

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
Nos. 20070119207, 20090180095**

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

RE: Jeffery Allen Fanning, Respondent
General Securities Representative
General Securities Principal
CRD No. 1566859

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Fanning entered the securities industry in 1986 with a FINRA registered broker-dealer. In May 2004, Fanning became registered with Liberty Partners Financial Services, LLC ("Liberty Partners" or the "Firm"), a FINRA registered broker-dealer, as a general securities representative and a general securities principal. Between March 2006 and May 2009 (the "Relevant Period"), Fanning was the Firm's Chief Compliance Officer and the Financial Operations Principal. Fanning was also a principal and co-owner of the Firm.

RELEVANT DISCIPLINARY HISTORY

Fanning has no relevant disciplinary history.

OVERVIEW

During the Relevant Period, Fanning was responsible for supervising trading by Thomas Fullerton ("Fullerton"), a former registered representative in the Firm's Bakersfield, California home office, for excessive trading and unauthorized transactions. During that time, Fullerton excessively traded four customer accounts and made unauthorized purchases of Washington Mutual, Inc. ("WAMU") on September 23 and September 24, 2008, for 15 Firm customers.¹ Fanning failed to enforce the Firm's written procedures for supervising excessive trading in the four customer accounts. Fanning also failed to recognize red flags and take appropriate action to supervise for unauthorized transactions by Fullerton.

Consequently, Fanning violated NASD Rules 3010(b) and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

During the Relevant Period, Fanning supervised Fullerton's account activity from his Henderson, Nevada and Windsor, Colorado office locations. According to Liberty Partners' WSPs, Fanning's responsibilities included supervising the Bakersfield home office for excessive trading and unauthorized transactions.

Fullerton's Misconduct

Fullerton excessively traded four customer accounts during the Relevant Period. The customers were moderate risk investors with aggressive income or growth/capital appreciation as their primary investment objectives. Fullerton's frequent trading in these four customer accounts resulted in turnover rates between 6 and 16.7, and cost-equity ratios between 20 % and 31 %. Fullerton's trading in these accounts was excessive in light of the customers' investment objectives and risk thresholds.

At 7:38 a.m. PST on September 23, 2008, Fullerton purchased 35,000 shares of WAMU for 13 accounts owned by 12 Firm customers. The following day, at 7:38

¹ On June 24, 2010, FINRA's Office of Disciplinary Affairs approved an Acceptance, Waiver and Consent for the Thomas Fullerton matter, Matter Nos. 20070119207 and 20090180095. Fullerton agreed to a bar for churning and engaging in excessive and qualitatively unsuitable trading in at least five customer accounts. Fullerton also willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder (for the churning violation), and violated NASD Rules 2510(a) and (b), 2310, 2120, 2110 and IM-2310-2 and FINRA Rules 2010 and 2020.

a.m. PST on September 24, 2008, Fullerton purchased 30,000 shares of WAMU for 13 accounts owned by 11 Firm customers. In total, Fullerton purchased WAMU for 15 customers. These customers' WAMU shares fell to a fraction of their purchase price when WAMU declared bankruptcy on September 26, 2008, only days after the purchases.

The Firm and Fanning conducted a limited investigation and terminated Fullerton for his misconduct in May 2009.

Fanning's Failure to Reasonably Supervise Fullerton for Excessive and Unauthorized Transactions

Fanning failed to conduct customer account reviews for excessive trading with a view toward preventing excessive trading in four Fullerton accounts.

During the Relevant Period, Liberty Partners' WSPs required quarterly reviews of customer accounts for excessive trading. The WSPs further stated that accounts with turnover rates in excess of six "exhibit patterns that represent statutory fraud" and required Fanning to take "immediate steps to determine that such trading activity is acceptable to the customers (approved by customer in writing), and confirms [SIC] to the customer's objectives." Although Fullerton had four customers with turnover rates greater than six, Fanning failed to contact the customers to determine whether the trading matched their investment objectives or whether Fullerton controlled their accounts.

The WSPs required calculations for account loss and break-even (or cost-to-equity ratios) for accounts with turnover rates in excess of four. Although Fullerton had four customers with turnover rates greater than six, Fanning neglected to review customer account activity for cost-to-equity ratios and profit and loss.

Fanning was also required to send an activity letter if the account had a turnover rate greater than two or if the account had more than eight trades in one month. Although Fullerton had four customers with turnover rates greater than six, Fanning did not send activity letters to the customers.

If an account had a turnover rate greater than four, Fanning was required to determine, first, whether the account activity matched the account objectives; and, second, whether the account representative controlled the account. The WSPs further stated that the compliance department or principal should take steps to stop the trading activity where a customer is adversely affected by the excessive trading. If the customers confirmed in writing that the trading activity in the account was acceptable, then no further action was required. Although Fullerton had four customers with turnover rates greater than six, Fanning did not undertake this analysis or take these steps in connection with those customer accounts.

Fanning also failed to respond to red flags that Fullerton's WAMU transactions on September 23 and September 24, 2008 were unauthorized. Most of Fullerton's customers lived in California, and it was highly unlikely that Fullerton could make contact with multiple customers on either day prior to 7:38 a.m. PST. Yet Fanning failed to adequately inquire into the suspicious timing of each of these customer transactions.

NASD Rule 3010(b)(1) states in part that each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable NASD and FINRA Rules.

Based on the forgoing, Fanning failed to enforce the Firm's written procedures, in violation of NASD Rules 3010 and 2110 and FINRA Rule 2010², in that during the Relevant Period, Fanning failed to determine whether the account activity in Fullerton's four customer accounts matched their account objectives, failed to contact the customers, and failed to calculate the cost-equity ratios or supervise for Fullerton's control over his customers' accounts. In addition, Fanning failed to reasonably supervise in that he failed to take reasonable action to detect unauthorized transactions by Fullerton.

OTHER FACTORS

In determining appropriate sanction in this matter, FINRA considered that the Firm and Fanning provided full restitution to each of the 15 customers who purchased WAMU on September 23 and September 24, 2008.

Between June 2009 and March 2010, Liberty Partners and Fanning paid \$65,634 in full or partial restitution to five complaining customers. Four customers received full reimbursement while a fifth initially only received half the value of his investment.

Then, between July 5, 2012 and August 1, 2012, Liberty Partners and Fanning provided \$139,478.73 restitution to the remaining ten customers who had had not been reimbursed for the WAMU transactions on September 23, 2008 and September 24, 2008. At this time, ten additional customers received full restitution. The customer previously reimbursed half the value of his WAMU purchase also received the balance of his investment.

² For the period January 2008 to December 14, 2008, this conduct constitutes a violation of NASD Rule 2110, and for the period December 15, 2008 through June 30, 2009, this conduct constitutes a violation of FINRA Rule 2010, both of which require that an associated person, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade.

In total, the Firm and Fanning paid \$205,112.73 in restitution to 15 customers.

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

- 30-day suspension in principal capacity; and
- \$20,000 fine.

I agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member in a principal capacity, I become 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, I may not be associated with any FINRA member in principal capacity, during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because I am subject to a statutory disqualification during the principal suspension, if I remain associated with a member firm in a non-suspended capacity, an application to continue that association may be required.

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

I understand that this settlement includes a finding that I failed to supervise an individual who violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5, and that under Article III, Section 4 of FINRA's By-Laws, this makes me subject to a statutory disqualification with respect to association with a member.

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I 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

I 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my 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. I 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. I 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

10-2 2012
Date

Jeffery Allen Fanning
Jeffery Allen Fanning

Reviewed By:

Jeffery A. Ziesman
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Accepted by FINRA:

10/25/12
Date

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

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