

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016300601**

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

RE: Detwiler Fenton & Co., Respondent
Member Firm
CRD No. 1794

Pursuant to FINRA 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

Detwiler Fenton & Co. ("DF") has been a member of FINRA since April 1962. Its principal place of business is in Boston, Massachusetts. DF currently generates its revenues primarily from institutional trading of OTC equities, soft dollar compensation and research. During the period relevant to this AWC, DF also engaged in a limited retail securities business. The firm currently has approximately 47 registered representatives working from approximately seven registered branch locations.

RELEVANT DISCIPLINARY HISTORY

In June 2007, the Securities and Exchange Commission censured and fined DF \$250,000 for failing to supervise one of its registered representatives. The firm agreed to those sanctions without admitting or denying the findings in the Order.

OVERVIEW

DF failed to establish and maintain a supervisory system, and establish, maintain and enforce written supervisory procedures (“WSPs”) reasonably designed to monitor the pricing of securities and commissions charged to its customers, the use of discretion in customer accounts, and excessive trading. DF also failed to implement its written anti-money laundering compliance program (“AMLCP”) by failing to obtain certain information required by its Customer Identification Program (“CIP”) and failing to identify the beneficial owner of the securities held in an account. This conduct violated NASD Conduct Rules 3010, 3011, and 2110, FINRA Rule 2010, and MSRB Rule G-41.

FACTS AND VIOLATIVE CONDUCT

SUPERVISORY VIOLATIONS

From September 2006 through September 2009 (“relevant period”), DF failed to establish and maintain a supervisory system, and establish, maintain and enforce WSPs, reasonably designed to achieve compliance with rules relating to fair pricing and commissions in retail transactions, the use of discretion in retail customer accounts, and excessive trading.

Specifically, during the relevant period, DF’s WSPs required weekly and monthly active trade reviews by the firm’s Retail Supervisor and Chief Compliance Officer (“CCO”), respectively. The WSPs and supervisory system, however, did not provide for appropriate follow up and review of potential concerns or issues identified by the trade reviews. As a result, CR, a DF registered representative who has since been terminated by the firm, was permitted to excessively trade the accounts of at least two retail customers during 2007 and 2008, notwithstanding the fact that the CCO’s monthly trade reviews identified high levels of trading being placed by CR in these accounts on multiple occasions.

The supervisory system and WSPs that DF established to monitor fair pricing and commissions charged to its retail clients were also deficient in several respects. Specifically, the systems and reports used by DF to review retail commissions were difficult to utilize effectively, thereby making the detection of excessive commissions less likely. For example, prior to August 2008, when the firm first began providing a commission percentage on trade runs, the reviewing principal was required to calculate commission percentages for each trade either manually or mentally during their review. Throughout the relevant period, DF principals also failed to routinely utilize exception reports provided by its clearing firm that provided information such as when a broker had manually overridden the firm’s commission schedule. Moreover, DF’s retail commission schedules for both equities and options set the base commission and applicable surcharges for many

low notional value transactions at above 5%. As a result of this and DF's deficient system and procedures for reviewing commissions, the firm charged commissions over 5% in certain low notional value equity and options retail transactions.

Further, in or about October 2005, DF informed its registered personnel that the firm would no longer utilize fee-based discretionary retail brokerage accounts. At or about that time, DF informed its registered representatives that any broker who wanted to use discretion in a retail customer account would be required to transfer the account to DF's affiliated investment adviser. The accounts remaining at DF would be handled on a commission basis and no use of discretion by the firm's brokers would be permitted. DF, however, failed to establish a supervisory system and WSPs reasonably designed to detect its brokers' use of discretion in retail accounts retained at the broker-dealer. As a result, during the relevant period CR continued to exercise discretion in brokerage accounts without written authority.

By failing to establish and maintain a supervisory system and establish, maintain and enforce WSPs reasonably designed to prevent violations of the securities laws, DF violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3010, and FINRA Rule 2010 (for conduct after December 14, 2008).

AML VIOLATIONS

From May 2007 through September 2009, DF failed to implement its AMLCP. Specifically, DF failed to obtain information required by its CIP, such as a passport or driver's license for individuals and articles of incorporation or a trust agreement for entities, verifying the identity of 22 customers. Fourteen of those customers were located outside of the United States. DF also failed to implement its AMLCP in that it failed to verify the identity of four foreign persons with an interest in stock held in a DF customer account. By failing to implement the firm's CIP, DF violated NASD Conduct Rules 2110 (for conduct before December 15, 2008) and 3011(b), MSRB Rule G-41 and FINRA Rule 2010 (for conduct after December 14, 2008).

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

- a censure and \$40,000 fine (\$5,000 of which pertains to the violations of MSRB Rule G-41).

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

Respondent 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

Respondent 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, 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 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

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 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 Respondent;
- 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 Respondent;
 - 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 FINRA Rule 8313;
 - 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; and
- 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 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 DF, 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 DF has agreed to its provisions voluntarily; and that no offer, threat,

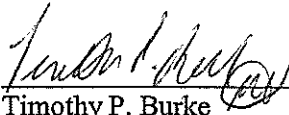
inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

Detwiler Fenton & Co.

November 28, 2011
Date (mm/dd/yyyy)

By: 
Peter D. Fenton
President and Chief Executive Officer

Reviewed by:


Timothy P. Burke
Counsel for Respondent
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110-1726
(617) 951-8620 (telephone)

Accepted by FINRA:

12/20/2011
Date

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


Paul D. Taberner
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