

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035775302**

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

RE: Capital Guardian, LLC, Respondent
CRD No. 137919

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Capital Guardian, LLC ("Capital Guardian" 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. We 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

Capital Guardian has been a FINRA member since April 6, 2006. The Firm is headquartered in Charlotte, North Carolina, has 35 branch locations, 135 registered representatives and is approved to conduct business in corporate debt, commodities, equities, mutual funds, mortgage or asset backed securities, options, private placements, time deposits, direct investments and variable contracts.

RELEVANT DISCIPLINARY HISTORY

Capital Guardian does not have any relevant prior disciplinary history.

OVERVIEW

During the time period from December 13, 2010 through March 15, 2012 (hereinafter the "relevant time period"), Capital Guardian violated FINRA Rules 3310(a) and 2010 by failing to establish and implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions. Specifically, the Firm failed to detect, investigate and report, if appropriate,

potentially suspicious transactions related to the deposit and rapid liquidation of Venezuelan bonds issued under the SITME Program (as defined below) and money movements into and out of customer accounts with only minimal securities activity.

FACTS AND VIOLATIVE CONDUCT

The JT Accounts

During the relevant time period, approximately 30 customer accounts were opened at Capital Guardian that former registered representative JT serviced, which were all held in the name of entities that were beneficially owned by citizens of Venezuela (hereinafter the "JT accounts"). The JT account owners (or beneficial owners) were related and engaged in various import/export businesses involving textiles. The majority of the JT accounts had the same physical address in Venezuela. The JT accounts presented a higher risk of potentially suspicious activity based on their geographic location and business model, which included the liquidation of Venezuelan sovereign and state-sponsored bonds. Further, a small number of the JT accounts did not liquidate Venezuelan bonds, but rather, engaged in frequent money movements without corresponding securities transactions.

According to a March 2010 report by the U.S. State Department's Bureau for International Narcotics and Law Enforcement Affairs, Venezuela posed significant money laundering risks due to its proximity to drug producing countries, weaknesses in its anti-money laundering regime and because "the main sources of money laundering are proceeds generated by . . . illegal transactions that exploit Venezuela's currency control."

Sistema de Transacciones con Titulos en Moneda Extranjera

During the account-opening process for some of the JT accounts, JT prepared attestations for Capital Guardian regarding the expected activity in the accounts, which indicated that the JT accounts were associated with ("the SITME") Program. According to the U.S. Department of State, in 2011 the official exchange rate policy in Venezuela had been in flux, and remained difficult for foreign and Venezuelan companies to obtain adequate dollars to pay suppliers and repatriate funds abroad. In May 2010, the Venezuelan government abolished the former "permuta" or parallel market for foreign exchange, in place since currency controls were implemented in 2003. In June 2010, the Central Bank of Venezuela ("CBV") created SITME. SITME allowed for Venezuelan entities, and to a lesser extent individuals, to convert Venezuelan Bolivars ("VEF") to U.S. Dollars ("USD") (or other currency foreign to Venezuela) by purchasing approved USD denominated Venezuelan bonds locally in VEF and selling the bonds abroad for USD. SITME was closed by the CBV in February 2013. While in existence, SITME transactions were subject to certain limitations and requirements by the Venezuelan government which included, without limitation, the following:

- The purchase of the approved USD denominated Venezuelan bonds must be effected through authorized financial institutions such as universal banks and commercial banks;
- An entity or individual purchasing securities through SITME must first submit an application through the Registro de Usuarios del SITME;
- An entity or individual purchasing securities through SITME must submit a sworn declaration to an authorized financial institution demonstrating that the entity or individual satisfies certain conditions to acquire the securities via SITME and that the resulting funds will be used only for the purpose stated in the request;
- Approved purposes include, among other things, the purchase of goods or services related to trade, food, mining, and health, or study abroad;
- Companies may purchase a monthly maximum of \$350,000 of securities through SITME at a maximum daily rate of \$50,000;
- Individuals may purchase within varying limits in accordance with the purpose (e.g., for study abroad individuals may purchase up to \$5,000 per year); and
- CBV regulates the terms and conditions of the transactions including the exchange rate and the minimum and maximum price for such SITME purchases and sales.

The mechanics of the SITME process were generally as follows: (1) authorized Venezuelan-based financial institutions were allocated approved USD denominated Venezuelan sovereign or state-sponsored bonds; (2) customers of the financial institutions would then request an allocation of bonds via a sworn declaration which included the customer's stated purpose for the proceeds of the bonds; (3) if approved, the financial institution would then transfer the bonds to the customer's account in a U.S. broker-dealer; and (4) the customer would then sell the bonds from the U.S. broker-dealer account with the intention of using the proceeds for the reason(s) listed on the sworn declaration.

One of the aforementioned attestations prepared by JT included instructions that proceeds of some bond liquidations in certain JT accounts would be sent to a particular customer and/or his family members instead of suppliers of the textile businesses. Since SITME required that individuals and entities attest that funds from the liquidations be used for business purposes to purchase future goods or chattels, this activity was in direct contravention of the SITME restrictions.

Upon accepting customers engaged in SITME activity, Capital Guardian did not update its Anti-Money Laundering ("AML") policies and procedures to account for the risks posed by this business.

Activity in the JT Accounts

Upon receipt of the USD denominated Venezuelan bonds, the majority of the JT accounts would often liquidate and then transfer the proceeds of the bonds via first-party wire to operating accounts that they maintained at other U.S. broker-dealers or banking institutions. However, on numerous occasions, many of the JT accounts transferred the bond proceeds via third-party wires (or even in some cases via check or ATM withdrawal) which differed from expected activity under SITME and for the JT accounts' expected activity, and which raised red flags under Capital Guardian's Anti Money Laundering Compliance Procedures ("AMLCP"). Additionally, even though the JT accounts were established as investment accounts at Capital Guardian, the accounts were used almost exclusively for the purpose of transfer and liquidation of SITME bonds and, as a result, there was virtually no investment activity in any of the JT accounts. Furthermore, because the majority of the JT accounts were maintained by the same or related beneficial owners, there were often transfers to and from related accounts that did not comport with SITME regulations or the expected activity in the JT accounts.

For example, the account activity of JT account holders CB and IVM¹ raised red flags indicative of potentially suspicious activity under Capital Guardian's AMLCP. On March 17, 2011, customer CB received a \$256,000 wire transfer and the funds were used four days later to purchase 300 Venezuelan bonds from another U.S. broker dealer. Account holder IVM had money movements during the relevant time period in excess of \$566,000. The source of funds for the wire transfers was a free receipt of 772 Venezuelan bonds on March 29, 2011, which carried a face value of \$772,000, and which were sold on April 4, 2011 for \$566,698. Three days after the liquidations, IVM sent the sale proceeds to customer CB via a third-party journal transfer in the amount of \$566,698. Five days after CB received the third party journal transfer from IVM, CB wrote two third-party checks totaling \$229,651. Two months later, CB wrote two additional third-party checks totaling \$83,847.

Customers CB and IVMs' account activity did not comport with the SITME process. As set forth above, SITME contemplates that liquidation proceeds would be transferred to other accounts held by the same Venezuelan-based financial institution maintained outside of Venezuela for redistribution to the bank's underlying customer or for service payments from that bank account. IVM's liquidation proceeds were not sent to a first-party account at a U.S. bank or a bank outside of Venezuela, but rather transferred to customer CB via a third-party journal transfer. Second, the size of the transactions also should have raised red flags as the monthly purchase limit for SITME transactions involving businesses was \$350,000.

¹ The JT accounts were all held in the name of entities that were beneficially owned by individuals. The initials used herein to describe the account activity represent those of the respective entities, and not individuals.

Capital Guardian Failed to Establish and Implement an Adequate AMLCP

FINRA Rule 3310, formerly NASD Rule 3011,² FINRA's AML Rule, requires all member firms to establish and implement a written AML compliance program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Rule 3310(a) also requires members to "[e]stablish and implement policies and procedures that can reasonably be expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder." In Notice to Members 02-47, FINRA reminded members of their obligation to tailor their AML policies and procedures to the risks posed by their business model. The Firm failed to establish AML policies and procedures reasonably designed to address the risks to the Firm presented by accounts engaging in SITME activity.

Not only were the Firm's procedures inadequate for the risks posed by accounts engaging in SITME activity, but the procedures were not properly implemented either. The account activity in the JT accounts raised various red flags as identified by Capital Guardian's AMLCP. While not tailored to the risks posed by activity pursuant to the SITME Program, the Firm's AMLCP still listed, among others, the following red flags that should have required additional due diligence by the Firm:

- The customer's account has a large number of wire transfers to unrelated third parties inconsistent with the customer's legitimate business purpose;
- The customer engages in excessive journal entries between unrelated accounts without any apparent business purpose;
- The customer's account indicates large or frequent wire transfers, immediately withdrawn by check or debit card without any apparent business purpose;
- The customer's account shows an unexplained high level of account activity with very low levels of securities transactions;
- The customer's account has inflows of funds or other assets well beyond the known income or resources of the customer; and
- The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities, for no apparent purpose.

Under Capital Guardian's existing AMLCP, the Firm failed to identify and respond to red flags exhibited in the JT accounts. For example, during the relevant time period, JT account RZL had total money movements of approximately \$4.6 million, which accounted for between 76 and 92 percent of the customer's net worth, and between 232 and 465 percent of the customer's annual income. During the time period November 24, 2010 through December 17, 2010, RZL received six wire transfers totaling \$1,549,449.38 from a third-party account at a U.S. bank in the name of PGP. On December 13, 2010 and January 5, 2011, RZL sent two outgoing wires totaling \$1,549,438.49 to a third-party account at a U.S. bank in the name of DT. The only other activity conducted by RZL

² NASD Rule 3011 was superseded by FINRA Rule 3310 effective January 1, 2010.

during the relevant time period involved a series of back and forth journal transfers in December 2010, each in the amount of \$775,000, between accounts of RZL and DT. The foregoing activity involved red flags under Capital Guardian's AMLCP in that the account activity did not involve the receipt and sale of Venezuelan bonds under the SITME Program, but rather consisted solely of incoming and outgoing money movements between RZL, PGP and DT, all of which were owned or controlled by JT customer AMK. The money movements were inconsistent with the SITME process and the anticipated activity in the account as set forth by the customers and JT himself.

Capital Guardian's AMLCP also required the Firm to monitor for potentially suspicious activity as indicated by the above red flags, investigate the activity, and, as appropriate, report suspicious activity by filing a suspicious activity report ("SAR"). Capital Guardian failed to adequately monitor the JT accounts.

Capital Guardian's AML program was flawed in two ways. First, the Firm failed to establish AML policies and procedures reasonably designed to detect and report potentially suspicious activity related to the deposit and rapid liquidation of SITME bonds. Second, the Firm failed to adequately implement its existing AMLCP by failing to identify the activity as potentially suspicious and because it did not investigate, and report as necessary, the activity in the JT accounts.

As a result of the foregoing, Capital Guardian violated FINRA Rules 3310(a) and 2010.

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

Censure and a \$125,000 fine.

We agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. We have submitted an Election of Payment form showing the method by which we propose to pay the fine imposed.

We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against us;
- 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, we 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.

We 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

We 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 us; and
- C. If accepted:
 - 1. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against us;

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. We 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. We 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 our: (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. We may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 Capital Guardian, certifies that a person duly authorized to act on its behalf has read and understands 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Capital Guardian to submit it.

Capital Guardian LLC

By:



05/08/2015
Date

Michael Bacchus

Print

Chief Compliance Officer

Title

Reviewed by:

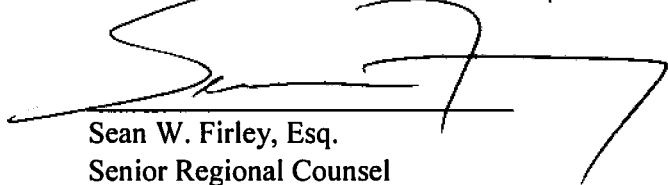


Bob E. Lehman, Esq.
Counsel for Capital Guardian, LLC
Lehman & Eilen LLP
50 Charles Lindbergh Blvd.
Suite 505
Uniondale, NY 11553
Phone 516-222-0888 ext. 114
Fax 516-222-0948
blehman@lehmaneilen.com

Accepted by FINRA:

5/18/15
Date

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

A handwritten signature in black ink, appearing to read 'Sean W. Firley', is written over a horizontal line.

Sean W. Firley, Esq.
Senior Regional Counsel
FINRA Department of Enforcement
5200 Town Center Circle
Tower I, Suite 200
Boca Raton, FL 33486
Phone: (561) 443-8120
Fax: (561) 443-7998
sean.firley@finra.org