

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016049587401**

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

RE: David Apted, Respondent
CRD No. 1255773

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit 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 me alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

Apted entered the securities industry in 1984. He has been registered with FINRA or its predecessor as a general securities representative since 1985, and he has been dually-registered as an investment advisor since 2008. From June 19, 2013 to March 14, 2016, he associated with Smith, Moore & Co. (CRD No. 3441) ("Smith Moore"). Since March 14, 2016, he has associated with Forest Securities, Inc. ("Forest Securities") (CRD No. 16255).

RELEVANT DISCIPLINARY HISTORY

Apted does not have any history of relevant discipline.

OVERVIEW

Apted participated in two private securities transactions with customers who invested more than \$300,000, shared nonpublic information about thirty-nine customers with a broker-dealer that he planned to join, communicated about those customers using a personal email account that his firm could not supervise, and

sent more than 150 tweets about securities without his firm's approval and retention. As a result, Apted violated FINRA Rules 2010, 2210, and 3280.

FACTS AND VIOLATIVE CONDUCT

1. Private securities transactions

In December 2015, Apted decided to move from Smith, Moore to Forest Securities in mid-January 2016. Due to various delays, however, Apted repeatedly postponed the date of his move, eventually joining Forest Securities two months later than he originally anticipated. After Apted decided to change firms but before he moved, two people expressed interest to Apted in investing in a certain venture-capital fund. Although Smith, Moore offered that fund, Apted referred the investors to Forest Securities for the purpose of investing in the fund. Apted then participated in the investors' dealings with the fund, explaining its structure and costs, advising the investors about its portfolio, helping to prepare their subscription agreements, arranging and attending a meeting between one investor and the fund's representatives, and handling a wire transfer for the other investor's investment.

Between early January and mid-February 2016, the investors collectively invested more than \$300,000 in the fund. Apted did not notify Smith, Moore about those transactions or his role in them. Smith, Moore prohibited its associated persons from participating in private securities transactions, and Apted had attested on three occasions that he would comply with that policy.

FINRA Rule 3280 prohibits associated persons from participating in any manner in a private securities transaction without first notifying their firms in writing about the transaction, their role in it, and whether they will or may receive selling compensation. That rule is designed to, among other things, protect firms from liability and loss resulting from sales that they do not supervise.

By advising and assisting the two investors with transactions through Forest Securities without notifying Smith, Moore—his firm at the time—Apted violated FINRA Rule 3280 and consequently FINRA Rule 2010.

2. Disclosing nonpublic information using an unsupervised email account

Before Apted changed firms, he sent lists of his customers to Forest Securities. The lists contained nonpublic information, such as account numbers or balances, about thirty-nine customers. None of the affected customers had an opportunity to opt out of the disclosure. Apted shared that nonpublic information using a personal e-mail account that Smith, Moore could not supervise, and he did not notify Smith, Moore that he was sharing his lists.

By disclosing nonpublic information about customers to another firm without their consent, and by communicating about his securities business using an

account that his firm could not supervise, Apted violated FINRA Rule 2010.

3. Communicating with the public without approval

From September to December 2016, Apted used a Twitter account to send more than 150 public tweets about his securities business. During that period, his account had approximately three dozen followers. Apted never sought or received approval for any of those tweets from Forest Securities, even though it prohibited using Twitter without approval. Apted did not provide copies of those tweets to Forest Securities so that it could retain them.

FINRA Rule 2210(b) requires a qualified registered principal to approve any electronic communication that is made available to more than twenty-five people simultaneously, before the communication is used. That rule also requires firms to retain such communications.

By tweeting about his securities business without a qualified registered principal's approval, and without providing those tweets to his firm for retention, Apted violated FINRA Rule 2210(b) and consequently FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

1. A four-month suspension from associating with any FINRA member in any capacity; and
2. A fine of \$10,000.

I understand that if I am suspended from associating with any FINRA member, I become 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, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

I agree to pay the fine imposed in this matter upon notice that this AWC has been accepted and that such payment is due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay that fine. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, that fine.

The sanctions imposed in this AWC shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive 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

I understand that:

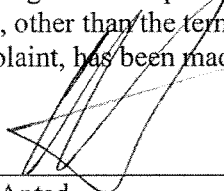
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
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. I 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. I 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 my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

10/3/2017
Date (mm/dd/yyyy)


David Apted

Reviewed by:

Lance Sandage

Digitally signed by Lance Sandage
DN: cn=Lance Sandage, o=Sandage Law LLC,
ou, email=lance@sandagelaw.com, c=US
Date: 2017.10.03 15:57:38 -05'00'

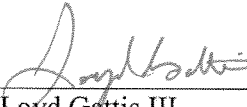
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816-753-0800

Counsel for David Apted

Accepted by FINRA:

Oct. 20, 2017
Date

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



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

CORRECTIVE ACTION STATEMENT
No. 2016049587401

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

RE: David Apted, Respondent
CRD No. 1255773

This Correction Action Statement is submitted by the Respondent, David Apted. It does not constitute factual or legal findings by FINRA, nor does it reflect the view of FINRA or its staff.

Mr. Apted is currently participating in a heightened supervision plan ("plan") with his current employer, Forest Securities. The plan remains in effect until a review on December 31, 2017. The plan covers a wide range of business related activities. The parts of the plan that pertain to the facts in the AWC are as follows:

1. Mr. Apted meets with management on a weekly basis to discuss all advisory clients. A review of methods of investment for each specific client is conducted.
2. All internal communications must be done using Firm's email system.
3. Any communication from 3rd party (including a client) related Firm business that is sent to Mr. Apted's personally (including personal email address) must be archived and provided to the Firm. 3rd Party must be advised to no longer communicate business related activities with Mr. Apted unless done through the Firm.
4. Outgoing communications related to Firm business must be approved by Firm.
5. Mr. Apted agreed to allow the Firm to place "Spy Alert" software on all devices that he uses to conduct Firm business. This software will allow the Firm to monitor all activities on the devices including email.
6. All advertising that is conducted by Mr. Apted must first be approved by Firm's Compliance Officer.
7. Mr. Apted is prohibited from using social media of any kind unless Firm approves and Firm has a protocol in place to archive the approved social media content for later review.

The above comprises the extensive corrective actions taken by Mr. Apted.