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REGISTRATION & DISCLOSURE

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2006005546005**

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

RE: Bruce Tucker, Respondent  
CRD No. 2369029

Pursuant to NASD 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 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**

Respondent Bruce Tucker (CRD No. 2369029) ("Tucker") first became registered with FINRA (f/k/a National Association of Securities Dealers, Inc. or NASD) as a General Securities Representative in 2003. From August 9, 2004, through July 14, 2006, Tucker was registered as a General Securities Representative of SAMCO Financial Services, Inc. ("SAMCO"). Tucker was registered as a General Securities Representative with Allen Konrad Asset Management, Corp.<sup>1</sup> ("Allen Konrad") from August 2006 through February 2007. Tucker has not been registered with any member firm since his registration with Allen Konrad was terminated on February 22, 2007. FINRA retains

<sup>1</sup> Allen Konrad Asset Management, Corp. changed its name to Alterna Capital Corp. through an amended Form BD filing on November 8, 2007.

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jurisdiction over Tucker pursuant to Article V, § 4(a) of the By-Laws since the conduct which serves as the basis for this action commenced prior to his termination of registration from a member firm and this AWC is filed within two years after the effective date of his termination of registration from a member firm.

### **OVERVIEW**

During the relevant period of August 9, 2004, through July 14, 2006, Tucker made recommendations to three customers to open accounts with SAMCO for purposes of buying and selling Collateralized Mortgage Obligation ("CMO") securities. Each of these customers opened accounts, invested in CMOs, and incurred substantial losses. Based upon the financial situations and needs of his customers, Tucker did not have reasonable grounds to believe that his recommendations to these customers to invest in CMOs were suitable. As a result, Tucker's recommendations violated NASD Conduct Rules 2310 and 2110. Further, in recommending that customers invest in CMOs, Tucker made misstatements of material fact and omitted material facts in connection with the CMO investments, in violation of NASD Conduct Rules 2120 and 2110, and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder. These customers lost approximately \$260,000 by investing in these unsuitable securities that Tucker recommended.

Tucker knew at the time that he opened accounts for his customers that another registered representative would be exercising discretion over the accounts. Yet at no time did Tucker obtain written authorization signed by any of his clients and a firm principal, in order to authorize Tucker or anyone at the firm to exercise discretion in any of his customer accounts. Tucker was aware that all of his clients had non-discretionary accounts and that he needed to get authorization from his clients before each and every trade. Tucker, nonetheless, delegated the authority to this other individual to (a) select particular CMO investments for his customers; (b) decide how much of the security his customers would buy and when; and (c) decide how much margin borrowing would be utilized to purchase CMOs. By allowing this other representative to exercise discretionary authority in 15 of his customers' accounts in this manner, Tucker violated NASD Conduct Rules 2510(b) and 2110.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Inverse Floating Rate CMOs**

A CMO is a security that pools together mortgages and issues shares, called tranches, with various characteristics and risks. The underlying mortgages serve as the collateral for the CMO and provide principal and interest payments, which are directed to the various tranches and paid to shareholders.

One of the most volatile and risky CMO tranches is the inverse floater CMO ("inverse floater"). An inverse floater is a type of tranche that pays an adjustable rate of

interest that moves in the opposite direction from movements of an interest rate index, such as the London Interbank Offered Rate ("LIBOR"). Inverse floaters are thinly traded securities which trade in the over-the-counter market. FINRA informed members as early as 1993 that inverse floaters "are only suitable for sophisticated investors with a high-risk profile."<sup>2</sup>

Inverse floaters typically are highly leveraged and vulnerable to a high degree of price volatility as interest rates move. An increase in the interest rate index decreases the interest rate of an inverse floater and subsequently, the interest earned by the CMO holder. Rising interest rates also generally reduce the prepayment speeds of inverse floaters because home owners are less likely to refinance their mortgages. Although most mortgages include at least a partial repayment of principal with each payment, refinancing results in large principal payments before the expiration of the loan. A slow down in home refinancing may result in a decrease in principal payments to the CMO owner. The smaller repayment of principal extends the maturity date and keeps the owner's investment tied up in the CMO, potentially for as much as 30 years. In addition, an increase in the index reflects an increase in prevailing interest rates, which further decreases the value of the inverse floater. Should the CMO owner need to sell the security on the open market, the trading price could be significantly lower than the original purchase price. Furthermore, inverse floaters generally are traded for institutional clients. Therefore, trades of smaller denominations can be difficult to execute without being subjected to lower than market pricing.

Due to the fact that each inverse floater tranche is uniquely structured and thinly traded, prices used for valuation purposes are determined using theoretical pricing models. These prices are strictly best estimates of value and can vary substantially from prices obtained through actual bidding or market offerings. Consequently, the risk of inverse floaters can be exacerbated by the use of margin borrowing given that the value of the underlying asset is difficult to ascertain until it is actually offered for sale on the market.

#### **SAMCO's Boca Raton Branch Office**

During the relevant period of August 9, 2004, through July 14, 2006, Tucker was one of eight registered persons working in SAMCO's Boca Raton, Florida branch office. During this period, the business conducted in the Boca Raton branch office consisted almost entirely of investing in inverse floaters.

The head of that branch office, JLS, was a self-proclaimed expert in highly complex mortgage backed securities and its derivative CMOs. JLS's business focused almost exclusively on purchasing large par amounts of inverse floaters and allocating the shares among the branch's retail customer accounts, utilizing margin borrowing to finance the customers' investments, in some cases borrowing twice or three times as much as the equity the customer initially deposited. Within the branch office, Tucker and

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<sup>2</sup> NASD Notice to Members 93-73, Members' Obligations to Customers When Selling Collateralized Mortgage Obligations (CMOs), at 3.

seven other registered representatives were responsible for soliciting potential retail customers to invest in JLS's CMO program. Tucker prospected for potential retail CMO investors through word of mouth referrals and inquiries made by customers of his landscape architecture business.

After Tucker and the other representatives opened the customers' accounts, JLS employed a trading strategy of buying and selling the same inverse floater for large numbers, or even all, of the branch office's retail customers. JLS determined which inverse floaters to purchase and how shares were to be allocated to individual customers' accounts. In addition, JLS decided how to utilize margin borrowing to fund additional CMO purchases for customers. None of the branch office's customers provided the firm with written authorization for the firm or any of its representatives to exercise discretionary authority over their accounts.

### **Tucker's Recommendations to Customers**

At the time that Tucker recommended that a customer open an account for the purpose of investing in JLS's CMO program, he was responsible for ensuring that such an investment was suitable for the customer based upon the customer's financial condition. Indeed, NASD Conduct Rule 2310 required Tucker to have reasonable grounds for believing that the recommendation was suitable for that customer, based upon the facts disclosed by the customer as to his other security holdings, financial situation and needs. Tucker failed to conduct any suitability assessments and, as a result, he made numerous unsuitable recommendations to customers who were unsophisticated investors with low risk profiles. These recommendations violated NASD Conduct Rules 2310 and 2110.

In connection with making these unsuitable recommendations to customers, Tucker also recklessly made material misrepresentations and/or omitted material information as detailed below in violation of NASD Conduct Rules 2120 and 2110, and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

#### **1. Customer JC**

In February 2005, Tucker spoke with customer JC and recommended he open an account for purposes of investing in JLS's CMO program. JC was 43 years old at the time his account was opened at SAMCO. JC's new account form listed his annual income between \$250,000 and \$499,999, net worth between \$500,000 and \$1 million, and liquid net worth of \$200,000. JC had previous investment experience with both stocks and mutual funds but he was not a sophisticated investor, nor did he have a high-risk profile. JC was a conservative investor, but his new account form listed "Speculative" as his investment objective. This was because Tucker followed an office policy that required representatives to always mark, or have the customers mark, "Speculative" on the new account forms irrespective of their actual objectives. Tucker followed this instruction regardless of whether the information provided by a customer

reflected a conservative investor.

In recommending the CMO program to JC, Tucker did not ensure that JC understood the characteristics and risks associated with CMOs. Based upon Tucker's representations, JC believed the CMO program involved safe, stable securities. Tucker did not tell JC that his investment might not be able to be liquidated or that margin would be used in his account. Tucker also did not explain that the use of margin greatly increases risk, as customers may be required to deposit additional funds to satisfy margin obligations if the value of the holdings decreases. Nor did he explain that CMOs, especially inverse floaters, are thinly traded and transactions involving smaller par amounts can be difficult to execute.

In February 2005, JC opened an account at SAMCO with an initial deposit of \$50,000 based upon Tucker's recommendation. On March 20, 2005, an inverse floater was purchased for JC's account using his initial investment and borrowing \$111,937.33 on margin. The margin borrowing represented nearly 56% of JC's liquid net worth. This CMO was subsequently sold in November 2005 and generated a realized loss of \$25,608.

The proceeds from the sale of the first inverse floater were used to purchase another CMO. The cost of the CMO was \$138,604. Margin borrowing again was utilized to help fund the purchase. By May 31, 2006, the value of the CMO decreased and JC was issued a margin call for \$22,815.17. At that point, JC's margin borrowing represented nearly 82% of the account's total value. JC did not contribute any additional funds to his account after the initial investment of \$50,000. Therefore, the CMO in his account was sold to satisfy his margin obligation, resulting in a realized loss of \$30,914.41. In total, JC lost his entire investment of \$50,000.

## **2. Customers RW & LW**

In June 2005, Tucker spoke with a married couple, RW and LW, and recommended that they open an account with him at SAMCO to invest in CMOs. RW and LW were 71 and 63 years old, respectively, and both were retired at the time the account was opened. Although RW's and LW's new account form reflects 5 years of investment experience in both stocks and bonds, RW and LW were unsophisticated investors who had no previous investment experience prior to opening an account with Tucker. The investment experience was not the only incorrect information on RW's and LW's new account form. RW's and LW's income, net worth and liquid net worth were all below the ranges indicated on the new account form, which showed that their annual income was between \$40,000 and \$64,999, their net worth was between \$500,000 and \$1 million, and their liquid net worth was between \$65,000 and \$124,999. RW and LW's investment objective was to obtain additional income to assist with living expenses, but, consistent with the office policy, the new account form inaccurately listed an investment objective of "Speculative."

Tucker told RW and LW that they could earn approximately \$1,100 per month in additional income with a \$120,000 investment in the CMO program. Tucker did not explain that numerous market events, however, such as rising interest rates, will impact the principal and interest payments distributed to CMO holders.

In June 2005, based on Tucker's recommendation, RW and LW opened an account for the purpose of investing in inverse floaters at SAMCO with an initial deposit of \$40,000. RW and LW made additional deposits of \$30,000 and \$50,000 in July 2005 and October 2005, respectively. Between June 2005 and April 2006, there were eight different inverse floaters purchased in their account. These purchases were funded with their deposits, totaling \$120,000, plus margin borrowing ranging from \$130,724 to \$220,780. By March 31, 2006, their margin borrowing represented over 91% of the account's total value. On August 18, 2005, January 18, 2006, and April 4, 2006, some of these inverse floaters were sold from RW's and LW's account. These sales resulted in a total realized loss of \$6,114.12.

Between June 2005 and June 2006, the value of RW's and LW's original \$120,000 investment dropped to \$21,953.53. In April 2007, RW and LW closed their account at SAMCO. At that time, the value of their total investment had dropped to \$2,626.11.

### **3. Customer BW**

In May 2006, customer BW opened an account with Tucker in order to participate in the CMO program. BW was 50 years old and a widow at the time of the account opening. BW's new account form did not indicate any level of income, but listed her net worth and liquid net worth between \$500,000 and \$1 million. BW had no previous investment experience. Despite BW being an unsophisticated investor, she opened an account for the purpose of investing in CMOs, based on Tucker's recommendation. Her initial investment was \$100,000.

BW's new account form indicated that her account was opened on May 25, 2006. However, on May 22, 2006, three days before the account was officially opened, seven inverse floaters were purchased in her account. Tucker was not aware the trades had occurred in BW's account until she brought it to his attention after receiving her month end account statement. Further, BW's initial deposit of \$100,000 was not deposited into her account until June 23, 2006. Therefore, the seven CMO purchases in May 2006 were executed entirely on margin, with no funding provided by the customer. These purchases totaled \$477,399.81.

Although CMOs were purchased for BW's account prior to its opening and without any customer funding, BW was issued a margin call on June 1, 2006, one week

after her account was opened, for \$207,096.30. Three of the inverse floaters purchased in May 2006 were subsequently sold in June 2006, resulting in a realized loss of \$53,454.91. Despite the sale of securities and BW's \$100,000 deposit, her account dropped to a negative value of \$5,642.54 as of June 30, 2006. In August 2006, the remaining securities in BW's account were sold for a realized loss of \$46,860.44. In approximately three months, BW lost her entire \$100,000 investment.

#### **Tucker Improperly Exercised Discretionary Authority in Customer Accounts**

Tucker knew at the time that he opened accounts for his customers that JLS would be exercising discretion over the accounts. At no time did Tucker obtain written authorization signed by any of his clients and a firm principal, in order to authorize Tucker, JLS or the firm to exercise discretion in any of his customer accounts. Tucker was aware that all of his clients had non-discretionary accounts and that he needed to get authorization from his clients before each and every trade. Tucker, nonetheless, delegated the authority to JLS to (a) select particular CMO investments for his customers; (b) decide how much of the security his customers would buy and when; and (c) decide how much margin borrowing would be utilized to purchase CMOs. Due to Tucker allowing JLS to control all of the trading in his customers' accounts in this manner, Tucker's customers were not always contacted by Tucker or anyone else at SAMCO for trade authorization prior to trades being executed in their accounts. As a result, Tucker improperly exercised discretionary authority in 15 customer accounts in violation of NASD Conduct Rules 2510(b) and 2110.

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

A bar from associating with any member firm in any and all capacities.

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

Respondent understands that if he is barred 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 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.)

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against him;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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**

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 NASD Rule 9216;

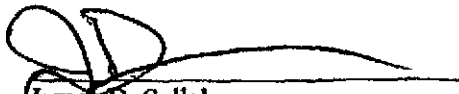
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against him; and
- C. If accepted:
  - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against him;
  - 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 NASD Rule 8310 and IM-8310-3; 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 he 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.

Respondent 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; that he 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 him to submit it.

8/28/08  
Date

  
Respondent Bruce Tucker

Reviewed by:

  
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Accepted by FINRA:

September 8, 2008  
Date

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



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