

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035211002**

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

RE: Cape Securities, Inc., Respondent
BD No. 7072

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Cape Securities, Inc. ("Cape" 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

Cape has been a member of FINRA and its predecessor entities since 1976. Cape currently has 118 registered representatives who operate out of a main office in McDonough, Georgia and 20 branch offices and 79 non-registered office locations.

RELEVANT DISCIPLINARY HISTORY

Respondent does not have any relevant disciplinary history.

OVERVIEW

During the period from February 2012 through September 2012, Cape failed to establish, maintain and enforce supervisory systems and procedures reasonably designed to detect and prevent fraudulent wire activity conducted by the Firm's registered representatives. Specifically, Cape's supervisory system and written supervisory procedures failed to address reviewing and monitoring transmittal of

funds from multiple customer accounts to a common outside bank account, in violation of NASD Rules 3010(a), 3010(b) and 3012(a)(2)(B)¹ and FINRA Rule 2010.

Additionally, Cape's Anti-Money Laundering ("AML") systems and procedures were not reasonably designed to detect, investigate, or ensure appropriate reporting of potentially suspicious money movements, in violation of FINRA Rules 3310(a) and 2010.

Finally, during the period from October 2011 through February 2013, Cape failed to establish, maintain and implement a reasonable supervisory system and written supervisory procedures designed to identify and prevent unsuitable excessive trading and churning in customer accounts, in violation of NASD Rules 3010(a), (b) and (d) and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Failure to Supervise Wire Transfer Activity

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.² 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 branch office.

In 2012, Cape's AML system and procedures were not reasonably designed to detect, investigate or ensure appropriate reporting of potentially suspicious fund transfers to third parties, and its general supervisory system and procedures were not reasonably designed to detect and prevent wire transfers between Cape customers and its registered representatives. Moreover, 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.

Cape did not utilize any exception reports or other means to enable the Firm to detect patterns of potentially suspicious wire transfers over time. As a result, Cape was unable to detect PE's pattern of repeatedly transferring funds between his customers' Cape accounts and his branch office operating account.

The Firm's written supervisory procedures related to outgoing wire transfers also were insufficient to enable the firm to identify instances in which the firm was

¹ Effective December 1, 2014, NASD Rule 3012 was replaced by FINRA Rule 3120.

² 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. He had already paid restitution of \$70,000 to one customer. The funds converted by PE have been repaid to the customers by Cape and its insurer.

presented with fraudulent wire transfer requests. Cape's procedures did not require the operations staff processing the requests to validate information on the letters of authorization used to transfer funds from customer accounts. For example, Cape's procedures did not require staff to verify signatures or to speak to the customer before initiating a wire transfer. Nor did the firm have any method by which it verified that the recipient account belonged to the customer.

Cape failed to detect that any of the 21 wire transfers were third-party wires or that they were unauthorized. In two instances, the customer had died before the date on the forged wire transfer request, and thus could not have signed it. In the case of customer LR, Cape was notified in writing on April 5, 2012 that LR had died. Nonetheless, on April 19, 2012, PE submitted and Cape processed a third-party wire request from her account, ostensibly with her signature on it. Cape did not have signed new account forms for LR, who had transferred her account in from another broker-dealer, and thus could not have compared signatures to discover the forgery.

On July 23, 2012, PE submitted a wire transfer request for CG, a customer who had passed away on May 15, 2012. The transfer was processed, but later was questioned by the operations department because the signature on the wire transfer request significantly varied from the one contained on a margin form submitted the same day. The Firm contacted PE to determine the reason for the variation in customer signatures. Cape learned that CG was deceased, and PE admitted that the signature on the wire transfer request was forged. Cape 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. Cape 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, the Firm temporarily froze CG's account, but permitted PE to resume servicing the account after receiving successor account documentation in September 2012.

After PE admitted to submitting a forged signature on the wire transfer request for CG's account, Cape made no additional inquiries into other third-party 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. Cape's implementation of its supervisory system was inadequate as it failed to reasonably respond to PE's admittance to forgery by failing to: (a) review previous wire transfers in PE's accounts; (b) affirmatively speak with a representative for CG; and (c) conduct additional due diligence on later wire transfer requests submitted by PE.

As a result of the foregoing conduct, Cape violated NASD Rules 3010(a), 3010(b) and 3012(a)(2)(B) and FINRA Rules 3310(a) and 2010.

Failure to Supervise Actively Traded Accounts

For the period of October 2011 through February 2013, Cape's supervisory system and written supervisory procedures relating to the review of transactions and the supervision of actively traded accounts did not adequately address or identify the following: the process by which transactions are reviewed and/or approved; risk and red flags in the review of active accounts; and methods by which the firm assesses quantitative suitability, such as turnover ratio analysis or cost-to-equity maintenance analysis. The Firm's written supervisory procedures in this area were general in nature. The procedures indicated that the chief operating officer will identify and utilize clearing firm exception reports to identify potential sales practice problems; however, Cape did not actually make use of any clearing firm exception reports in the review of actively traded accounts. Additionally, Cape had no written supervisory procedures relating to monitoring of recommendations of complex trading strategies. The firm's review of trades was done on a trade-by-trade basis, and did not include a comprehensive review of all trading activity in a customer's account.

The Firm's written supervisory procedures failed to adequately address the supervisory review that would be performed for actively traded accounts. For example, the written supervisory procedures failed to discuss: how Cape would identify active accounts; how it would review active accounts; and how it would determine quantitative suitability. The Firm did not perform turnover ratio analysis or cost-to-equity analysis in spite of the fact that exception reports performing this analysis were available from its clearing firm.

During the period of October 2011 through September 2012, registered representatives in Cape's Manhattan branch conducted trades in several leveraged exchange-traded funds ("ETFs") and sold covered calls to customers. This trading activity resulted in at least 15 customer accounts with annualized turnover ratios ranging from 7.09 to 19.67. Additionally, due to the significant amount of commissions charged, the annualized cost-to-equity ratios ranged from 11.02% to 63.74%. Despite indications of excessive trading and awareness of the strategy being recommended by these registered representatives, Cape did not inquire into the suitability of the trading activity, did not require disclosure to customers of the risks of active trading, and did not contact the customers about the trading.

As a result of the foregoing conduct, Cape violated NASD Rules 3010(a), 3010(b) and 3010(d) and FINRA Rule 2010.

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

A censure and a fine of \$125,000.

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.

Pursuant to the General Principles Applicable to All Sanction Determinations contained in the Sanction Guidelines, FINRA imposed a lower fine in this case after it considered, among other things, the Firm's revenues and financial resources. See Notice to Members 06-55.

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 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 it;
 - 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 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 Respondent, 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 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.

4-17-2015
Date

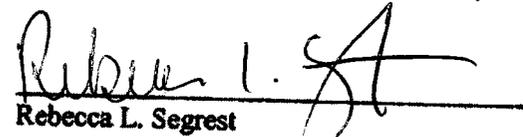
Cape Securities, Inc.


By: James R. Webb, Chief Executive Officer

Accepted by FINRA:

May 5, 2015
Date

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


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