

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 91853 / May 12, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20298**

**In the Matter of**

**GWFS Equities, Inc.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against GWFS Equities, Inc. (“Respondent” or “GWFS”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. From September 2015 through October 2018 (the "Relevant Period"), GWFS, a registered broker-dealer, failed to file certain Suspicious Activity Reports ("SARs") with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") and omitted from certain filed SARs important information it knew, and was required to report, about the suspicious activities.

2. GWFS provides services to employer-sponsored retirement plans. Over the course of the Relevant Period, GWFS began detecting increasing numbers of attempts by bad actors to gain unauthorized access to the retirement accounts of individual plan participants and the funds therein. The bad actors generally tried to access the accounts by using improperly obtained personal identifying information of the plan participants. Although GWFS concluded that the personal identifying information was not obtained in connection with any breach of GWFS' systems, the bad actors frequently were in possession of electronic login information—such as user names, email addresses, and passwords—of the plan participants. GWFS detected most of these attempts before the bad actors could request a distribution from a plan participant's account, but some incidents involved successful distributions. These attempts, whether or not funds were ultimately withdrawn, are referred to as "account takeovers."

3. During the Relevant Period, GWFS failed to implement its anti-money laundering program ("AML Program") consistently in practice. As a result, GWFS: (1) failed to file approximately 130 SARs, including in cases when it had detected external bad actors gaining, or attempting to gain, access to the retirement accounts of participants in the employer-sponsored retirement plans it serviced; and (2) omitted, from approximately 297 SARs it did file, information it knew, and was required to report, about the suspicious activity and suspicious actors.

4. As a result of the conduct described herein, GWFS willfully<sup>2</sup> violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

## **Respondent**

5. GWFS Equities, Inc., headquartered in Greenwood Village, Colorado, has been registered as a broker-dealer with the Commission since 1985. GWFS is one of several affiliates of Great-West Life & Annuity Insurance Company (collectively, “Great-West”). GWFS’ core business concerns executing transactions on behalf of Great-West’s employer-sponsored retirement plan clients.

## **Background**

6. Great-West’s business focuses primarily on the retirement services market, with an emphasis on defined contribution plans, including plans commonly known as “401(k)” and “403(b)” plans.

7. Great-West provides record-keeping and other services to employer-sponsored retirement plans. It is the nation’s second largest record-keeping retirement service provider, with approximately 9.4 million participant accounts holding over \$700 billion in assets.

8. GWFS buys and sells securities on behalf of Great-West’s retirement plan participants, individual retirement accounts, and brokerage accounts, and virtually all of GWFS’ revenue comes from its administration of retirement plan accounts. GWFS is responsible for identifying suspicious transactions that occur in the Great-West plan participants’ accounts, and reporting suspicious transactions by filing SARs.

9. Beginning in approximately 2015 and continuing through the Relevant Period, GWFS, and the retirement-plan servicing industry in general, experienced a rise in account takeovers. In response, GWFS enhanced its efforts to detect and prevent the account takeovers.

10. GWFS recognized at the time, and throughout the Relevant Period, that these account takeovers are required to be reported under the Bank Secrecy Act (“BSA”) and implementing regulations promulgated by FinCEN when the account takeover at issue involved at least \$5,000. GWFS had an AML Program that included, among other things, a BSA Officer, a SAR Committee, Written Supervisory Procedures, and formal and informal training. GWFS’ AML Program materials noted the importance of providing clear, complete, and concise descriptions of the suspicious activity, including the “who, what, when, where, and why” of the suspicious activity being reported. However, GWFS did not comply with its SAR-reporting obligations as to these incidents.

## **The Bank Secrecy Act**

11. The BSA and implementing regulations promulgated by FinCEN require that broker-dealers file SARs with FinCEN to report a transaction (or pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating funds or other assets of at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds

derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) (“SAR Rule”).

12. FinCEN’s regulations implementing the BSA require that: “A suspicious transaction shall be reported by completing a Suspicious Activity Report.” 31 C.F.R. § 1023.320(b)(1). FinCEN instructs SAR filers to “provide a clear, complete, and concise description of the activity, including what was unusual or irregular that caused suspicion” in the narrative and to “include any other information necessary to explain the nature and circumstances of the suspicious activity.” See FinCEN, *FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Requirements* (October 2012). As noted by FinCEN—whose guidance and SAR instructions were incorporated into GWFS’ AML Program—in order to be effective tools and fulfill their intended purpose, broker-dealers should describe in SAR narratives “the five essential elements of information – *who? what? when? where? and why?* – of the suspicious activity being reported.”<sup>3</sup> When a SAR is filed “it must include information about each of the Five Essential Elements of the suspicious activity.” See *SEC v. Alpine Sec. Corp.*, 308 F. Supp. 3d 775, 804 (S.D.N.Y. 2018), *aff’d* 982 F.3d 68 (2d Cir. 2020). When a SAR “lack[s] basic information regarding the Five Essential Elements . . . [the] SAR [i]s deficient as a matter of law.” *Id.* at 800.

13. FinCEN has provided additional instruction regarding financial institutions’ obligations to report cyber-related events. In December 2011, for example, FinCEN issued an Advisory to alert financial institutions to the increased threat of cyber account takeover activity.<sup>4</sup> FinCEN advised that “[c]ybercriminals are increasingly using sophisticated methods to obtain access to accounts” and these “attacks aim to deliberately exploit a customer’s account and, in many instances, to gain seemingly legitimate access to another customer’s account.” *Id.* In order to assist financial institutions with identifying and reporting account takeover activity where cybercriminals attempt intrusions into a customer’s account in order to steal the customer’s funds, FinCEN also set forth detailed instruction for reporting account takeovers that emphasizes the importance of reporting cyber-related information—including cyber-event data such as URL address and IP addresses with timestamps, as well as email addresses and other electronic identifying information—in the event of a cyber-enabled account takeover.<sup>5</sup>

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<sup>3</sup> See, e.g., FinCEN, *Guidance on Preparing a Complete & Sufficient Suspicious Activity Report Narrative* (Nov. 2003), at pg. 3 (*emphasis in original*).

<sup>4</sup> FinCEN, *Account Takeover Activity*, FIN-2011-A016 (Dec. 19, 2011).

<sup>5</sup> See FinCEN, *Advisory to Financial Institutions on Cyber-Events and Cyber-Enabled Crime*, FIN-2016-A005 (Oct. 25, 2016); see also *Frequently Asked Questions (FAQs) regarding the Reporting of Cyber-Events, Cyber-Enabled Crime, and Cyber-Related Information through Suspicious Activity Reports (SARs)* (Oct. 25, 2016).

14. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule—including omitting from a filed SAR “a clear, complete, and concise description of the activity, including what was unusual or irregular that caused suspicion” or failing to “identify the five essential elements of information – *who? what? when? where? and why?* – of the suspicious activity being reported”—is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. *See Alpine Sec. Corp.*, 308 F. Supp. 3d at 798–800.

15. GWFS’ AML Program required, among other things, that SAR-filers include the “five essential elements” in the SAR narratives, consistent with FinCEN’s instruction.

### **GWFS Failed to File Approximately 130 SARs**

16. In approximately 130 instances during the Relevant Period, GWFS failed to file SARs when it was required to do so.

17. For example, in April 2016, Plan Participant A (“PPA”) contacted GWFS to report an unauthorized withdrawal of approximately \$128,000. GWFS’ internal investigation determined that, in March 2016, someone fraudulently impersonating PPA called GWFS’ call center, authenticated PPA’s personal identifying information, and requested a distribution form that was sent by facsimile. After the distribution was requested and made, PPA’s retirement plan administrator notified GWFS of the suspicious activity, at which time GWFS put a hold on the account. GWFS determined that the distribution was fraudulent, and identified various bank accounts and phone numbers associated with the bad actor. In the following months, the phone number used to make the initial call was used in at least two other account takeovers.

18. GWFS’ BSA Officer and SAR Committee reviewed the investigative reports of PPA’s account takeover and determined that a SAR should be filed, but GWFS did not take further steps to ensure a SAR was filed. As a result, GWFS did not file a SAR concerning PPA’s account takeover.

19. In another example, in December 2016, Plan Participant B (“PPB”) contacted GWFS to report receiving a check for approximately \$43,000 that he did not request. GWFS’ internal investigation determined that PPB’s personal information had been changed and that the account had been accessed using an IP address that GWFS had identified in connection with another account takeover. The internal investigation determined phone numbers and IP addresses that had been used in the fraudulent withdrawal request, and names and businesses associated with those phone numbers and IP addresses. Additionally, GWFS identified with specificity how the account takeover perpetrator planned to carry out his or her fraud—namely, by intercepting the check that was sent to PPB at the package delivery facility—and that the interception was ultimately not successful because the bad actor called the delivery facility after the package was already out for delivery. In total, nine plan participants’ accounts with PPB’s employer were improperly accessed in the same period and with a similar pattern of activity.

20. Although GWFS personnel shared a summary of their investigation of PPB's account takeover with GWFS' BSA Officer, and PPB's account takeover was a suspicious transaction that required reporting under the BSA and GWFS' AML Program, GWFS did not take further steps to ensure a SAR was filed. As a result, GWFS did not file a SAR concerning PPB's account takeover.

21. During the Relevant Period, in approximately 130 separate transactions, GWFS personnel, including the BSA Officer, identified fraudulent transactions that required SAR filings, yet GWFS failed to file SARs. As a result of this conduct, GWFS willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

### **GWFS Filed Approximately 297 Deficient SARs**

22. In approximately 297 instances during the Relevant Period, GWFS filed SARs concerning account takeovers, but omitted from its SAR narratives known facts identifying the "five essential elements"—namely the "who, what, when, where, and why" of the suspicious activity being reported. These SAR narratives also omitted other key facts, including details relating to cyber-events, necessary to make the SARs effective tools and fulfill their intended purpose.

23. As a result of its investigations into account takeover incidents, GWFS often possessed specific, detailed information about the underlying suspicious activity, including, for example: when and how the suspicious actor took control, or attempted to take control, of the plan participant's account; identifying information regarding the suspected bad actors, including names on bank accounts, telephone numbers, and associated names and locations; IP addresses and email addresses linked to the bad actors; and details regarding how the bad actors used misappropriated funds once they had been improperly withdrawn from the GWFS plan participants' accounts.

24. Despite having compiled such information, and sharing it with GWFS' SAR Committee and BSA Officer, GWFS failed to include it in its SAR narratives. Instead, GWFS filed hundreds of SARs that disclosed only that an unauthorized person had accessed a plan participant's account—and omitted any details about the bad actor or the bad actor's activity.

25. For example, in October 2016, Plan Participant C ("PPC") was the victim of two unauthorized withdrawals from his retirement account, totaling approximately \$250,000. GWFS' investigation revealed that a new email address, telephone number, and bank account had been added to PPC's account profile, and further identified the names of the account holders for the bank accounts to which the unauthorized funds were transferred—including these individuals' phone numbers, IP addresses, and mailing addresses. GWFS also identified that the bad actor's bank account associated with the unauthorized access to PPC's account had previously been associated with another account takeover involving a different plan participant.

26. Despite the SAR Committee and the BSA Officer receiving detailed identifying information about the bad actor, the nature of how the bad actor accessed PPC's account, and the bad actor's association with another account that had been taken over, GWFS filed a SAR that did not include the "five essential elements" about the bad actor or the bad actor's conduct—instead

using a template narrative that GWFS used through much of the Relevant Period, that simply stated:

The participant's account was taken over by an unauthorized individual who used all of their personal information to authenticate as the participant. It is unknown whether or not there is any related litigation with this SSN. It is unknown whether or not foreign nationals are involved in this activity. It is unknown whether or not the IRS has been contacted. All information is contained in this report.

27. Similarly, in August 2016, Plan Participant D ("PPD") was the victim of multiple unauthorized withdrawals totaling more than \$400,000. GWFS' investigation revealed a number of specific, detailed facts about the account takeover, including that two days before the first withdrawal, an individual had called GWFS from a phone number that GWFS had flagged as being associated with several other recent fraud attempts to inquire about the balance in PPD's account; that PPD's account login information was changed the next day via online access; and that the bad actor then proceeded to request that three separate withdrawals be directed toward three different bank accounts. GWFS learned from one of the banks to which the bad actor had requested a transfer that the account had been associated with fraudulent activity. The name of the owner of that bank account was identified, and the account numbers for the two other bank accounts were also identified.

28. Despite the SAR Committee and BSA Officer receiving these specific details about the suspicious activity, GWFS again filed a generic SAR that did not include the "five essential elements" about the bad actor or the bad actor's conduct—instead using a template narrative that simply stated:

The participant did not request a distribution but someone using all of their personal information authenticated and requested a distribution on their behalf. It is unknown whether or not there is any related litigation with this SSN. It is unknown whether or not foreign nationals are involved in this activity. It is unknown whether or not the IRS has been contacted. All information is contained in this report.

29. Over the course of the Relevant Period, GWFS filed SARs for approximately 297 transactions relating to account takeovers that included SAR narratives with similarly generic, template language, despite GWFS possessing (among other key details) information identifying persons, phone numbers, bank accounts, and IP addresses connected to the unauthorized access.

30. As a result of this conduct, GWFS willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

### **GWFS' Cooperation and Remediation**

31. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

32. GWFS undertook significant remedial measures, including implementing new SAR drafting procedures; retaining an outside AML consulting firm to review and recommend enhancements to its SAR processes; increasing both the size and experience of its AML compliance team; restructuring its SAR process to ensure greater accountability and quality control; implementing new SAR-related policies, procedures, standards, and training; and implementing a new case management system to track all reports of unusual activity from initial intake through SAR decision and SAR filing.

33. GWFS also provided substantial cooperation during the investigation. GWFS conducted a thorough internal investigation of its AML Program; identified key documents; made detailed presentations on its findings to the staff; and provided helpful analyses of the issues leading to the inadequate SAR narratives. GWFS also identified numerous transactions for which no SAR had been filed.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in the Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 promulgated thereunder.

B. Responded is censured.

C. Respondent shall, within twenty-one (21) days of the entry of this Order pay a civil monetary penalty in the amount of \$1,500,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;



- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying GWFS as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jason Burt, Associate Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, 1961 Stout Street, Suite 1700 Denver, CO 80294.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary