FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021069460001

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

RE: Independent Financial Group, LLC (Respondent)
Member Firm
CRD No. 7717

Pursuant to FINRA Rule 9216, Respondent Independent Financial Group, LLC (IFG) 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

IFG, along with its predecessor firms, has been a FINRA member firm and registered with the Municipal Securities Rulemaking Board (MSRB) since 1978. IFG is headquartered in San Diego, California. IFG has approximately 650 registered representatives and 380 branch offices.[1]

OVERVIEW

From September 2015 to the present, IFG failed to establish and maintain a supervisory system reasonably designed to supervise registered representatives' recommendations to customers that they rollover 529 savings plan investments from one state plan to another. Specifically, IFG did not have policies or procedures regarding available sales charge waivers or special share classes that decreased the cost of 529 plan rollover transactions. Although IFG revised its written supervisory procedures in May 2022 to address 529 plan rollover transactions, the procedures failed to articulate the firm's policy for providing customers with available sales charge waivers or special share classes. Further, although IFG initiated training in 2023 on the potential availability of 529 plan rollover sales charge waivers, the training similarly failed to articulate the firm's policy for providing customers with those waivers. Some customers who were eligible for waivers did not

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

receive them. Therefore, Respondent violated MSRB Rule G-27. As of June 30, 2020, Respondent also violated Exchange Act Rule 15*l*-1(a)(1) ("Reg BI"), specifically, Reg BI's Compliance Obligation.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA review of whether eligible customers who rolled their 529 plans from one state plan to another were receiving available front-end sales charge waivers or Class AR shares.

Background—529 Plans

529 plans are tax-advantaged municipal securities that are designed to encourage saving for the future educational expenses of a designated beneficiary.[2] 529 plans are sponsored by states, state agencies, or educational institutions. All fifty states and the District of Columbia sponsor at least one type of 529 plan. States offer 529 plans either directly, through designated broker-dealers, or both.

Shares of 529 plans are sold in different classes with different fee structures.[3] Class A shares typically impose a front-end sales charge but charge lower annual fees compared to other classes. Class C shares typically impose no front-end sales charge but impose higher annual fees than Class A shares.

Some 529 plan product sponsors waive sales charges for investors who roll their current 529 plan from one state's 529 plan into another state's 529 plan, either by waiving the sales charges on Class A shares or by offering a special share class, Class AR, which is meant specifically for 529 plan state-to-state rollovers and has no upfront sales charge. Class AR shares are subject to a contingent deferred sales charge within the first year and, initially, have annual fees similar to a Class C share but convert to Class A shares after a predefined length of time, usually one year.

The different sales charges, waivers, and fees associated with 529 plans affect customers' investment returns. If a customer qualifies for a Class A sales charge waiver or a Class AR share as a result of a rollover, he or she would not pay the front-end sales charge traditionally associated with new Class A share purchases. In contrast, a purchase of a Class C share of the same fund will be subject to higher ongoing fees. Therefore, if a rollover customer qualifies for a Class A sales charge waiver or a Class AR share, there likely would be no justification for that customer to purchase a class of shares that has a sales load and/or higher annual expenses.

[2] 529 plans are named after Section 529 of the Internal Revenue Code (26 U.S.C. § 529), which grants tax-exempt status to qualified education expenses.

[3] A 529 plan is structured as a trust. A customer purchases "units" in the trust. For purposes of this AWC, the terms "unit" and "share" are used interchangeably.

[redacted]

The Applicable Rules Relating to 529 Plan Share-Class Recommendations

Because 529 plans are municipal securities, the sales of 529 plans are governed by the rules of the MSRB.

Prior to June 30, 2020, MSRB Rule G-19 required a broker, dealer or municipal securities dealer to have a reasonable basis to believe that a recommended transaction was suitable for the customer based on the customer's investment profile, which included a customer's investment objectives. As of June 30, 2020, Rule G-19 applies only to recommendations to which Reg BI does not apply.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Reg BI. Exchange Act Rule 15*l*-1(a)(1) requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Care Obligation, set forth at Exchange Act Rule 15*l*-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, understand the potential risks, rewards, and costs associated with a recommendation.

MSRB Rule G-27(a) requires brokers, dealers, and municipal securities dealers to supervise the conduct of their municipal securities activities to ensure compliance with MSRB rules and applicable provisions of the Securities Exchange Act of 1934 and Exchange Act rules. MSRB Rule G-27(b) requires brokers, dealers, and municipal securities dealers to establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable MSRB rules. MSRB Rule G-27(c) requires brokers, dealers, and municipal securities dealers to adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with MSRB Rule G-27(a).

Additionally, Reg BI's Compliance Obligation, set forth at Exchange Act Rule *15l*-1(a)(2)(iv), requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI, including the Care Obligation. The Adopting Release provides that broker-dealers should consider the nature of that firm's operations and how to design such policies and procedures to prevent violations from occurring, detect violations that have occurred, and to correct promptly any violations that have occurred.[4]

[4] Adopting Release at 33397.

Respondent's 529 Plan Rollover Supervision Was Not Reasonable

From September 2015 through the present, Respondent's system for supervising representatives' 529 plan rollover recommendations was not reasonably designed. Since at least September 2015, Respondent made available to customers numerous 529 plans, each of which, at some time during that time period, implemented a Class A sales charge waiver for state-to-state rollovers.

From September 2015 through May 2022, Respondent's policies and procedures, including its written supervisory procedures, did not alert registered representatives who recommended 529 plan state-to-state rollovers of the potential availability of Class A sales charge waivers or Class AR shares for 529 plan rollovers. The firm also did not offer training to registered representatives regarding sales charge waivers or the availability of Class AR shares. Further, Respondent failed to provide supervisors with guidance or training on how to review recommended 529 plan rollover transactions to identify instances where there might have been an available Class A sales charge waivers or Class AR shares.

In May 2022, Respondent revised its written supervisory procedures to address the potential availability of Class A sales charge waivers and Class AR shares for 529 plan rollovers. Although these revised procedures direct representatives to confirm with the applicable plan sponsor if a client is entitled to a sales charge waiver or Class AR share when completing a 529 plan state-to-state rollover, they fail to articulate the firm's policy regarding whether to provide customers with a sales charge waiver or Class AR share. Further, the revised written supervisory procedures do not establish any system for monitoring and reviewing the application of available sales charge waivers or Class AR shares for eligible customers. Starting in 2023, the firm first provided training that apprised representatives of the potential availability of sales charge waivers for 529 plan rollovers. However, the training materials did not address the firm's policy or information regarding whether to provide customers with a sales charge waiver or Class AR share.

As a result, from September 2015 through the present, Respondent failed to consistently apply available sales charge waivers, impacting at least 18 customers in which total rollover dollars totaled at least $837,000. This resulted in at least $17,000 in sales charges and fees that, had the waiver been granted, would not have been charged.

Therefore, from September 2015 to the present, Respondent violated MSRB Rule G-27. From June 30, 2020 to the present, Respondent violated Exchange Act Rule 15*l*-1.

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

- a censure;
- a $75,000 fine ($50,000 of which pertains to the violation of MSRB Rule G-27);
- the firm will pay restitution plus interest to current and former customers who, from September 1, 2015, to the date of the acceptance of this AWC, qualified for,

but did not receive, the applicable sales charge waivers or Class AR shares in connection with recommended state-to-state 529 rollovers ("Eligible Customers") in an amount to be determined by a Third-Party Consultant as described below; and

- an undertaking to do the following:

  a. Continue to retain, at its own expense, the Third-Party Consultant[5] to conclude performance of the following tasks:

     i. Conduct a comprehensive review of the adequacy of Respondent's compliance with MSRB Rule G-27 and Reg BI's Compliance Obligation, including but not limited to a review of Respondent's written supervisory procedures, controls and training related to the application of sales charge waivers or Class AR shares in connection with 529 plan rollover recommendations;

     ii. Identify which customers are Eligible Customers as defined above; and

     iii. Calculate the amount of restitution owed to each Eligible Customer.

  b. Cooperate with the Third-Party Consultant in all respects, including providing the Third-Party Consultant with access to Respondent's files, books, records, and personnel, as reasonably requested for the above-mentioned review. Respondent shall require the Third-Party Consultant to report to FINRA on its activities as FINRA may request and shall place no restrictions on the Third-Party Consultant's communications with FINRA. Further, upon request, Respondent shall make available to FINRA any and all communications between the Third-Party Consultant and Respondent and documents examined by the Third-Party Consultant in connection with this review.

  c. Refrain from terminating the relationship with the Third-Party Consultant without FINRA's written approval. Respondent shall not be in and shall not have an attorney-client relationship with the Third-Party Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Third-Party Consultant from transmitting any information, reports, or documents to FINRA.

  d. Require the Third-Party Consultant to submit an initial written report to Respondent and FINRA at the conclusion of the Third-Party Consultant's review, which shall be no more than 120 days after the date of the notice of acceptance of this AWC. The initial report shall, at a minimum: (i) evaluate

[5] Respondent has already engaged a third-party outside consultant (the Third-Party Consultant) to review the adequacy of Respondent's compliance with MSRB Rule G-27 and Reg BI's Compliance Obligation (including but not limited to Respondent's written supervisory procedures, controls and training related to sales charge waivers or Class AR shares in connection with 529 plan rollover recommendations), identify Eligible Customers, and calculate the amount of restitution owed to Eligible Customers.

and address the adequacy of Respondent's written supervisory procedures, controls, and training concerning sales charge waivers or Class AR shares on 529 plan rollovers; (ii) provide a description of the review performed and the conclusions reached; (iii) make recommendations as may be needed regarding how Respondent should modify or supplement its processes, controls, policies, systems, procedures, and training to manage its regulatory and other risks in relation to compliance with MSRB Rule G-27 and Reg BI's Compliance Obligation; (iv) identify the Eligible Customers (as defined above); and (v) calculate the amount of restitution owed to each Eligible Customer using a methodology not unacceptable to FINRA.

i. Within 60 days after delivery of the initial report, Respondent shall adopt and implement the recommendations of the Third-Party Consultant or, if Respondent considers a recommendation to be, in whole or in part, unduly burdensome or impractical, propose alternative recommendations to the Third-Party Consultant designed to achieve the same objective. Respondent shall submit such proposed alternative recommendations in writing simultaneously to the Third-Party Consultant and FINRA.

ii. Respondent shall require that, within 30 days of Respondent's submission of any proposed alternative procedure, the Third-Party Consultant: (A) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Third-Party Consultant's original recommendation; and (B) provide Respondent and FINRA with a written report reflecting the Third-Party Consultant's evaluation and determination. In the event the Third-Party Consultant and Respondent are unable to agree, Respondent must abide by the Third-Party Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Third-Party Consultant.

Implementation of Third-Party Consultant's Supervisory Recommendations

iii. Within 60 days after the issuance of the later of the Third-Party Consultant's initial report or the Third-Party Consultant's ultimate determination with respect to any proposed alternative recommendation, Respondent shall provide the Third-Party Consultant and FINRA with a written implementation report, certified by an officer of Respondent, attesting to, containing documentation of, and setting forth the details of Respondent's implementation of the Third-Party Consultant's recommendations. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

Payment of Restitution to Eligible Customers

iv. Within 60 days after the issuance of the later of the Third-Party Consultant's initial report or the Third-Party Consultant's ultimate determination with respect to any proposed alternative recommendation, the Firm shall remit to each Eligible Customer restitution consistent with the Third-Party Consultant's initial report or ultimate determination with respect to any proposed alternative recommendation, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), with interest amounts to be calculated based on the date that the excess charges and fees for each respective customer were incurred until the date of the acceptance of the AWC.

v. 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 to Elissa Meth Kestin either (1) by letter that identifies Respondent and the case number and includes copies of the checks, money orders or other methods of payment or (2) by e-mail, with .pdf copies of the payment documentation, from a work-related account of a registered principal of Respondent to EnforcementNotice@FINRA.org. This proof shall be provided to the FINRA staff member listed above no later than 60 days from the date on which the firm issued the restitution payments to Eligible Customers.

vi. 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 issuance of the later of the Third-Party Consultant's initial report or the Third-Party Consultant's ultimate determination with respect to any proposed alternative recommendation, 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.

e. Upon written request showing good cause, FINRA may extend any of the procedural dates set forth above.

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.

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.

The imposition of a restitution order or any other monetary sanction 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.

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 Independent Financial Group, LLC, certifies that a person duly authorized to act on its 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 IFG 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 Independent Financial Group, LLC to submit this AWC.

November 26, 2024

Date

Sarah Kreisman

Independent Financial Group, LLC
Respondent

Sarah Kreisman

Print Name:

General Counsel/VP, Compliance

Title:

Accepted by FINRA:

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

November 27, 2024

Anne Cowman

Date

Anne Cowman, Esq.
Honors Associate
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