

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021072581101**

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

RE: M1 Finance LLC (Respondent)
Member Firm
CRD No. 281242

Pursuant to FINRA Rule 9216, Respondent M1 Finance LLC 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

M1 Finance LLC, which became a FINRA member in 2016, provides self-directed trading to retail investors through its mobile application and website. Headquartered in Chicago, Illinois, the firm has approximately 60 registered representatives at one branch office.¹

OVERVIEW

Between January 2020 and April 2023, M1 Finance paid individuals with followings on social media sites (commonly known as “influencers”) to promote the firm in social media communications. M1 Finance’s influencers posted on the firm’s behalf communications about the firm that were not fair and balanced or made claims that were exaggerated, unwarranted, promissory, or misleading. Therefore, M1 Finance violated FINRA Rules 2210(d)(1) and 2010.

During that same period, M1 Finance did not review M1 Finance’s influencers’ communications prior to their posting on social media platforms, nor did the firm retain the communications. M1 Finance also failed to establish, maintain, and enforce a system, including written supervisory procedures (WSPs), reasonably designed to supervise

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

communications disseminated on the firm's behalf by the firm's influencers. Therefore, the firm violated the Securities Exchange Act of 1934 Section 17(a), Exchange Act Rule 17a-4(b)(4), and FINRA Rules 2210(b), 4511, 3110, and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination of firms' practices related to the acquisition of customers through social media channels.

1. M1 Finance's influencer communications were not fair and balanced and included exaggerated and promissory statements.

FINRA Rule 2210 addresses FINRA member communications with the public and includes content standards that apply to all member communications, including retail communications. FINRA Rule 2210(a)(5) defines retail communication as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

FINRA Rule 2210(d)(1)(A) requires that all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts regarding any particular security, industry, or service. No member may omit any material fact or qualification if the omission, considering the context of the material presented, would cause the communication to be misleading. FINRA Rule 2210(d)(1)(B) states that no member may make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication or publish, circulate, or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

A violation of FINRA Rule 2210 also is a violation of FINRA Rule 2010, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

In Regulatory Notices 10-06 and 17-18, FINRA stated that third parties' social media posts would constitute retail communications subject to FINRA Rule 2210 if a member firm either (1) paid for or was involved in the preparation of the content prior to posting (which FINRA referred to as "entanglement") or (2) explicitly or implicitly endorsed or approved the content (which FINRA referred to as "adoption").

During the relevant period, M1 Finance paid influencers to promote the firm. The firm chose influencers to participate in its influencer marketing program based on the size of an influencer's social media following and the relevance of the influencer's social media content to M1 Finance's business. The firm paid influencers who participated in its program a flat fee for every new account that was opened and funded by the customer using a unique link provided by M1 Finance. M1 Finance did not limit the compensation influencers could earn. During this period, the firm paid approximately 1,700 influencers over \$2.75 million, resulting in more than 39,400 new accounts which were opened and

funded.

M1 Finance’s influencers’ social media posts were retail communications of M1 Finance subject to FINRA Rule 2210. M1 Finance provided its influencers with a unique link which directed people to a page on the firm’s website where they could open and fund an M1 Finance brokerage account. The firm instructed its influencers to include this link in their social media posts about the firm. M1 Finance also provided its influencers with graphics to use in their social media posts and a “Welcome Guide” that influencers could use to make their social media posts more effective and highlighted specific services and features offered by the firm. For example, the Welcome Guide touted the firm’s lack of commissions or management fees and its margin lending program, and it invited influencers to contact the firm for other promotional ideas.

During the relevant period, numerous M1 Finance influencers created social media posts which promoted M1 Finance but were false and misleading or not fair and balanced. For instance, in a video posted on a social media platform, an influencer advertising the firm’s margin lending program stated that customers “can pay [margin loans] back at any given time . . . there is no set time period.” In fact, investors are not entitled to any extension of time to meet the firm’s margin requirements, and the firm can, without contacting the investor, increase the maintenance margin requirement on the account at any time, force a sale of securities in the account, and choose which securities to sell. Other influencer posts touted that M1 Finance’s margin interest rates were low but did not disclose that those rates could fluctuate.

M1 Finance’s influencers also posted communications claiming that M1 Finance’s services were completely free without disclosing that certain fees may apply. For example, in a video posted on a social media platform, an M1 Finance influencer claimed that M1 Finance accounts had “no fees.” In another, an M1 Finance influencer claimed that “with M1 Finance, you can trade for free . . . [and] every dollar you are putting into the platform is actually going into that ETF or that stock or bond.” These posts did not disclose that other fees may apply and did not provide a prominent link to M1 Finance’s fee schedule.²

M1 Finance’s influencers also posted communications containing promissory language about M1 Finance. For example, in a video posted on a social media platform, an M1 Finance influencer showed viewers how to open a Roth IRA using M1 Finance and how to purchase specific securities. The influencer stated, “it is a general principle that anyone who starts a ROTH IRA early on let’s say in their 20s will become a millionaire by the time they’re 60. In fact, you’ll probably have a lot more than a million bucks by that age if you contribute \$6,000 per year.” The post did not have a balanced discussion of the risks involved in investing.

Therefore, M1 Finance violated FINRA Rules 2210(d)(1) and 2010.

² In Regulatory Notice 13-23, FINRA reminded firms that claiming or implying that accounts are “free” or “no fee” would generally be inconsistent with FINRA Rule 2210.

2. M1 Finance failed to approve its influencers' posts about the firm before they were used and failed to preserve records of its influencers' posts.

FINRA Rule 2210(b)(1)(A) requires that an appropriately qualified registered principal of a member firm must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department.

In addition, the Exchange Act, its accompanying rules, and FINRA rules require firms to preserve certain records related to retail communications. Exchange Act §17(a) requires every registered broker-dealer to "keep for prescribed periods such records . . . as the Commission, by rule, prescribes." Exchange Act Rule 17a-4(b)(4) requires every registered broker-dealer to preserve for at least three years "all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public." FINRA Rule 2210(b)(4)(A) requires that member firms maintain all retail communications for the period prescribed under the Exchange Act and maintain a record of, among other things: (i) the dates of first and last use of such communication; and (ii) the name of any registered principal who approved the communication and the date that approval was given. FINRA Rule 4511 requires member firms to "preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

A violation of the Exchange Act, Exchange Act Rules, and FINRA Rule 4511 also is a violation of FINRA Rule 2010.

During the relevant period, M1 Finance did not have an appropriately qualified registered principal review its influencers' posts prior to them being made public. During that period, the firm also did not maintain records of the retail communications created by its influencers or the dates each retail communication was used.

Therefore, M1 Finance violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-4, and FINRA Rules 2210(b), 4511, and 2010.

3. M1 Finance failed to establish, maintain, and enforce a reasonably designed supervisory system, including WSPs, for its influencers' retail communications.

FINRA Rule 3110(a) requires each member firm to 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 each member firm to 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 applicable securities laws and regulations, and with applicable FINRA rules. A violation of FINRA Rule 3110 also is a violation of FINRA Rule 2010.

During the relevant period, M1 Finance did not establish, maintain, or enforce a reasonably designed supervisory system, including WSPs, for the firm's retail communications posted by the firm's influencers. Although the firm's WSPs addressed retail communications generally, they did not require the firm to preapprove or maintain records of posts created by influencers' promoting M1 Finance. The firm also did not supervise its retail communications posted by its influencers for compliance with FINRA Rule 2210(d)(1). In particular, the firm did not have any system to review the content of its retail communications posted by its influencers prior to them being used, as required by FINRA Rule 2210(b)(1). The firm also did not establish or maintain a supervisory system to preserve records of those retail communications or their dates of use, as required by Section 17(a) of the Exchange Act, Exchange Act Rule 17a-4, and FINRA Rule 2210(b)(4) and 4511.

In April 2023, the firm revised its policies and procedures, including WSPs, to require a registered principal of the firm review and approve influencer posts prior to use. The firm also implemented a system to retain social media communications disseminated by influencers on the firm's behalf.

By failing to establish, maintain, and enforce a reasonably designed supervisory system, including WSPs, for its retail communications disseminated by its influencers during the relevant period, M1 Finance violated FINRA Rules 3110 and 2010.

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

- a censure
- an \$850,000 fine
- an undertaking that, within 180 days of the date of the notice of acceptance of this AWC, a member of M1 Finance'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 Rule 2210 regarding the issues identified in this AWC. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate M1 Finance's remediation and implementation. FINRA staff may request further evidence of M1 Finance's remediation and implementation, and M1 Finance agrees to provide such evidence. M1 Finance shall submit the certification to Alex Boudreau, Principal Counsel, 99 High Street, Suite 900, Boston, MA 02110, alexandra.boudreau@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.

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.

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.

February 12, 2024

Date

Brian Randall Barnes

M1 Finance LLC
Respondent

Print Name: Brian Randall Barnes

Title: CEO

Reviewed by:

Andrew Rutkowski

Andrew Rutkowski
Senior Director, Assistant General Counsel
M1 Finance LLC
200 N. LaSalle, Suite 800
Chicago, IL 60601

Accepted by FINRA:

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

March 15, 2024

Date

Alexandra Boudreau

Alex Boudreau
Principal Counsel
FINRA
Department of Enforcement
99 High Street, Suite 900
Boston, MA 02110

ELECTION OF PAYMENT FORM

Respondent intends to pay the fine set forth in the attached Letter of Acceptance, Waiver, and Consent by the following method (check one):

- A check for the full amount;
- Wire transfer for the full amount;
- Credit card authorization for the full amount;¹ or
- The installment payment plan (only if approved by the Department of Enforcement and the Office of Disciplinary Affairs).²

Respectfully submitted,

February 12, 2024

Brian Randall Barnes

Date

M1 Finance LLC
Respondent

Print Name: Brian Randall Barnes

Title: CEO

¹ Credit card payment is only available for fines of \$50,000 or less. Only Mastercard, Visa, and American Express are accepted. If this method is chosen, the appropriate forms will be mailed to Respondent by FINRA's Finance Department. Credit card information should not be included on this Election of Payment Form.

² The installment payment plan is only available for fines of \$5,000 or more. Certain interest payments, minimum initial and monthly payments, and other requirements apply. Respondent must discuss these requirements with the Department of Enforcement prior to requesting this method of payment. If this method is chosen and approved, the appropriate forms will be mailed to Respondent by FINRA's Finance Department.