FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065100701

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

RE: Dawson James Securities, Inc. (Respondent)
Member Firm
CRD No. 130645

Robert Dawson Keyser Jr. (Respondent)
General Securities Representative and General Securities Principal
CRD No. 1291503

Pursuant to FINRA Rule 9216, Respondents Dawson James Securities, Inc. and Robert Dawson Keyser Jr. 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 Respondents alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

A. Respondents accept and consent to the following findings by FINRA without admitting or denying them:

BACKGROUND

Dawson James has been a FINRA member firm since 2004. Headquartered in Boca Raton, Florida, the firm has three branch offices and approximately 35 registered representatives. The firm conducts a general securities business, primarily selling private and public securities offerings.

Keyser Jr. entered the securities industry in 1984 when he became associated with a FINRA member firm. Since August 2012, he has been registered with FINRA in multiple capacities, including as a General Securities Representative and General Securities Principal, through his association with Dawson James. Keyser Jr. also has been the Chief Executive Officer and a shareholder of Dawson James since August 2012.[1]

OVERVIEW

From August 2011 through January 2021, Dawson James failed to preserve and review over 10,900 business-related text messages sent or received by at least 27 associated

[1] For more information about the firm, including prior regulatory events, and for more information about Keyser Jr., visit BrokerCheck® at www.finra.org/brokercheck.

persons, including Keyser Jr. During this period, the firm's supervisory system, including written supervisory procedures, was not reasonably designed to achieve compliance with the firm's obligation to capture, retain, and review text messages. As a result, Dawson James violated Section 17(a) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-4, NASD Rules 3010 and 3110(a), and FINRA Rules 3110, 4511, and 2010.

Moreover, Keyser Jr. sent or received approximately 4,400 text messages relating to the firm's securities business from August 2011 to December 2017, which the firm did not retain. During this period, Dawson James prohibited associated persons from communicating about securities business via text message. By causing Dawson James to maintain incomplete books and records, Keyser Jr. violated NASD Rule 3110(a) and FINRA Rules 4511 and 2010.

Between December 2016 and March 2019, Dawson James also failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the firm's obligation to conduct reasonable due diligence on private placement offerings. Accordingly, Dawson James violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA firm examination of Dawson James.

A. Dawson James failed to preserve, and reasonably supervise, business-related text messages sent by Keyser Jr. and others.

FINRA Rule 4511, and its predecessor, NASD Rule 3110(a),[2] require member firms to make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules. Under Exchange Act § 17(a) and Exchange Act Rule 17a-4(b)(4), member firms are required to preserve for a period of at least three years the originals of all communications received, and copies of all communications sent, relating to the member firm's business. A registered representative who causes his or her member firm to fail to comply with its recordkeeping obligations violates FINRA Rule 4511 and NASD Rule 3110(a).

FINRA Rule 3110(a), and its predecessor, NASD Rule 3010(a),[3] require a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA and NASD rules.

FINRA Rule 3110(b), and its predecessor, NASD Rule 3010(b),[4] require a member firm to establish, maintain, and enforce written procedures to supervise the types of business

[2] FINRA Rule 4511 superseded NASD Rule 3110(a) on December 5, 2011.

[3] FINRA Rule 3110(a) superseded NASD Rule 3010(a) on December 1, 2014.

[4] FINRA Rule 3110(b) superseded NASD Rule 3010(b) on December 1, 2014.

in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA and NASD rules.

FINRA Rule 3110(b)(4), and its predecessor, NASD Rule 3010(d)(2),[5] provide that the firm's supervisory procedures shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business.

A violation of Exchange Act § 17(a), Exchange Act Rule 17a-4(b)(4), or any of the aforementioned FINRA or NASD rules, is also a violation of FINRA Rule 2010, which requires that a "member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

From August 2011 to December 2017, Dawson James prohibited firm employees from using text messaging for business purposes. The firm thereafter removed this prohibition and then reinstituted it in January 2021. At no time from August 2011 through January 2021—even during the period when the firm permitted associated persons to use text messaging for business purposes—did Dawson James implement a system or procedures to preserve or review those business-related text messages. As such, the firm failed to capture, retain, and review over 10,900 business-related text messages sent or received by at least 27 associated persons. These messages included communications about the firm's net capital computations, communications about customer complaints, and communications with customers about holding or selling positions in stocks and warrants. The firm's management knew that associated persons used text messaging for business-related communications, and during the period when the firm prohibited using text messaging for business purposes, Keyser Jr. used his firm-issued mobile phone to send and receive approximately 4,400 business-related text messages. Nonetheless, Dawson James failed to take reasonable steps to enforce its prohibition against using text messaging for business-related communications, and the firm failed to take steps to capture, retain, and review its associated persons' business-related text messages.[6]

Therefore, Dawson James violated Exchange Act § 17(a), Exchange Act Rule 17a-4, NASD Rules 3110 and 3010, and FINRA Rules 3110, 4511, and 2010. Further, Keyser Jr. violated NASD Rule 3110(a) and FINRA Rules 4511 and 2010.

B. Dawson James failed to conduct reasonable due diligence reviews of private placement offerings.

FINRA Rule 2111 requires member firms to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer. Supplementary Material 2111.05(a) states:

[5] FINRA Rule 3110(b)(4) superseded NASD Rule 3010(d)(2) on December 1, 2014.

[6] Following FINRA's examination of Dawson James, in February 2021, the firm retrieved and reviewed the text messages sent and received using mobile phones that it had issued to Keyser Jr. and others.

> The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors. . . A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.

A broker-dealer must conduct a reasonable investigation into any private placement offering—and the issuer of any offering—that it recommends and sells to customers. In April 2010, FINRA issued Regulatory Notice 10-22[7], which reminded firms of their obligation to conduct a reasonable investigation into: (1) the issuer and its management; (2) the business prospects of the issuer; (3) the assets held by or to be acquired by the issuer; (4) the claims being made by the issuer; and (5) the intended use of the proceeds of the offering. FINRA further reminded firms that, generally, a firm '"may not rely blindly upon the issuer for information concerning a company,' nor may it rely on the information provided by the issuer and its counsel in lieu of conducting its own reasonable investigation." When a firm is affiliated with an issuer, the firm must resolve any conflict of interest that could impair its ability to conduct a thorough and independent investigation. And where a firm has prior experience with an issuer, a reasonable investigation requires that the firm perform additional research about the issuer's new offerings. Finally, to demonstrate that it has completed a reasonable investigation, a broker-dealer should retain records documenting both the process and results of its investigation.

Regulatory Notice 10-22 further reminded firms that they must have supervisory procedures that are reasonably designed to ensure, among other things, that firm personnel investigate each private placement recommended by the firm, and that firm personnel do so in a manner that is sufficiently rigorous to comply with all legal and regulatory requirements.

Between December 2016 and March 2019, Dawson James' supervisory system, including its written supervisory procedures, regarding due diligence for private placement offerings was deficient in several respects. First, the firm's procedures did not address how the firm's investment banking principal should review the reasonableness of the due diligence conducted by the firm's investment bankers. Second, the firm's procedures did not address conflicts of interest raised when the firm's investment bankers conducted due diligence on offerings by issuers with whom they were affiliated. Third, while Dawson James' procedures required the firm's investment bankers to document their due diligence reviews, they did not address how the investment banking principal should review or enforce this requirement. Finally, Dawson James failed to require its investment bankers to conduct due diligence reviews for every offering, including follow-on offerings.

[7] Regulatory Notice 23-08 (May 9, 2023) updates and supplements, without altering, the guidance provided in Regulatory Notice 10-22.

As a result of these supervisory deficiencies, the firm: (1) unreasonably relied in three offerings on a due diligence file compiled primarily by three of the firm's investment bankers, who collectively held a majority ownership interest in the issuer; (2) failed to maintain a record of any due diligence it may have conducted on a follow-on offering, instead relying on the due diligence file that the firm's investment bankers had compiled for a prior offering by that issuer; and (3) failed to maintain a record of any due diligence it may have conducted when the firm solicited customers to invest in Dawson James.

Therefore, Dawson James violated FINRA Rules 3110 and 2010.

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

- Keyser Jr. consents to:
  - a one-month suspension from associating with any FINRA member in all capacities and
  - a $10,000 fine.
- Dawson James consents to:
  - a censure;
  - a $500,000 fine;[8] and
  - an undertaking to do the following:
    a. Continue to retain, at its own expense, the Third-Party Consultant[9] to conclude a review of the adequacy of Dawson James' supervisory system, policies, procedures, and internal controls relating to:
       i. the preservation and review of associated persons' business-related communications, including, but not limited to, communications via text message and via non-firm-issued email accounts; and
       ii. due diligence reviews for private placement offerings.
    b. Cooperate with the Third-Party Consultant in all respects, including providing the Third-Party Consultant with access to Dawson James' files, books, records, and personnel, as reasonably requested for the above-mentioned review. Dawson James shall require the Third-Party Consultant to report to

[8] Pursuant to the General Principles Applicable to all Sanction Determinations contained in FINRA's *Sanction Guidelines*, FINRA imposed a lower fine in this case after it considered, among other things, Dawson James' revenues and financial resources.

[9] Dawson James has already engaged a third-party outside consultant (the Third-Party Consultant) to review and recommend changes to Dawson James' supervisory system, policies, procedures, and internal controls relating to the firm's preservation and review of associated persons' business-related communications.

FINRA on its activities as FINRA may request and shall place no restrictions on the Third-Party Consultant's communications with FINRA. Further, upon request, Dawson James shall make available to FINRA any and all communications between the Third-Party Consultant and Dawson James and documents examined by the Third-Party Consultant in connection with this review.

c. Refrain from terminating the relationship with the Third-Party Consultant without FINRA's written approval. Dawson James shall not be in and shall not have an attorney-client relationship with the Third-Party Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Third-Party Consultant from transmitting any information, reports, or documents to FINRA.

d. Require the Third-Party Consultant to submit an initial written report to Dawson James and FINRA at the conclusion of the Third-Party Consultant's review, which shall be no more than 90 days after the date of the notice of acceptance of this AWC. The initial report shall, at a minimum: (i) evaluate and address the adequacy of Dawson James' supervisory system, policies, procedures, and internal controls relating to the firm's preservation and review of associated persons' business-related communications (including, but not limited to, communications via text message and via non-firm-issued email accounts), and its due diligence reviews for private placement offerings; (ii) provide a description of the review performed and the conclusions reached; and (iii) make recommendations as may be needed regarding how Dawson James should modify or supplement its processes, controls, policies, systems, procedures, and training to manage its regulatory and other risks in relation to the firm's preservation and review of associated persons' business-related communications (including, but not limited to, communications via text message and via non-firm-issued email accounts), and its due diligence reviews for private placement offerings; and

    i. Within 30 days after delivery of the initial report, Dawson James shall adopt and implement the recommendations of the Third-Party Consultant or, if Dawson James considers a recommendation to be, in whole or in part, unduly burdensome or impractical, propose to the Third-Party Consultant an alternative procedure designed to achieve the same objective. Dawson James shall submit any such proposed alternative procedure in writing simultaneously to the Third-Party Consultant and to FINRA.

    ii. Dawson James shall require that, within 30 days of Dawson James' submission of any proposed alternative procedure, the Third-Party Consultant: (A) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Third-Party Consultant's original recommendation; and (B) provide Dawson James and FINRA with a written report reflecting the Third-Party Consultant's

evaluation and determination. In the event the Third-Party Consultant and Dawson James are unable to agree, Dawson James must abide by the Third-Party Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Third-Party Consultant.

iii. Within 30 days after the issuance of the later of the Third-Party Consultant's initial report or any written report regarding proposed alternative procedures, Dawson James shall provide the Third-Party Consultant and FINRA with a written implementation report, certified by an officer of Dawson James, attesting to, containing documentation of, and setting forth the details of Dawson James' implementation of the Third-Party Consultant's recommendations. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and Dawson James agrees to provide such evidence.

e. Upon written request showing good cause, FINRA may extend any of the procedural dates set forth above.

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

Each Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed on such Respondent in this matter.

Respondent Keyser Jr. 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 Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, he 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* FINRA Rules 8310 and 8311.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

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

A. To have a complaint issued specifying the allegations against them;

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, Respondents specifically and voluntarily waive any right to claim bias or prejudgment 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 its acceptance or rejection.

Respondents further specifically and voluntarily waive 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

Respondents 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 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 Respondents; and

C. If accepted:

1. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondents;

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 its subject matter in accordance with FINRA Rule 8313; and

4. Respondents 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. Respondents 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 Respondents' rights to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondents' testimonial obligations in any litigation or other legal proceedings.

D. Respondents may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

The undersigned, on behalf of Respondent Dawson James, certifies that a person duly authorized to act on Dawson James' 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 the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Dawson James to submit this AWC.

Respondent Keyser Jr. certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; he has agreed to the AWC's provisions voluntarily; and no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce him to submit this AWC.

April 4, 2024
Date

Richard Aulicino
Dawson James Securities, Inc.
Respondent

Print Name: Richard Aulicino

Title: President

April 4, 2024
Date

Robert D. Keyser, Jr.
Robert Dawson Keyser Jr.
Respondent

Reviewed by:

Ralph V. De Martino
Ralph De Martino
Counsel for Respondents
ArentFox Schiff LLP
1717 K Street NW
Washington, DC 20006

[redacted]

Accepted by FINRA:

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

April 5, 2024

Date

John Sheehan

John Sheehan
Principal Counsel
FINRA
Department of Enforcement
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San Francisco, CA 94111