

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2017052388601**

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

RE: Actinver Securities, Inc. (Respondent)
Member Firm
CRD No. 41139

Pursuant to FINRA Rule 9216, Respondent Actinver Securities, Inc. 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 in this AWC.

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

Actinver has been a FINRA member since 1996. The firm is headquartered in Houston, Texas, has four branches, employs approximately 40 registered individuals, and engages in a full-service retail brokerage business. Actinver obtains the majority of its clients from its Mexican affiliates, including Actinver Bank located in Mexico. Actinver does not have any relevant disciplinary history.

OVERVIEW

During the period August 26, 2015 to March 11, 2017, Actinver failed to establish and implement an Anti-Money Laundering (AML) program that could be reasonably expected to detect and cause the reporting of suspicious activity. Specifically, Actinver's AML surveillance system was unreasonable because it generated reports that were inaccurate and failed to capture certain potentially suspicious activity. In addition, the firm failed to tailor its AML program to the risk presented by its practice of allowing customers to engage in foreign currency exchange and maintain accounts used primarily for managing cash.

Actinver also failed to reasonably implement certain aspects of its AML program. Although the firm's AML program included procedures that required the firm to gather

specific information and forms when opening foreign accounts or accounts for Politically Exposed Persons (PEPs), Actinver's registered representatives frequently failed to obtain these forms or left information blank on the forms. Finally, the firm failed to follow its procedures regarding responses to inquiries from its clearing firm concerning red flags of potentially suspicious activity.

As a result of these failures, Actinver violated FINRA Rules 3310(a) and 2010.

In addition, the firm failed to conduct an adequate independent AML test in 2016, because the testing failed to review key aspects of the firm's AML program. Therefore, the firm violated FINRA Rules 3310(c) and 2010.

Finally, Actinver failed to have its Chief Executive Officer complete the firm's Annual Certification Requirement in 2015 and 2017 in violation of FINRA Rules 3130(b) and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2017 Cycle Exam of Actinver.

FINRA Rule 3310 requires FINRA regulated broker-dealers to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor [their] compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations thereunder. . . ." Under FINRA Rule 3310(a), the program must, at a minimum, establish and implement policies and procedures that "can be reasonably expected to detect and cause the reporting of" transactions required to be reported under 31 U.S.C. § 5318(g) and the implementing regulations thereunder. A violation of FINRA Rule 3310(a) is also a violation of FINRA Rule 2010, which requires FINRA regulated broker-dealers to observe "high standards of commercial honor and just principles of trade."

Broker-dealers are also required to file "a report of any suspicious transaction relevant to a possible violation of law or regulation" pursuant to 31 C.F.R. §1023.320. The U.S. Treasury Department has instructed broker-dealers to determine whether trading activity raised suspicions by monitoring for various "red flags."¹ FINRA issued guidance to member firms that they have a duty to (a) tailor their AML program to the particular risks of its business model, as well as its customer base; (b) monitor red flags of suspicious activity; and (c) where suspicious activity is detected, perform additional due diligence to determine whether or not to file a SAR.²

Actinver failed to establish a reasonable AML program.

From August 26, 2015 to March 11, 2017, Actinver failed to establish an AML program that could reasonably be expected to detect and cause the reporting of certain suspicious

¹ 67 Fed. Reg. 44048 (July 1, 2002) (<http://www.treas.gov/fincen/brokersdealersarjuly2002.pdf>).

² NASD Notices to Members 02-21 and 02-47.

activity. As detailed below, the firm's systems and reports were not reasonably designed to detect certain red flags listed in the firm's procedures.

Furthermore, the firm's AML program was not reasonably tailored to the firm's business of allowing clients to engage in foreign currency exchange and maintain accounts primarily for cash management purposes.

The firm failed to establish reasonable systems and reports.

Actinver's written AML procedures provided that the firm would manually monitor for suspicious activity and would use both proprietary and clearing firm reports to assist in monitoring for potentially suspicious activity. The firm's procedures listed red flags that employees should investigate. These red flags included the following:

- Payment by a third-party check or money transfer without an apparent connection to the customer;
- Payment to a third-party check without apparent connection to the customer;
- An unexplained high level of account activity with very low levels of securities transactions;
- Maintenance by a customer of multiple accounts, or maintenance of accounts in the names of family members or corporate entities with no apparent business or other purpose for the maintenance of the multiple accounts; and
- Wire transfers to/from financial secrecy havens or high-risk geographic location without an apparent business reason.

In practice, Actinver relied on three proprietary reports to detect red flags of potentially suspicious activity—the Deposit Report, the Giros a Terceros Report (GAT Report), and the Lavados de Dineros Alert (LDD Alert). As discussed below, the parameters of these reports, however, were such that significant data points were missing and only limited information was being reviewed. Consequently, the firm's review of these reports failed to reasonably detect red flags of potentially suspicious activity and caused the firm to be unable to reasonably determine whether to file a suspicious activity report (SAR).

The Deposit Report

The Deposit Report was the primary tool used by the firm to monitor for and detect potentially suspicious activity. The report was intended to flag third-party wire transactions—both incoming deposits from a party other than the account holder and outgoing transfers to a party other than the account holder. Actinver's written procedures required the firm to investigate the circumstances of third-party wire transactions and determine whether to file a SAR. However, the Deposit Report was flawed because the report's default was set to label all incoming transactions as first-party. Actinver relied on its AML analyst to manually change the transaction to third-party only if the analyst identified unambiguous information in the clearing firm's report indicating that the

transaction was third-party. In practice, if information necessary to make this determination was missing, no one followed up to obtain the needed information or to clarify the nature of the transfer. As a result, the Deposit Report routinely mischaracterized third-party transactions as first-party. In a sample of 79 accounts with 1,142 transactions, 190 transactions provided the firm with information suggesting the deposit was third-party. In those 190 instances, the Deposit Report mischaracterized those third-party transactions as first-party and the analyst did not follow up on the information. Consequently, those transactions, totaling approximately \$18 million, were not subjected to any additional review.

Furthermore, the parameters of the Deposit Report were not set to capture any wires denominated in currencies other than US dollars. Consequently, over 1,324 incoming and outgoing non-USD wires totaling \$150,349,436 were not reviewed for red flags of suspicious activity. This represented 21% of all firm wire activity during the time period at issue.

The GAT Report

The GAT Report was intended to identify accounts with high volumes of third-party transfers in order to allow the firm to focus on more high-risk activity. The GAT Report, however, relied on data from the Deposit Report. As described above, the Deposit Report mischaracterized many third-party transfers as first-party and failed to include any transfers denominated in foreign currency. As a result of the inaccurate data in the Deposit Report, the GAT Report was similarly flawed. Thus, the GAT Report was frequently inaccurate and could not reasonably be expected to detect potentially suspicious activity.

The LDD Alert

The firm's LDD Alert was also not reasonably designed to detect potentially suspicious activity because it failed to provide critical information about transactions. An LDD Alert triggered in situations where an account's same-day activity exceeded the account holder's stated annual income or exceeded 50 percent of the account holder's stated net worth. Although the LDD Alert was intended to identify deposits or withdrawals that substantially exceeded a client's stated income or net worth, the alert only provided the reviewer with a narrow, one-day view of account activity. As a result, the LDD Alert failed to identify instances where customer activity over a period exceeding one day was substantially above the customer's stated income or 50 percent of the customer's stated net worth. In addition, as a result of inaccurate entry of information into the system generating the LDD Alerts, annual income and net worth parameters used for the LDD Alert were frequently inconsistent with the information on the customer's new account form. The parameters of the LDD Alerts were also set to only review single accounts, and thus the alerts did not detect when cumulated trades in multiple related accounts exceeded the parameters. Moreover, the LDD alert parameters were not set to detect any banking-type account activity such as checks, debit card, ATM, or journal transfers.

Actinver's failure to establish a reasonable AML program resulted in the failure to detect and investigate potentially suspicious activity.

Actinver's failures resulted in numerous instances of potentially suspicious activity not being reasonably reviewed by the firm. For instance, one account sent third-party wires of over \$3.3 million, including wires to a Swiss bank to benefit a Canadian corporation and wires of over \$1 million to a United Kingdom law firm at a Scottish bank purportedly to purchase an automobile. Actinver could not evidence that it had identified and reasonably investigated the activity.

Similarly, Actinver was unable to evidence that it had investigated wire activity of another individual domiciled in Mexico who opened a business account for a company domiciled in the British Virgin Islands. The account received nine third-party wires totaling over \$1.3 million. The account should have triggered other red flags, as well, including the fact that the individual establishing the account was a PEP and the wires exceeded the stated annual income of the account holder.

The firm also failed to demonstrate that it reasonably investigated accounts that had a high level of account activity with little or no securities transactions. Fourteen accounts were opened at Actinver and closed less than a year later with no corresponding securities transactions. As a result, more than \$8 million moved through these accounts with no evidence of review of the activity.

Actinver also failed to demonstrate that it had identified and reasonably investigated account activity that was inconsistent with the expected account activity disclosed on new account forms. For instance, one customer opened an account, stating in new account documents that the customer anticipated one or two third-party wires per year. However, the customer sent or received 11 third-party wires, totaling approximately \$700,000 over a ten-month period. Actinver, however, never detected the deviation from expected activity or inquired about the activity.

In another example, the new account form for a different account stated that the account expected no third-party activity and was expected to engage in investment. After opening, however, the account immediately received numerous third-party wires totaling over \$1.8 million. Less than one year later, the funds were wired to another broker-dealer. The account engaged in no securities transactions during the year the funds were at Actinver.

Actinver failed to tailor its AML procedures to its foreign exchange business and cash management services.

Actinver offered its customers foreign exchange services which presented an increased money laundering risk. From August 26, 2015 to March 11, 2017, Actinver customers sent or received wires denominated in foreign currencies such as Mexican pesos, Euros, Swiss Francs, British Pounds, Hungarian Forint, and Swedish Krona, totaling over \$150 million, involving 286 firm customers. Approximately 93% of these wires were third-

party in nature. Overall, Actinver's foreign exchange wires represented 21% of the firm's overall wire activity.

Despite this significant volume of currency exchange activity, Actinver failed to tailor its AML program to address this portion of its business. The firm's AML program had no procedures regarding the review of foreign currency exchange red flags that would warrant investigation for purposes of determining whether to file a SAR. Furthermore, as detailed above, the reports used by the firm to monitor for suspicious activity failed to capture these wires.

In addition, Actinver allowed its customers to maintain accounts used primarily for managing cash, which also presented an increased money laundering risk. Because this service was likely to result in red flags due to a lack of securities transactions, Actinver should have recognized the risk and put in place procedures to mitigate those risks. From August 26, 2015 to March 11, 2017, Actinver had 200 accounts that engaged in banking activity with little or no securities transactions. Money movement through these accounts amounted to approximately \$110 million in incoming funds and approximately \$82 million in outgoing funds. Actinver's procedures stated that accounts with "an unexplained high level of account activity with very low levels of securities transactions" were considered a red flag of suspicious activity; however, none of Actinver's reports identified this activity and Actinver's procedures provided no guidance as to how to detect and evaluate such account activity for purposes of determining whether or not to file a SAR. As a result, Actinver's procedures were not tailored to address its cash management business.

Therefore, Respondent violated FINRA Rules 3310(a) and 2010.

Actinver failed to implement certain aspects of its AML program.

The firm failed to implement its AML program regarding customer due diligence for foreign accounts.

Actinver's AML procedures required the firm to conduct significant due diligence on accounts domiciled outside the United States. The Firm used a proprietary form (the Foreign Account Form) to obtain detailed information regarding the customer's business, anticipated account activity (both in terms of the expected volume and types of activity), and the source of funds, among other items.

Actinver, however, routinely failed to implement these AML procedures and ensure this information was obtained. In a sample of 85 foreign accounts, the firm failed to collect the Foreign Account Forms for 38 accounts at the time of account opening. For the accounts where the firm did collect the Foreign Account Forms, 29 were incomplete. Missing information in these forms primarily related to the customers' background, business and/or source of funds. Despite the numerous missing Foreign Account Forms and the missing required information in the Foreign Account Forms collected, the firm approved the opening of all 85 foreign accounts.

As a result of Actinver's failure to obtain required account opening information, the firm was unable to assess whether activity in the accounts was consistent with expected activity. For example, when a business owner in Mexico opened an account, the firm failed to complete World-Check, OFAC, or internet searches and did not obtain a completed Foreign Account Form. The account immediately changed from a named account to an anonymous numbered account with no documentation regarding the change. All the deposits into the account were made in Canadian dollars despite the fact the account owner was doing business in Mexico—with total deposits of approximately \$3 million³ and withdrawals of over \$1.5 million. Sizable deposits of approximately \$300,000 to \$500,000 were followed shortly thereafter by withdrawals, but Actinver did not detect this activity as potentially suspicious.

The firm failed to implement its AML program regarding due diligence of senior foreign political figures.

The firm's AML procedures required the firm to conduct enhanced due diligence regarding the opening of an account by a "senior foreign political figure." In some instances, the firm failed to conduct basic due diligence required by its procedures to identify senior foreign political figures. As a result, 15 accounts were not identified as belonging to senior foreign political figures and were not subject to the required enhanced due diligence.

For 18 accounts that the firm identified as PEP accounts, the firm failed to conduct the enhanced due diligence required by its procedures for 12 of these accounts. In addition, the firm did not monitor asset movements for PEP accounts any differently than it did for other accounts and subjected the accounts to no additional monitoring.

As a result, Actinver failed to reasonably monitor PEP accounts. For example, the firm failed to identify the owner of a business account as a Senior Political Figure, even though the individual was a former member of the Mexican government; his father was a former General in the Mexican Army; and his brother (also with an account not identified as a PEP account) was the former CEO of the Mexican State owned company. The account was not designated as a PEP account or subjected to heightened monitoring.

Actinver further failed to reasonably investigate the owner of a travel agency and school in Mexico; had it done so, Actinver would have found that the individual was publicly associated with the governor of one of the Mexican states as someone who could place family and friends in high positions and allocate government contracts. Because this individual's accounts were not designated as PEP accounts or subject to heightened monitoring, Actinver failed to detect that the individual's trust account received wires in a four-month timeframe that exceeded the customer's stated annual income and net worth.

³ For purposes of the example, the amounts have been converted to U.S. dollars.

The firm failed to implement its AML program regarding cooperation with its clearing firm.

Actinver's AML procedures stated that the firm would "work closely with [its] clearing firm to detect money laundering" and required it to "exchange information, records, data and exception reports" to comply with AML laws. Similarly, NTM 02-21 provides that it is "imperative" that clearing firms and introducing brokers work together to allow each firm to meet its obligations to comply with AML laws.

From August 26, 2015 to March 11, 2017, the AML department of the clearing firm sent 27 different inquiries to Actinver regarding potentially suspicious activity in 19 accounts. These requests typically consisted of questions regarding the purpose of the transaction or series of transactions, the relationship between counterparties involved in third-party transfers, or a customer's source of wealth. Actinver, however, conducted no independent investigation into the questions raised by the clearing firm. Instead, Actinver sent the questions to the registered representative for the account who obtained explanations from the client. These explanations were passed along to the clearing firm with no effort made to verify the information provided.

Actinver also did not consider an inquiry from the clearing firm to be a red flag of suspicious activity, and thus did not make a determination as to whether to file a SAR. Even where the clearing firm decided to reject a wire, based upon inadequate information provided by Actinver, the firm took no steps to determine whether to file a SAR.

Therefore, Respondent violated FINRA Rules 3310(a) and 2010.

Actinver failed to conduct reasonable independent AML testing.

FINRA Rule 3310(c) requires member firms that conduct business with the public to undertake annual independent testing of their AML programs, and FINRA has stressed the importance of thorough independent testing to member firms. In the 2017 Report on FINRA Examination Findings, for example, FINRA stated that effective AML programs conduct independent testing that includes "trading and money movement activity to test whether the firm was performing adequate monitoring for and investigations of potentially suspicious activity."

Although Actinver conducted an independent test in 2016, the test did not evaluate essential aspects of the firm's AML program. Specifically, the 2016 test failed to review the firm's systems, such as its proprietary reports and its clearing firm reports, to determine the adequacy of the systems for detecting suspicious activity. In addition, the test failed to review account activity for any accounts held at Actinver, including accounts held by Senior Political Figures, and failed to review money movement activity, including money movements involving foreign currency exchange or to third-parties in high-risk jurisdictions. As a result, the test failed to determine whether potentially suspicious activity was being reasonably detected, monitored, and investigated. This

significant gap in the testing prevented the firm from discovering that its AML procedures were not being implemented.

Therefore, Respondent violated FINRA Rules 3310(c) and 2010.

Actinver failed to obtain required CEO annual certifications.

FINRA Rule 3130 requires each member firm's chief executive officer to certify annually that the firm has processes to establish, maintain, and review written policies and procedures to ensure compliance with applicable rules and regulations. Among other content, the certification shall state that the firm's compliance and supervisory processes "are evidenced in a report reviewed by" the chief executive officer or other reviewing officer. Actinver's Chief Executive Officer failed to complete the Annual Compliance and Supervision Certification for 2015 and 2017.

Therefore, Respondent violated FINRA Rules FINRA Rules 3130(b) and 2010.

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

- a censure; and
- a fine of \$150,000

Respondent further agrees to the following undertaking:

Certification: Within 60 days of Notice of Acceptance of this AWC, Actinver shall certify to FINRA in a submission signed by an officer and registered principal of Actinver that, as of the date of the certification, Actinver has established and implemented policies, procedures, and internal controls reasonably designed to address and remediate the issues identified in this AWC. The certification shall be addressed to Laura Leigh Blackston, Senior Counsel, 1100 Poydras St., Suite 850, New Orleans, Louisiana 70163. Upon written request, showing good cause, FINRA staff may extend the procedural date set forth above.

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 after the execution of this AWC, the monetary sanction imposed in this matter.

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

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 its acceptance or rejection.

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 its subject matter 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 testimonial obligations or 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 the AWC's

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 Respondent to submit this AWC.

February 11, 2021

Date



Actinver Securities, Inc.
Respondent

Print Name: Xavier Maza

Title: President

Reviewed by:



Alan M. Wolper, Esq.
Counsel for Respondent
Ulmer & Berne, LLP
500 W. Madison Street, Suite 3600
Chicago, IL 60661-4587

Accepted by FINRA:

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

February 12, 2021

Date



Laura Leigh Blackston
Senior Counsel
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