

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO.: 2013035211001**

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

RE: Michael A. Lovett, Respondent  
CRD No. 2203338

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Michael A. Lovett ("Lovett" or "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**

Lovett entered the securities industry in 1991, when he became associated with a FINRA member firm. Lovett has been associated with Cape Securities, Inc. ("Cape" or the "Firm") since April 2011. Lovett was initially hired as a Compliance Officer, but has served as the firm's Chief Compliance Officer since January 2012. Lovett holds registrations as a general securities representative, general securities principal, municipal securities principal, operations professional and research principal.

**RELEVANT DISCIPLINARY HISTORY**

In Matter Number E06010134 (January 16, 2003), Lovett consented to findings that he violated Article V, Section 2 and 3 of the NASD By-Laws and NASD Rules 2110, 3070(b), and 3070(c) as the result of failing to timely report to NASD and failing to keep current the applications for registered persons of the firm for whom customer complaints had been filed. Lovett was fined \$15,000 and suspended from association with any NASD member in any principal capacity for 10 business days.

In Matter Number E0605000301 (October 25, 2007), Lovett consented to findings that he violated NASD Rules 2110, 2711(i) and 3010 as the result of failing to establish and maintain a supervisory system reasonably designed to achieve compliance with

applicable securities laws, regulations and NASD rules regarding research reports. Lovett was fined \$10,000 and suspended from association with any FINRA member in a principal or supervisory capacity for 10 business days.

In September 2013, Lovett was fined \$4,000 by the Securities Commissioner of South Carolina for failure to provide a timely response to a request for information.

### **OVERVIEW**

During the period from February 2012 through September 2012, Lovett failed to establish, maintain and enforce a supervisory system and written supervisory procedures at Cape reasonably designed to adequately review and monitor the transmittal of funds from the accounts of customers to third-party accounts. Specifically, Cape's supervisory system and written supervisory procedures, which Lovett was charged with establishing and implementing, failed to address reviewing and monitoring the transmittal of funds from multiple customer accounts to a common outside bank account, in violation of NASD Rule 3012(a)(2)(B) and FINRA Rule 2010.

Lovett also failed to establish, maintain and implement a reasonable supervisory system and written supervisory procedures designed to detect and prevent fraudulent wire activity conducted by the firm's registered representatives, in violation of NASD Rules 3010(a) and 3010(b) and FINRA Rule 2010.

### **FACTS AND VIOLATIVE CONDUCT**

During the period from February 2012 to September 2012, PE, a registered representative with Cape, converted funds for his own use and benefit from the Cape brokerage accounts of seven customers.<sup>1</sup> PE submitted 21 separate wire transfer requests totaling \$690,152.90 to Cape, ostensibly on behalf of the customers; however, none of the seven customers authorized the transfers. The funds were actually wired into the operating account for PE's office.

In 2012, Cape had no supervisory system or written supervisory procedures pertaining to NASD Rule 3012(a)(2)(B), which requires reviewing and monitoring the transmittal of funds from customer accounts to third-party accounts. Additionally, the Firm had no supervisory system or written supervisory procedures to assist in the detection and prevention of acts of conversion by its registered representatives through the use of fraudulent wire instructions. As Cape's Chief Compliance Officer, Lovett was responsible for establishing the Firm's supervisory system and written supervisory procedures, which he failed to do.

On July 23, 2012, PE submitted a wire transfer request for CG, a customer who had passed away on May 15, 2012. The wire was flagged by the operations department

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<sup>1</sup> In January 2013, PE was barred from association with any FINRA member firm in all capacities and ordered to pay restitution in the amount of \$620,177.90 in FINRA Matter No. 2012034412101.

because the signature on the wire transfer request significantly varied from the one contained on a margin form submitted the same day. Lovett conducted a review of the transaction and contacted PE to determine the reason for the variation in customer signatures. Lovett learned that CG was deceased, and PE informed Lovett that the signature on the wire transfer request was forged. Lovett was told by PE that the forgery was an "accommodation forgery" made as a result of CG's death in order to assist the family in handling the account. Lovett attempted to contact CG's family, but was unable to speak to CG's family at that time to discuss the existence of the "accommodation forgery" or the wire request that was processed based on the forged signature. Rather, Lovett temporarily froze CG's account, but permitted PE to resume servicing the account after Cape received successor account documentation in September 2012.

After PE admitted to submitting a forged signature on the wire transfer request for CG's account, Lovett made no additional inquiries into other wire transfer requests from PE's office, did not place any restrictions on PE's ability to submit additional wire transfer requests, and did not institute any additional supervision of PE. Subsequently, PE submitted four more unauthorized wire transfers, misappropriating an additional \$107,000. Lovett's implementation of his supervisory responsibilities under the Firm's supervisory system was inadequate, as he failed to reasonably respond to PE's admittance of forgery by failing to: (a) review earlier wire transfers in PE's accounts; (b) affirmatively contact CG's family; and (c) conduct additional due diligence on later wire transfer requests submitted by PE.

As a result of the foregoing conduct, Lovett violated NASD Rules 3010(a), 3010(b) and 3012(a)(2)(B) and FINRA Rule 2010.

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

A six-month suspension from association in a principal capacity with any FINRA member firm and a fine of \$5,000.

Respondent has submitted a sworn financial statement and demonstrated a limited ability to pay. In light of the financial status of Respondent, a fine of \$5,000 has been imposed.

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 he proposes to pay the fine imposed.

Respondent's limited ability to pay has been considered in connection with the monetary sanctions imposed in this matter. Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

Respondent understands that if he is barred or suspended from associating with any FINRA member in a principal capacity, he becomes 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, Respondent may not be associated with any FINRA member in a principal capacity during the period of the bar or suspension (see FINRA Rules 8310 and 8311). Furthermore, because Respondent is subject to a statutory disqualification during the suspension, if he remains 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.

## 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 him;
- 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 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.

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:

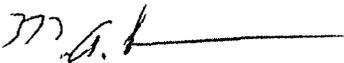
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it

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 records and may be considered in any future actions brought by FINRA or any other regulator against him;
  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. 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.
- 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 he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent 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 Respondent to submit it.

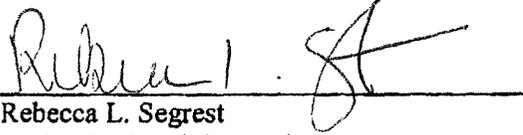
4/17/15  
Date

  
Michael A. Lovett, Respondent

Accepted by FINRA:

May 5, 2015  
Date

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



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