

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2018056483905**

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

RE: Arive Capital Markets (Respondent)  
Member Firm  
CRD No. 8060

Pursuant to FINRA Rule 9216, Respondent Arive Capital Markets 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 accepts and consents to the following findings by FINRA without admitting or denying them:

**BACKGROUND**

Arive has been a FINRA member firm since 1980. The firm is located in Staten Island, New York, and has eight registered representatives and one branch office.<sup>1</sup>

**OVERVIEW**

From August 2016 to June 2020, the firm failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 as they pertain to excessive trading. As a result, Arive failed to reasonably identify or address red flags of excessive trading in 12 customer accounts that caused the customers to pay a total of nearly \$640,000 in commissions, costs, and margin interest. By this conduct, Arive violated FINRA Rules 3110 and 2010.

From June 2018 through February 2019, the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with the requirements of FINRA Rule 3230 regarding telemarketing. During that period, registered representatives at Arive placed thousands of telemarketing calls to phone numbers on the national do-not-call registry and the firm's do-not-call list, without

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<sup>1</sup> For more information about the firm, including prior regulatory events, visit BrokerCheck® at [www.finra.org/brokercheck](http://www.finra.org/brokercheck).

a qualified exception, and also violated telemarketing call time-of-day restrictions. By this conduct, Arive violated FINRA Rules 3230, 3110 and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

This matter originated from a FINRA cycle exam of Arive Capital Markets.

#### **Arive failed to reasonably supervise for excessive trading.**

FINRA Rule 2111(a) required member firms and their associated persons to “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile.”<sup>2</sup> Prior to June 30, 2020, Rule 2111 Supplementary Material .05 (Rule 2111.05), members and associated persons with actual or *de facto* control over trading in a customer account were required to have a reasonable basis for believing that a series of recommended securities transactions were not excessive and unsuitable for the customer when taken together in light of the customer’s investment profile.

Rule 2111.05(c) states that “[n]o single test defines when trading is excessive, but factors such as the turnover rate and the cost-to-equity ratio, and the use of in-and-out trading in a customer’s account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.” Turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio measures the amount an account must appreciate just to cover commissions and other expenses. In other words, it is the break-even point where a customer may begin to see a return. A turnover rate of six or more, or a cost-to-equity ratio above 20 percent, generally indicates that excessive trading has occurred.

FINRA Rule 3110(a) requires that member firms “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” FINRA Rule 3110(b) requires that each FINRA member “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with the applicable securities laws and regulations, and with applicable FINRA rules.” The duty to supervise under Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation.

A violation of FINRA Rule 3110 also constitutes a violation of FINRA Rule 2010, which requires that member firms “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

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<sup>2</sup> FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations to retail customers that are subject to Regulation BI under the Securities Exchange Act of 1934.

From August 2016 to June 2020, Arive's supervisory system, including its WSPs, was not reasonably designed to detect and reasonably respond to potential excessive trading. The firm's WSPs did not provide reasonable guidance addressing how principals should identify or investigate potentially excessive trading. The WSPs required supervisors to review "active" customer accounts but did not define "active" or describe what activity might be concerning in the identified accounts. Until 2018, the WSPs regarding suitability contained no discussion of excessive trading. When the firm's WSPs were updated to include a definition of quantitative suitability, they still failed to provide guidance regarding indicators of potentially excessive trading, including benchmarks for turnover rates or cost-to-equity ratios. Also, the WSPs provided for daily reviews of activity in customer accounts for compliance with the suitability rules but did not require any review of trading over longer periods, which could identify patterns of unsuitable trades over time.

The firm relied on exception reports provided by its clearing firm to supervise for excessive trading, but the firm's use of those reports was not reasonable. Arive received exception reports that flagged turnover, cost-to-equity, and in-and-out trading, among other things. However, the firm's WSPs did not identify which reports supervisors should review, with what frequency they should review the reports, how supervisors should access the reports, or what activity supervisors should look for in their review of exception reports. The firm did not train its supervisors regarding key concepts associated with excessive trading that would be necessary to identify and investigate exceptions. Additionally, during the period January 1, 2018 to April 1, 2019, the firm was aware that several exception reports relevant to excessive trading were unavailable (including reports flagging monthly commission velocity, turnover, and margin use), yet the firm did not implement an alternate system to supervise for excessive trading. Further, from April 1, 2019 to August 26, 2019, the firm's turnover exception report was set to review only 30 days of historical activity even though the system had the capacity to look back over one year of historical activity.

Although sending activity letters to customers was a component of the firm's system to address potential excessive trading, the firm had no written policies until March 2019 regarding when supervisors should send activity letters to customers or what account activity should trigger letters. Additionally, the firm used a template activity letter that did not specify what trading or costs led the firm to issue the letter, and thus provided limited information to customers about the trading in their accounts.

As a result of the firm's unreasonable supervisory system, the firm failed to identify or address red flags of excessive trading by six registered representatives in 12 customer accounts. The customers relied on the advice of the representatives and routinely followed their recommendations, and, as a result, the representatives exercised *de facto* control over the accounts. For example:

- Between January 2017 and October 2018, one registered representative excessively traded the account of a 67-year-old retired pharmacist from Georgia. The customer

had limited knowledge of the stock market. The registered representative's recommendations resulted in annualized cost-to-equity of over 86 percent and annualized turnover rate of over 22. The registered representative's recommendations caused the customer to pay over \$88,000 in commissions and fees and almost \$8,000 in additional margin interest.

- Between August 2016 and July 2018, one registered representative excessively traded the account of a 64-year-old customer from Colorado who owned a small construction business. During the 24-month period, the registered representative's recommendations resulted in an annualized cost-to-equity of over 54 percent and an annualized turnover rate of over 14. The registered representative's recommendations caused the customer to pay over \$119,000 in commissions and fees and over \$18,000 in additional margin interest.

The 12 customer accounts had annualized cost-to-equity ranging from 30.12 to 152.56 percent, annualized turnover rates ranging from 5.71 to 45.23, and the recommendations resulted in a total of \$639,809.57 in commissions, costs, and margin interest paid by the customers during the relevant period.

Therefore, the firm violated FINRA Rules 3110 and 2010.

**Arive violated FINRA telemarketing rules and failed to reasonably supervise for compliance with telemarketing rules.**

FINRA Rule 3230(a) provides that “[n]o member or person associated with a member shall initiate any outbound telephone call to...[a]ny person who has registered his or her telephone number on the Federal Trade Commission’s national do-not-call registry” unless certain exceptions apply. The rule also includes a restriction on telemarketing calls before 8 a.m. or after 9 p.m. local time. Exceptions include the existence of an established business relationship, prior written consent, or a personal relationship with the call recipient.

FINRA Rule 3230(d) requires members to institute procedures to comply with Rule 3230(a) prior to engaging in telemarketing. The procedures must include, among other things, a written policy for maintaining a do-not-call list, training of personnel engaged in any aspect of telemarketing, and recording of any requests not to receive calls by the member on its internal do-not-call list.

A violation of FINRA Rule 3230 also constitutes a violation of FINRA Rule 2010.

From June 2018 through February 2019, the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA’s telemarketing rules. The firm’s WSPs provided no guidance to representatives regarding how to access the do-not-call list or how to add individuals to the list pursuant to individual requests. Further, the firm’s WSPs failed to address time-of-day restrictions and did not provide for training of personnel engaged in telemarketing

activities. The procedures required a “periodic review” of the do-not-call list by designated supervisors but failed to specify the purpose of the periodic review, who was responsible for conducting the periodic review, how often the review should be conducted, or what steps supervisors should take to conduct the review. In practice, the firm’s headquarters office and its branch office used separate do-not-call lists that did not match and only included telephone numbers manually identified by the firm. Arive did not subscribe or have access to the national do-not-call registry and did not block numbers from that list.

Between June 2018 and February 2019, the firm routinely violated the telemarketing rules. Representatives made over 60,000 outbound calls to over 20,000 telephone numbers listed on the national do-not-call registry. On at least 27 instances during the relevant period, representatives at the branch office made outbound calls to telephone numbers on the firm’s do-not-call list. In at least 32 instances, representatives made outbound telemarketing calls before 8 a.m. or after 9 p.m. local time.

Therefore, the firm violated FINRA Rules 3230, 3110, and 2010.

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

- a censure;
- a \$300,000 fine;
- restitution of \$594,928.74, plus interest;<sup>3</sup> and
- an undertaking to review and revise the firm’s WSPs, as necessary, and certify that the firm has remediated the issues identified in this AWC and implemented a supervisory system, including WSPs, reasonably designed to achieve compliance with rules identified in this AWC.

Respondent agrees to pay the monetary sanctions 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.

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$594,928.74, plus interest at the rate set forth

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<sup>3</sup> In connection with this matter, Enforcement entered into settlements with six Arive registered representatives and one supervisor. Pursuant to those AWCs, five registered representatives have been ordered to pay restitution totaling \$489,940, plus interest, to certain customers in this matter. To date, \$18,770.43 of the ordered restitution has already been paid. This AWC orders Arive to pay restitution in the amount of \$594,928.74, which includes the total costs (commissions, fees, and margin interest) paid by 11 customer accounts that were excessively traded, minus restitution already paid pursuant to the other AWCs connected to this matter. Additionally, one customer whose account was excessively traded settled with a registered representative in a separate matter and is therefore not included in the restitution order in this AWC.

in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from July 1, 2020, until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

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 sanctions imposed in this matter.

An undertaking that, within 180 days of the date of the notice of acceptance of this AWC, a member of Respondent's senior management who is a registered principal of the firm shall certify in writing that, as of the date of the certification, the firm has remediated the issues identified in this AWC and implemented a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA's Rules related to the issues identified in this AWC, including FINRA Rule 2111 and Reg BI's Care Obligation, set forth at Exchange Act Rule 15c-1(a)(2)(ii), and FINRA Rules 3230 and 2010. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Kerry Land,

Senior Counsel, FINRA Department of Enforcement, Brookfield Place, 200 Liberty Street, 11<sup>th</sup> floor, New York, NY 10281, Kerry.Land@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

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.

4/26/24  
Date

  
Arive Capital Markets  
Respondent

Print Name: Jodi Farci

Title: Arise Authorized signatory

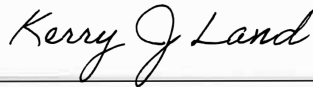
Reviewed by:



Anthony C. Varbero, Partner  
Counsel for Respondent  
Forchelli Deegan Terrana  
333 Earle Ovington Blvd., Suite 1010  
Uniondale, New York 11553

Accepted by FINRA:

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



May 14, 2024

Date

Kerry Land  
Senior Counsel  
FINRA  
Department of Enforcement  
Brookfield Place,  
200 Liberty Street, 11<sup>th</sup> Floor  
New York, NY 10281

**ATTACHMENT A**  
**TO LETTER OF ACCEPTANCE, WAIVER, AND CONSENT**  
**MATTER NO. 20180564839**

| <b>Customer</b>  | <b>Restitution</b>                 |
|------------------|------------------------------------|
| Customer A: KK   | \$137,305.34                       |
| Customer B-1: CH | \$42,564.70                        |
| Customer B-2: CH | \$31,773.66                        |
| Customer C: KH   | \$96,306.65                        |
| Customer D: KP   | \$18,770.43                        |
| Customer E: FP   | \$104,988.22                       |
| Customer F: AB   | \$49,224                           |
| Customer G-1: MA | \$19,224                           |
| Customer G-2: MA | \$21,032                           |
| Customer H: PM   | \$38,520                           |
| Customer I: MS   | \$35,219.74                        |
| <b>Total</b>     | <b>\$594,928.74, plus interest</b> |