identified as such in the video, speaks about the merits of the Firm's investment banking services. For example the Director of Research says, "after we discover the companies and we present them to investors, it's a win-win situation because both the companies benefit and the investors benefit at the same time." This and other statements on the video constitute the participation by the Firm's Director of Research in the solicitation of investment banking business.

By reason of the foregoing, the Firm violated NASD Rule 2711(c)(4) and FINRA Rule 2010, during the period from January 2011 through December 23, 2015, and FINRA Rules 2241(b) and 2010, during the period from December 24, 2015 through June 2016.

4. Research Report Disclosures – 2711(h)(10) and (h)(1)

NASD Rule 2711(h)(10) provides that research disclosures required by NASD Rule 2711(h) “must be clear, comprehensive and prominent.” NASD Rule 2711(h)(1) requires that a member must disclose in research reports certain information about the firm’s ownership of subject company securities and any other conflicts of interest. In Notice to Members 04-18, FINRA provided interpretive guidance concerning the clarity of research disclosures, including that member firms may not use conditional or indefinite language in required disclosures, such as “may have a position” in any of the subject company’s securities. Conditional or indefinite language lacks the specificity required by NASD Rule 2711(h).

Dawson James failed to make clear, comprehensive and prominent disclosures as required by NASD Rule 2711(h)(10). Between June 22, 2009 and August 1, 2010, the Firm issued 51 research reports including conditional language regarding the Firm and its employees’ ownership of the subject companies’ securities. These reports state “[t]he Firm and/or its directors and employees may own securities of the company(s) in this report and may increase or decrease holdings in the future.” Such conditional language does not comply with NASD Rule 2711(h)(10).

By reason of the foregoing, the Firm violated NASD Rule 2711(h)(10), 2711(h)(1) and FINRA Rule 2010.

5. Research Report Disclosures – 2711(h)(5)(A)

NASD Rule 2711(h)(5)(A) requires that, “[r]egardless of the rating system that a member employs, a member must disclose in each research report the percentage of all securities rated by the member to which the member would assign a ‘buy,’ ‘hold/neutral,’ or ‘sell’ rating.” The Firm must disclose the percentage of rated securities in each of these three specific categories, regardless of whether the Firm uses its own bespoke rating system.

Between June 22, 2009 and August 1, 2010, the Firm issued 25 research reports disclosing the percentage of all securities rated using seven separate categories: “Speculative Buy,” “Strong Buy,” “Buy,” “Neutral,” “Sell,” “Sell Short,” “Under Review,” and “Restricted.” These reports did not also identify the percentage of all securities rated based solely on the three categories set out in the rule, and as a result were confusing and potentially misleading.

By reason of the foregoing, the Firm violated NASD Rule 2711(h)(5)(A) and FINRA Rule 2010.

6. *Research Report Disclosures – 2711(h)(4)*

NASD Rule 2711(h)(4) requires that if a research report contains a rating, the member must define in the research report the meaning of that rating.

Between June 22, 2009 and August 1, 2010, the Firm issued seven research reports containing a rating that referred to the term “speculative buy” without defining that term.

By reason of the foregoing, the Firm violated NASD Rule 2711(h)(4) and FINRA Rule 2010.

Violations in Connection with the Offering

7. *Failure to Enforce Written Supervisory Procedures Regarding Due Diligence in a Contingency Offering - NASD Rule 3010(b) and FINRA Rule 2010*

NASD Rule 3010(b) requires each member to establish, maintain, and enforce written supervisory procedures that are reasonably designed to achieve compliance with applicable securities laws and regulations. A violation of NASD Rule 3010(b) is also a violation of FINRA Rule 2010.

Section 10 of the Exchange Act, and Rule 10b-9 promulgated thereunder, dictate that it is a manipulative or deceptive device or contrivance to fail to return investor funds in a minimum contingency offering when the minimum sales requirement has not been met. A minimum contingency offering is an offering in which the closing of the offering is contingent upon the receipt of orders for a minimum aggregate amount of securities by a specified offering expiration date. FINRA’s Regulatory Notice to Members 16-08 provides guidance regarding the requirements of Rule 10b-9. This Notice instructs that, in contingency offerings, undisclosed purchases by the issuer or its affiliates are non-bona fide sales for purposes of meeting the minimum contingency.

From October 2013 through December 2013, Dawson James participated in the Offering. During this time period, the Firm’s written supervisory procedures required that due diligence be conducted in connection with all private placement offerings. The procedures also required that sales used to meet minimum contingencies be bona-fide sales for investment purposes. The Firm’s procedures further required that, in cases when the Firm was not managing the contingency offering, it must request a letter from the issuer or managing broker-dealer confirming that the minimum sales requirement had been met.

Dawson James served as a selected dealer for the Offering. Another broker-dealer acted as the lead placement agent for the Offering. These two firms were the only broker-dealers that participated in the sale of this offering. The Offering was structured as a best-efforts part-or-none contingency offering. In such an offering, only a specified portion of the total number of securities being offered was required to be sold in order to close the offering. The closing of the offering was contingent upon meeting the minimum sales requirement. The private placement memorandum required minimum sales of 2,400,000 shares at \$1.25 per share (\$3,000,000) in order to complete the offering. Although Dawson James, the other broker-dealer and the issuer raised a total of \$3,117,755 for the Offering, the issuer included \$293,750 of insider investor funds in its calculation of the minimum contingency requirement. The offering documents did not disclose that sales to issuer insiders would be counted towards the required minimum. Under these circumstances, sales to issuer insiders were not bona-fide sales under the securities laws.

Dawson James's sales in the Offering did not include sales to issuer insiders. However, as a selected dealer participating in the offering, Dawson James did not adequately investigate the use of non-bona fide sales in the minimum contingency calculation. Because the minimum contingency requirement was not met with bona-fide sales, the issuer was required to return all investor funds. Additionally, the Firm failed to request a letter from the issuer or managing broker-dealer confirming that the required minimum contingency had been met. The Firm's failure to conduct adequate due diligence and to request the required letter from the issuer or managing broker-dealer thereby contributed to the improper closing of the Offering and placed investor funds at risk.

By reason of the foregoing, Dawson James failed to supervise its participation in the Offering and failed to enforce its written procedures. The Firm therefore violated NASD Rule 3010(b) and FINRA Rule 2010.

8. *Improper Use of Attorney IOLA as Escrow Account for Contingency Offering - Exchange Act Rule 15c2-4 and FINRA Rule 2010*

Under Section 15(c)(2) of the Exchange Act and SEC Rule 15c2-4 promulgated thereunder, it is a fraudulent, deceptive or manipulative act or practice for a broker-dealer participating in a best efforts contingency offering to accept any portion of the sale price for securities unless certain conditions are met. Under Rule 15c2-4, a broker-dealer in a contingency offering must promptly deposit all investor funds into an escrow account using an independent bank escrow agent. FINRA Regulatory Notice 16-08 states that the escrow account may not be controlled by the issuer, the broker-dealer or an attorney.

As stated above, from October 2013 through December 2013, Dawson James participated in the Offering in which the issuer designated its law firm's IOLA as the escrow account for the receipt of subscription funds. Dawson James received

\$62,500 in subscription checks from five investors and improperly transferred those checks to the designated IOLA escrow account. In so doing, the Firm violated Exchange Act Section 15(c), SEC Rule 15c2-4 thereunder and FINRA Rule 2010.

B. Dawson James also consents to the imposition of the following sanctions:

- A censure, and
- A total fine in the amount of \$75,000

Dawson James agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Dawson James has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

Dawson James 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

Dawson James, 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, Dawson James specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, 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.

Dawson James 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

Dawson James 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 Dawson James; and
- C. If accepted:
 - 1. this AWC will become part of Dawson James's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Dawson James;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Dawson James 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. Dawson James 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 my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Dawson James may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Dawson James 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 Dawson James 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 Dawson James to submit it.

12/7/16
Date (mm/dd/yyyy)


Respondent Dawson James Securities, Inc.

By:  _____

Title: Thomas W. Hands
President

Reviewed by:

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Accepted by FINRA:

2/7/17
Date

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



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