

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011025433301**

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

RE: Detwiler Fenton & Co. (BD No. 1794),
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Detwiler Fenton & Co. ("Respondent," "DFC," 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 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

DFC has been a member of FINRA since April 1962. Its principal place of business is in Boston, Massachusetts. DFC currently generates its revenues primarily from institutional trading of OTC equities, soft dollar compensation and research. The firm currently has approximately 32 registered representatives working from approximately six registered branch locations.

RELEVANT DISCIPLINARY HISTORY

In December 2011, DFC entered into an AWC with FINRA (Case No. 2009016300601) in which it agreed, without admitting or denying the findings, to a censure and fine of \$40,000 for (i) failing to establish and maintain a supervisory system reasonably designed to monitor the pricing of securities and commissions charged to its customers, the use of discretion in customer accounts, and excessive trading; and (ii) failing to enforce its written Anti-Money Laundering Compliance Program ("AMLCP") in not obtaining certain information relating to retail accounts required by its Customer Identification

Program (“CIP”) and by failing to identify the beneficial owner of the securities held in an account.

In September 2007, the Securities and Exchange Commission (Case No. 3-12750) censured and fined DFC \$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.

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

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3310, like its predecessor NASD Conduct Rule 3011, requires members to develop and implement an AMLCP reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and the regulations promulgated thereunder (the “BSA”). FINRA Rule 3310(b) requires firms to establish and implement procedures reasonably designed to achieve compliance with the BSA. MSRB Rule G-41 requires registrants to establish and implement an anti-money laundering compliance program reasonably designed to achieve and monitor ongoing compliance with the requirements of the BSA.

Under BSA regulations, broker-dealers are required to establish, document and maintain a written CIP. The CIP must include procedures (i) for verifying the identity of a customer within a reasonable time before or after a customer account is opened; (ii) that specify the verifying information that will be obtained and describe when the broker-dealer will use documentary, non-documentary methods or a combination thereof to verify customer identity; and (iii) that provide for the collection of required verifying information and maintaining the required records.

From at least August 26, 2010 through October 9, 2011 (the “Relevant Period”), DFC failed to establish and implement a CIP for institutional accounts reasonably designed to achieve compliance with the requirements of the BSA and the implementing regulations thereunder. Specifically, the procedures were not tailored to address the specific business of the firm, which during the Relevant Period had a client base consisting almost entirely of institutions. Further, for trading purposes, over half of DFC’s customers during the Relevant Period utilized a prime broker, with DFC serving as an executing broker through its clearing firm. Despite this business, DFC’s CIP procedures failed to define which entity in its institutional relationships (i.e., prime broker, master account customer, sub-account holders) was the “customer” subject to CIP. The CIP procedures also failed to clearly describe

both how DFC would obtain identification information and how this information would be verified.

Moreover, DFC failed to enforce the CIP procedures that it had in place during the Relevant Period. For example, in a sample of 30 customer relationships established by DFC during the Relevant Period, the Firm failed to obtain customer address and Tax Identification Number ("TIN") in 14 instances. DFC also failed to obtain identity verification documents for all 30 of the customer relationships sampled in accordance with its CIP procedures.

By failing to establish and implement a CIP for institutional accounts reasonably designed to achieve compliance with the requirements of the BSA and the implementing regulations thereunder, DFC violated FINRA Rules 3310(b) and 2010 and MSRB Rule G-41.

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

- a Censure, and
- a \$20,000 fine (\$10,000 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; 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 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: (i) testimonial obligations; or (ii) 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 DFC, 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 DFC 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 DFC to submit it.

Detwiler Fenton & Co.

4/16/13
Date (mm/dd/yyyy)

Accepted by FINRA:

4/29/13
Date

By:


Peter D. Fenton
President and Chief Executive Officer

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


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