

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2015047008701**

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

RE: Dougherty & Company LLC, Respondent ("Dougherty")  
CRD No. 7477

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

**I.**

**ACCEPTANCE AND CONSENT**

- A. Dougherty 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**

Dougherty is a general securities firm that has been registered with FINRA or its predecessor since 1977. The firm has nine branch offices and approximately 119 registered persons.

**RELEVANT DISCIPLINARY HISTORY**

Dougherty does not have any relevant disciplinary history.

**OVERVIEW**

For more than four years, Dougherty did not adequately supervise a representative who initiated hundreds of trades for two elderly customers without contacting them, and unsuitably recommended dozens of transactions to those customers. As a result, Dougherty violated NASD Rule 3010, MSRB Rule G-27, and FINRA Rule 2010.

## FACTS AND VIOLATIVE CONDUCT

From 2010 until June 2014, one of Dougherty's top producers ("Representative") initiated trades for two elderly customers without contacting them on hundreds of occasions, and Representative recommended unsuitable trading strategies—short-term trading in corporate and municipal bonds and unnecessary uses of margin—to those customers on dozens of occasions.

Dougherty did not adequately supervise Representative's trading activity. First, Dougherty assigned the primary responsibility for supervising that activity to a supervisor ("Supervisor"), who was also responsible for supervising numerous other representatives and handling his own customers' accounts. Supervisor's supervision of Representative was not subject to adequate oversight or specific direction from Dougherty; instead, the firm relied on Supervisor's discretion and judgment, which he did not exercise appropriately. Second, Dougherty did not have supervisory resources that were reasonably designed to detect Representative's misconduct. While Supervisor received daily trade blotters and certain monthly exception reports, Dougherty did not provide exception reports addressing short-term trading or margin usage to Supervisor. Additionally, Dougherty's exception reports addressing trading by elderly customers excluded accounts in the name of a trust, regardless of the age of the settlor or trustee, meaning that Representative's trading activity in two of the accounts at issue did not appear on those exception reports. Third, Dougherty failed to respond appropriately to warning signs about Representative's business, such as a dramatic increase in his commissions from 2011 to 2012 without a commensurate change in the number of accounts that he handled or the type of products that he sold.

Representative is no longer associated with Dougherty, and the firm paid restitution to one of the affected customers and changed relevant aspects of its supervisory system.

"[T]he responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme."<sup>1</sup> Before December 1, 2014, NASD Rule 3010(a) required firms to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." Similarly, MSRB Rule G-27(a) required firms to supervise their associated persons "to ensure compliance with Board rules" and MSRB Rule G-27(b) required firms to "establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with

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<sup>1</sup> *Dep't of Enforcement v. Rooney*, Discip. Proc. No. 2009019042402, 2015 FINRA Discip. LEXIS 19, \*\*103-04 (NAC July 23, 2015) (citing *Robert Lane*, Exch. Act Rel. No. 74269, 2015 SEC LEXIS 558, \*62 (Feb. 13, 2015)).

applicable securities laws and regulations, and with applicable Board rules.” Supervision may be unreasonable if a firm does not (1) discover misconduct that diligent efforts would have revealed; (2) investigate “red flags” suggesting that misconduct may be occurring; or (3) directly address misconduct that the firm identifies.

Violating NASD Rule 3010 also violates FINRA Rule 2010, which provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

Dougherty’s system of supervision was not reasonably designed under the circumstances to prevent violations of securities laws and rules, including rules governing trading without customers’ approval and unsuitable recommendations and thus the firm violated NASD Rule 3010(a), MSRB Rule G-27(a) and (b), and FINRA Rule 2010.

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

- Censure
- Fine of \$140,000 (\$35,000 of which pertains to the violations of MSRB Rule G-27)
- Restitution of \$78,910 to the customer listed on Attachment A to this AWC

Dougherty agrees to pay the monetary sanctions imposed in this matter upon notice that this AWC has been accepted and that such payment is due and payable. Dougherty specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, those monetary sanctions.

Dougherty has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed in this matter.

No later than 120 days after this AWC is accepted, a registered principal of Dougherty shall submit satisfactory proof of payment of the restitution imposed in this matter, or reasonable and documented efforts undertaken to pay that restitution, to the following two addresses:

By first-class mail:

Loyd Gattis  
FINRA Department of Enforcement  
120 West 12th Street, Suite 800  
Kansas City, Missouri 64105

By electronic mail from a work-related account of Dougherty's registered principal:

EnforcementNotice@FINRA.org

Dougherty's proof of payment of restitution or efforts to pay restitution shall identify Dougherty and case number 2015047008701.

If for any reason Dougherty cannot locate the customer listed in Attachment A after reasonable and documented efforts within 120 days from the date this AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, Dougherty shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided. Dougherty shall provide satisfactory proof of such action to the FINRA staff member and electronic-mail address identified above and in the manner described above, within 14 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Dougherty understands that this settlement includes a finding that it failed to supervise an individual who violated MSRB Rules G-17 and G-19, and that under Article III, Section 4 of FINRA's By-Laws, this makes the firm subject to a statutory disqualification with respect to membership.

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

## II.

### WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against Dougherty;
- 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, Dougherty specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Dougherty 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

Dougherty understands that:

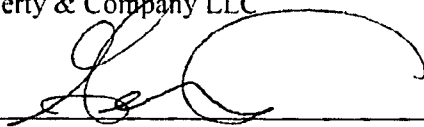
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Dougherty; and
- C. If accepted:
1. this AWC will become part of Dougherty's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Dougherty;
  2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. Dougherty 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. Dougherty 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 Dougherty's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Dougherty may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Dougherty 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 Dougherty, certifies that a person duly authorized to act on its behalf has read and understood all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that Dougherty 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 Dougherty to submit it.

10/13/2016  
Date (mm/dd/yyyy)

Dougherty & Company LLC  
By:   
Gerald Kraut

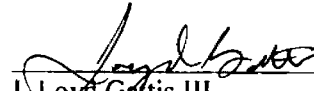
Reviewed by:

David Evans Rosedahl  
David Evans Rosedahl  
Counsel for Dougherty & Company LLC  
Dougherty Financial Group LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402  
612-376-4033

Accepted by FINRA:

Nov. 28, 2016  
Date

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



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J. Loyd Galtis III  
Principal Regional Counsel  
FINRA Department of Enforcement  
120 West 12th Street  
Kansas City, Missouri 64105  
816-802-4710 (telephone)  
816-421-4519 (facsimile)

**ATTACHMENT A**

Customer I