

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021072830601**

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

RE: Ariel Rivero (Respondent)
General Securities Representative
CRD No. 4236679

Pursuant to FINRA Rule 9216, Respondent Ariel Rivero 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

Rivero first registered with FINRA in 2000 through an association with a FINRA member firm. From May 2016, through January 2022, Rivero was registered with FINRA as a General Securities Representative through an association with Jefferies LLC (CRD No. 2347). Rivero is currently registered with FINRA through an association with another FINRA member firm.¹

OVERVIEW

Between November 2020 and January 2022, Rivero used WhatsApp Messenger, a mobile phone application used to send and receive encrypted messages, to communicate with six firm customers about securities-related business. Because WhatsApp was not one of Jefferies' approved electronic communications channels, the firm did not preserve Rivero's WhatsApp communications as required by Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-4(b)(4). By causing Jefferies to maintain incomplete books and records, Rivero violated FINRA Rules 4511 and 2010.

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

In December 2020, Rivero borrowed \$500,000 from a firm customer without providing prior written notice or obtaining written approval from the firm, in violation of FINRA Rules 3240 and 2010.

In April 2021, Rivero attempted to settle a customer complaint without notifying Jefferies, in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of a customer arbitration.

A. Rivero used WhatsApp for securities-related communications.

FINRA Rule 4511 requires each member to make and preserve books and records in conformity with, among others, Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(b)(4), which requires member firms to maintain for a period of not less than three years the originals of all communications received, and copies of all communications sent, by the member relating to the member's business. A registered representative who causes his or her member firm to fail to comply with its recordkeeping obligations violates FINRA Rule 4511.

A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

From November 2020 to January 2022, Jefferies' written supervisory procedures prohibited registered representatives from communicating with customers about securities business through unapproved messaging services such as WhatsApp.

Nonetheless, during this period, Rivero used WhatsApp to exchange hundreds of securities-related messages with six firm customers. These messages included, among other things, obtaining authorization to buy and sell stocks, discussions about account performance, and discussions related to the customer complaint and customer loan discussed below. In 2020, Rivero falsely attested that he did not use unapproved messaging services such as WhatsApp for business-related communications.

Because WhatsApp was not an approved channel for electronic communications with customers, Jefferies did not capture or maintain these communications, which it was required to do under the Exchange Act and FINRA rules.

By communicating with customers about firm business in messages that the firm did not preserve, Rivero violated FINRA Rules 4511 and 2010.

B. Rivero received a loan from a customer without prior written notice or obtaining written approval from the firm.

FINRA Rule 3240 prohibits registered persons from borrowing money from their customers unless (1) their member firm has written procedures permitting borrowing from customers; and

(2) the borrowing arrangement meets at least one of five circumstances specified in the rule. Even if these requirements are satisfied, the registered representative must seek and obtain prior written approval of the loan from the member firm, except that the firm's procedures may provide otherwise where the customer is a lending-related business, under certain circumstances, or a member of the representative's immediate family.

A violation of FINRA Rule 3240 also constitutes a violation of FINRA Rule 2010.

In December 2020, Jefferies' written supervisory procedures prohibited registered representatives from borrowing money from a customer without permission from the firm unless the customer was an immediate family member or a financial institution.

In December 2020, Rivero borrowed \$500,000 from his long-time friend and customer at Jefferies. The customer was not an immediate family member or a financial institution. To date, Rivero has repaid the customer more than half of the amount he borrowed, and he is current on his payments on the loan. Rivero did not provide any notice, written or otherwise, to Jefferies about the loan, and he did not obtain approval from Jefferies to borrow the money.

Therefore, Rivero violated FINRA Rules 3240 and 2010.

C. Rivero attempted to settle a customer complaint without the knowledge or consent of his firm.

Settling or attempting to settle a customer complaint without a firm's knowledge or approval violates FINRA Rule 2010.

Jefferies' written supervisory procedures required registered representatives to escalate customer complaints to managers and prohibited representatives from settling complaints that had not been disclosed to the firm.

In April 2021, a customer, who was also Rivero's former brother-in-law, complained to Rivero about losses in the customer's account from investments in non-traditional exchange traded funds. Rivero offered, via WhatsApp, to reimburse the customer over \$300,000 in monthly installments of \$10,000 to resolve the complaint. Rivero did not disclose to Jefferies the customer's complaint or Rivero's attempt to settle with the customer. However, Rivero did not reach a settlement agreement with the customer or make any payments to him. Ultimately, the customer filed an arbitration claim against Jefferies and Rivero.²

As a result of Rivero's attempt to settle a customer complaint without notice to his member firm, Rivero violated FINRA Rule 2010.

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

- a six-month suspension from associating with any FINRA member in all capacities and

² Jefferies settled the customer's complaint in 2023.

- a \$15,000 fine.

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 he 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.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes 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, he 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.

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 him;
- 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 he 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.

Respondent certifies that he has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 him to submit this AWC.

May 3, 2024

Date

Ariel Rivero

Ariel Rivero
Respondent

Reviewed by:

Jon A. Jacobson

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Accepted by FINRA:

May 13, 2024

Date

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

Jennifer Cullinane

Jennifer Cullinane
Counsel
FINRA
Department of Enforcement
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