

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2016048256701**

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

RE: Arive Capital Markets, LLC, Respondent
Member Firm
CRD No. 8060

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Arive Capital Markets, LLC ("Arive" 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 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

Arive has been a FINRA member since 1980. The Firm has approximately 31 registered individuals, five branch offices and is headquartered in Brooklyn, NY. The Firm provides wealth management services to retail customers, engaging primarily in equity transactions.

RELEVANT DISCIPLINARY HISTORY

Arive does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

During the period October 27, 2015 through March 8, 2016 (the "Relevant Period"), Arive failed to develop and implement an anti-money laundering program ("AMLCP") reasonably designed to achieve and monitor the Firm's compliance with requirements of

the Bank Secrecy Act and the implementing regulations thereunder. Specifically, the Firm failed to establish and implement policies and procedures that could be reasonably expected to detect and cause the reporting of potentially suspicious activity related to low-priced securities transactions. Arive also failed to conduct annual independent testing (on a calendar-year basis) of its AMLCP in 2015 and 2016.

As a result of the foregoing conduct, Arive violated FINRA Rules 3310(a) and (c) and 2010.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3310 requires each member to develop and implement a written AMLCP 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 United States Department of the Treasury.

Specifically, FINRA Rules 3310(a) requires, at a minimum, that each member's AMLCP be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. § 5318(g) and the implementing regulations thereunder.¹ FINRA Rule 3310(c) requires that firms conduct annual (on a calendar-year basis) independent testing of their AMLCP.²

FINRA Rule 2010 provides that a member "shall observe high standards of commercial honor and just and equitable principles of trade."

NASD Notice to Members 02-21 ("NTM 02-21"), issued in April 2002, provided detailed guidance to the industry regarding the obligation of a broker-dealer to monitor for and report suspicious transactions. In NTM 02-21, FINRA advised each broker-dealer that when developing an AMLCP, it should tailor the program to fit its business, taking into consideration, among other factors, "the types of transactions in which its customers engage." NTM 02-21 further reminded broker-dealers of their duty to look for "red flags," *i.e.*, signs of suspicious activity that suggest money laundering or other violative activity, and provided broker-dealers with a non-exhaustive list of such red flags. That list of red flags includes when a "customer, for no apparent reason or in conjunction with other 'red flags,' engages in transactions involving certain types of securities, such as penny stocks ... which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)" Where such red flags are detected, FINRA cautioned broker-dealers to "perform additional due diligence before proceeding with the transaction." The notice advised broker-dealers to develop

¹ See FINRA Rule 3310(a) (stating that members shall "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.").

² See FINRA Rule 3310(c) (stating that the anti-money laundering programs shall "provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party.").

administrative procedures concerning suspicious activity reports, which “should address the process for filing SARs and reviewing SAR filings.”

Notice to Members 02-47 (“NTM 02-47”), issued in August 2002, provided an overview of the key provisions of the suspicious activity reporting rule promulgated by the Department of the Treasury and reminded firms that the “rule is intended to encourage broker/dealers to evaluate customer activities and the relationships and design an appropriate monitoring program....”

As described below, Arive did not develop and implement a written AMLCP, including policies and procedures that could reasonably be expected to detect and cause the reporting of potentially suspicious activity.

Arive’s Deficient Written AML Procedures

During the period of May 2015 through April 2016, Arive executed approximately 550 transactions in 73 separate low-priced securities totaling \$4.5 million. Despite the fact that Firm customers were engaged in numerous transactions in low-priced securities, including during the Relevant Period, Arive’s Anti-Money Laundering (AML) Manual (“AML Manual”), which detailed the Firm’s AMLCP procedures, failed to address the supervision of potentially suspicious trading in low-priced securities. For example, the Firm’s AML Manual failed to explain how to identify or investigate suspicious trading activity, failed to list some of the most common red flags of suspicious activity and address the process for identifying and assessing potential red flags associated with the sale of low priced securities, and did not provide guidance about how to utilize the reports and tools the Firm had at its disposal to monitor for suspicious trading.³ The Firm’s AML Manual did not list or describe some of the most relevant red flags for AML compliance personnel to look for in order to identify suspicious transactions, such as:

- A sudden spike in investor demand for, coupled with a rising price, in a thinly traded security;
- Multiple customer accounts buying and/or selling a thinly traded low-priced stock;
- A number of transactions in a stock comprising a large percentage of the total volume of market trading;
- Spam, advertising, or promotional campaigns related to the low-priced stock being bought or sold by Firm customers; and
- Customers buying or selling the security of an issuer that has changed its name and business strategy multiple times.

³ For example, even though some of the Firm’s exception reports identified the relevant transactions in low-priced securities, the Firm’s supervisors reviewed the transactions for suitability and not with the view towards detecting potentially suspicious trading.

Arive's Failure to Detect and Investigate Red Flags

During the Relevant Period, three registered representatives of the Firm had 22 customer accounts that engaged in a pattern of trading hundreds of thousands of shares in a particular low-priced security, which comprised a significant volume of the total trading in the stock (i.e., on certain days, the trading exceeded 50% of the total daily trading volume). There were various red flags in connection with this pattern of trading, including the following:

- The trading of the security was concentrated in customers of three Firm brokers.
- The company whose shares were traded underwent a number of name and business strategy changes since its incorporation.
- There was publicly available negative information about the company, including articles and a lawsuit alleging fraud against the company.
- There were press releases, on-line articles and a complaint filed in federal court, that all indicated the stock was touted by a suspected microcap stock promoter who was also a Firm customer that engaged in the suspicious trading.
- The brokers' recommendations to invest in the stock were suspect because of the company's unstable financial conditions.
- Investments in the security resulted in the highest customer losses at the Firm.

Arive failed to take reasonable steps to identify, investigate and address these numerous red flags, and because of these failures, the Firm failed to detect the suspicious trading in the low-priced security.

Arive's Failure to Conduct Independent Testing

As a retail firm engaging in equity transactions, Arive was required to conduct independent testing of its AMLCP on an annual basis. Consistent with FINRA Rule 3310 (c), Arive's procedures provided that the Firm's "AML Program will be tested ... once every calendar year." Nevertheless, the Firm failed to conduct the required independent testing annually (on a calendar basis) in 2015 and 2016.

* * *

As a result of the foregoing conduct, Arive violated FINRA Rules 3310(a) and (c) and 2010.

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

- A censure; and
- A fine of \$45,000.

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 an inability to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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 record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 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(s) 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 the Respondent Firm, 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 it has agreed to the AWC's 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 it to submit it.

3/2/2020
Date

Arive Capital Markets, LLC
Respondent

By: [Signature]

Print Name: James Sideris

Title: CEO

Reviewed by:

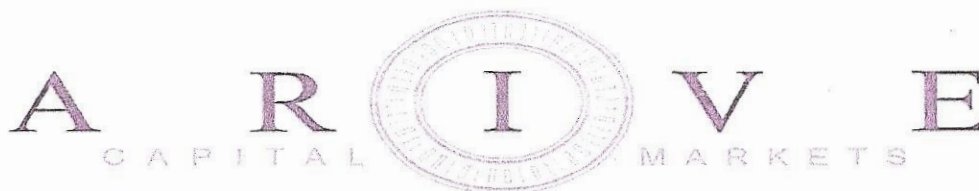
Scott Holcomb *SHW*
Scott Holcomb
Counsel for Respondent
Holcomb & Ward, LLP
3455 Peachtree Road, NE, Suite 500
Atlanta, GA 30326

Accepted by FINRA:

3/26/2020
Date

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

Artur M. Wlazlo
Artur M. Wlazlo
Senior Counsel
FINRA
Department of Enforcement
Two Jericho Plaza, 2nd Floor
Jericho, NY 11753



March 2, 2020

Mr. Artur M Wlazlo
Senior Counsel
FINRA
Department of Enforcement
Two Jericho Plaza; 2nd Floor
Jericho, NY 11753

RE: Corrective Action Statement to Letter of Acceptance, Waiver and Consent
(Investigation No. 2016048256701)

Dear Mr. Wlazlo:

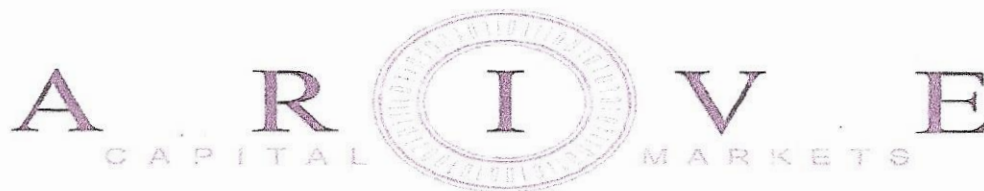
I am responding on behalf of Arive Capital Markets ("Arive") to the above-referenced Letter of Acceptance, Waiver and Consent ("AWC"). The AWC is related to Arive's implementation of an anti-money laundering program ("AMLCP") reasonably designed to achieve and monitor the Firm's compliance with the requirements of the Bank Secrecy Act and the implementing regulations thereunder. The findings in the AWC have been addressed and mitigated as explained in this Corrective Action Statement.

This Corrective Action Statement is submitted by Arive. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

Arive updated its Written Supervisory Procedures ("WSPs") in 2016 when it became aware of the issues identified in the AWC.

In particular Arive adopted additional procedural safeguards regarding the purchase and sale of low-priced securities. Arive now actively reviews all transactions in low priced securities. Further, Arive now requires its brokers to receive approval from the Compliance Department prior to conducting any transactions involving a low-priced security. Individual brokers are reminded of this policy on an annual basis and sign an annual attestation that they will not engage in any transaction involving low-priced securities without prior approval from the Compliance Department.

Arive believes that implementing these changes addresses the shortcomings in its AMLCP noted in the AWC. That there has been no reoccurrence of such issues from 2016 to the present has born that belief out.



Arive has also taken steps to address the gap in its independent auditing schedule noted in the AWC. Arive has conducted annual audits of its AMLCP every year since 2017.

Having addressed the issues noted in the AWC, Arive is confident that similar issues will not reoccur. Please contact me if you have any questions concerning the corrective actions taken.

Sincerely,

A handwritten signature in black ink, appearing to read "James Sideris". The signature is written in a cursive style with a long, sweeping underline.

James Sideris – CEO
Arive Capital Markets