

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025700901**

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

**RE: Blackbook Capital LLC, Respondent
BD No. 123234**

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Blackbook Capital LLC ("Blackbook," "Respondent," 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. Blackbook 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

Blackbook has been registered with the Securities and Exchange Commission and a member of FINRA since March 2003. The firm has three offices, with its main office located in New York City. The firm employs approximately 35 registered persons and engages in securities transactions for retail customers and in investment banking transactions.

RELEVANT DISCIPLINARY HISTORY

Blackbook has no formal disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any state securities regulator.

OVERVIEW

Between April 2010 and June 2011, Blackbook charged its customers \$60.50 on each purchase or sale transaction in addition to or in place of a designated

commission charge. Blackbook listed the charge on customer trade confirmations as "additional fee" or "miscellaneous." The charge was unreasonable and mischaracterized, as the charge was not reasonably related to the Firm's services or costs in processing each transaction and was effectively an undisclosed minimum commission. By reason of the foregoing, Blackbook violated NASD Conduct Rules 2430, FINRA Rule 2010, and Rule 10b-10 of the Securities Exchange Act of 1934 (the "Exchange Act").

Between August 2010 and August 2011, Blackbook failed to search its records in response to requests by the Financial Crimes Enforcement Network of the Department of the U.S. Treasury ("FinCEN"), pursuant to Section 314(a) of the USA PATRIOT Act of 2001. By reason of the foregoing, Blackbook violated FINRA Rules 3310(b) and 2010.

Blackbook also failed to conduct an adequate independent Anti-Money Laundering ("AML") test for calendar year 2010. As a consequence, Blackbook violated FINRA Rules 3310(c) and 2010.

Additionally, between July 2009 and August 2011, Blackbook failed to preserve all of its business-related emails in a non-rewriteable, non-erasable format. As a result, the Firm violated Section 17(a) of the Exchange Act and SEC Rule 17a-4(b)(4) and (f) thereunder, and violated NASD Conduct Rule 3110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

1. Unreasonable Handling Fee Charges and Mischaracterization of Commission Charges

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

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

some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

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

Between April 8, 2010 and June 10, 2011, Blackbook charged its customers \$60.50 on 4,515 separate purchase or sale transactions in addition to or in place of a designated commission charge. The Firm characterized the charge on customer trade confirmations as "miscellaneous" and/or as an "additional fee."

A substantial portion of the \$60.50 charge was not attributable to any specific cost or expense incurred by the Firm or service performed by the Firm in executing each transaction or determined by any formula applicable to all customers. A substantial portion of the charge represented a source of additional transaction based remuneration or revenue to the Firm, and was effectively a minimum commission charge. By designating the charge on trade confirmations as "miscellaneous" and/or as an "additional fee" in addition to or in place of a designated commission charge, Blackbook mischaracterized and understated the amount of the total commissions charged by the Firm.

By reason of the forgoing, Blackbook violated NASD Conduct Rules 2430, FINRA Rule 2010, and Rule 10b-10 of the Exchange Act.

2. Failure to Review FinCEN 314(a) Requests

Since November 2002, FinCEN has received requests from law enforcement agencies to help locate financial assets and recent transactions by subjects of criminal investigations that may be involved in terrorism or money laundering. Every two weeks, FinCEN, pursuant to Section 314(a) of the USA PATRIOT ACT, posts a new list of persons and entities of interest to law enforcement inquiries. Pursuant to 31 C.F.R. 103.100, recodified as 31 C.F.R. 1010.520, financial institutions are required to expeditiously search their records to determine whether they maintain or have maintained any account for, or have engaged in any transaction with, each individual, entity, or organization named in FinCEN's request.¹ Financial institutions must report to FinCEN, in the

¹ Pursuant to that Treasury Regulation, except as otherwise provided for in the request, the financial institution must specifically search their records for: (a) Any current account maintained for a named suspect; (b) Any account maintained for a named suspect during the preceding 12 months; and (c) Any transaction, as defined in the regulation, conducted by or on behalf of a named suspects, or any transmittal of funds conducted in which a named

manner and in the time frame specified in FinCEN's request, any positive matches.²

Between August 10, 2010 and August 9, 2011, in 28 instances, Blackbook failed to check the names of persons and entities on FinCEN's lists against the Firm's customer base and those with whom the firm engaged in any transaction, in violation of 31 C.F.R. 1010.520.

By reason of the foregoing, Blackbook violated FINRA Rules 3310(b) and 2010.

3. Failure to Conduct an Adequate Independent AML Test

FINRA Rule 3310(c) requires annual independent testing of a firm's AML compliance systems. Blackbook's AML test for calendar year 2010 was not independent and was inadequate. RV, the Firm's bookkeeper, performed the test. RV was not qualified to perform the test as he did not have a working knowledge of the applicable requirements under the Bank Secrecy Act and its implementing regulations. The AML test was not independent because RV reported directly to the Firm's AML compliance officer and took instruction from the compliance officer in how to perform the AML test and which documents to review. The test was not adequate as RV failed to actually test the adequacy of the Firm's AML compliance systems and instead relied on what he was told by the AML compliance officer.

By reason of the foregoing, Blackbook violated FINRA Rules 3310(c) and 2010.

4. Failure to Preserve Emails in the Required Format

Exchange Act Rule 17a-4(b)(4) requires each member, broker and dealer to "preserve for a period of not less than three years, the first two years in an accessible place . . . [o]riginals of all communications received and copies of all communications sent . . . by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such." Exchange Act Rule 17a-4(f)(2)(ii)(A) further requires that if a firm uses electronic storage media, it must, among other things, "[p]reserve the records exclusively in a non-rewritable, non-erasable format."

From July 2009 through August 25, 2011, Blackbook failed to preserve hundreds of business-related emails, principally internal emails, in a non-

suspect was either the transmitter or the recipient, during the preceding six months that is required under law or regulation to be recorded and/or maintained by the financial institution. 31 C.F.R. 1010.520.

² *Id.*

rewritable, non-erasable format when personnel used personal email addresses outside of the Firm's email domain to send or receive business-related emails. The Firm's compliance officer typically kept copies of those emails in folders on his personal email account platform, which emails could have been erased or altered.

Consequently, Blackbook violated Section 17(a) of the Exchange Act and SEC Rule 17a-4(b)(4) and (f) thereunder, and violated NASD Conduct Rule 3110 and FINRA Rule 2010.

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

- A censure;
- A fine of \$50,000; and
- An undertaking by Blackbook to certify, within 90 days of FINRA's acceptance of this AWC, that it has implemented the following corrective action:
 - (1) The Firm shall identify as a commission or markup/markdown, as the case may be, and not as any charge or fee for postage, handling, miscellaneous, additional fee, or the like, any transaction-based charge or fee that constitutes, in whole or in part, remuneration to the Firm and/or any associated person(s) of the Firm;
 - (2) With respect to any transaction-based charge or fee that may be imposed for a service performed or a cost incurred by the Firm (such as a postage charge or a charge imposed by a clearing firm) that is not included as part of the reported commission or markup/markdown, the Firm shall fully and accurately disclose on trade confirmations and in every written communication with customers or the public in which transaction fees, commissions, or markup/markdown charges are discussed (including fee schedules, if any, or new account documentation that contains such information), the specific service(s) or cost(s) for which the fee or charge relates and, if relating to more than one service or cost, the precise portion of the charge or fee attributable to each, and the Firm must retain detailed records to substantiate the service(s) performed or costs(s) incurred and to demonstrate how the dollar amount of the charge or fee was calculated or determined; and
 - (3) The Firm shall revise its written supervisory procedures to address the requirements of this undertaking and provide training to all associated persons relating to same.

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

Blackbook 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

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

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, Blackbook 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.

Blackbook 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

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

Blackbook Capital LLC, Respondent

03/25/2014
Date (mm/dd/yyyy)

By: [Signature]
[Print Name]
Franklin Ogle
[Title]
MANAGING MEMBER

Reviewed by

[Signature]
Michael Utila, Esq.
Counsel for Respondent
The Law Office of
Michael Utila & Associates
26 Court Street, suite 2601
Brooklyn, New York 11242
(718) 852-8400

Accepted by FINRA:

May 5, 2014
Date

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

[Signature]
Gary A. Chodos
Senior Regional Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
Tel. No.: 212-858-4771; Fax No.: 202-721-6564

STATEMENT OF CORRECTIVE ACTION

Examination No. 20110257009

THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY THE RESPONDENT. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY FINRA, NOR DOES IT REFLECT THE VIEWS OF FINRA.

This submission is respectfully transmitted for purposes of identifying the various remedial measures undertaken by Blackbook (the "Firm") in furtherance of its ongoing objective to maintain supervisory systems reasonably designed to achieve compliance with respect to the applicable securities laws and regulations and rules of FINRA.

1: FINCEN Reports

FINCEN Reports are now transmitted by email on a bi-weekly basis from fincen.gov to Blackbook's President Franklin Ogele's firm issued email address and have been contemporaneously reviewed by him since November 15, 2011.

Mr. Ogele's reviews are evidenced by way of the FINCEN system's generation of search self-verification memoranda containing the details of such access including the corresponding date and time.

2: Email Preservation

Any and all business-related email communications - whether involving the Firm's customers, internal correspondence or otherwise -are being archived by Global Relay and have been captured as such since September 2011.

Global Relay is notably the market leader in compliance archiving and message management.

3: AML Test

The Firm has been utilizing the services of reputable third parties with no prior nexus to it (i.e. Quadrant Compliance LLC and VMB Consulting Services, Inc.) for purposes of conducting its annual Independent AML tests for the years 2011, 2012 and 2013.

4: Miscellaneous Fee Charges

Contemporaneous with Blackbook having been freed of Penson's rather onerous five thousand dollar (\$5,000) per month minimum charges in favor of Stern Agee's more reasonable one thousand dollar (\$1,000) per month minimum fee structure, the Firm's prior \$60.50 minimum ticket charge was initially reduced to \$45.00 in May of 2012 and then promptly reduced yet again to \$29.99 in July 2012.

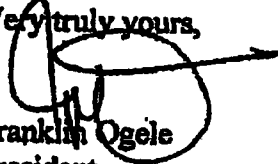
Moreover, upon approval of the Letter of Acceptance, Waiver and Consent, the Firm will timely implement its undertaking set forth in §B (1), (2) and (3) with respect to any remaining transaction based charge or fee that may be imposed for services performed or costs incurred by the Firm that is not specifically included as part of reported commissions or markup/markdowns.

5: Conclusion

We respectfully submit that the above referenced remedial measures undertaken by Blackbook Capital stand testament to the firm's ongoing objective of maintaining supervisory systems reasonably designed to achieve compliance with respect to the applicable securities laws and regulations and rules of FINRA.

Thank you for your continued consideration in this matter.

Very truly yours,


Franklin Ogele
President
Blackbook Capital