

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2023077084701**

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

RE: Mariner Investment Group (Respondent)  
Member Firm  
CRD No. 35993

Pursuant to FINRA Rule 9216, Respondent Mariner Investment Group 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**

Mariner Investment Group has been a FINRA member since April 1994. The firm, which is located in Houston, Texas, has four registered representatives. It conducts a general securities business with retail customers.<sup>1</sup>

**OVERVIEW**

From June 2020 until December 2023, Mariner failed to establish and maintain a supervisory system, including written policies and procedures, reasonably designed to achieve compliance with Regulation Best Interest (Reg BI). In addition, the firm failed to identify or investigate a red flag associated with the purchase of a non-traditional exchange-traded product (NT-ETP). As a result, the firm willfully violated Rule 15c-1(a)(1) of the Securities Exchange Act of 1934 and violated FINRA Rules 3110 and 2010.

For these violations, Mariner is censured and fined \$25,000, and will pay restitution of \$26,864.84 plus interest.

**FACTS AND VIOLATIVE CONDUCT**

This matter originated from a FINRA firm examination of Mariner Investment Group.

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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. Mariner failed to establish written policies and procedures and a supervisory system reasonably designed to achieve compliance with Regulation Best Interest.**

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation BI under the Securities Exchange Act of 1934. Rule 15c-1(a)(1) of Reg BI 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 Compliance Obligation, set forth at Exchange Act Rule 15c-1(a)(2)(iv), requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. Reg BI's Adopting Release provides that a broker-dealer should consider the nature of its operations and how to design policies and procedures to prevent violations from occurring, detect violations that have occurred, and to correct promptly any violations that have occurred.<sup>2</sup>

FINRA Rule 3110 requires member firms to establish, maintain, and enforce a supervisory system, including written procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules, including Reg BI.

A violation of Reg BI or FINRA Rule 3110 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 June 2020 until December 2023, Mariner failed to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to achieve compliance with Reg BI. The firm's WSPs, for example, contained no provisions relating to Reg BI until at least May 2023, and even then, discussed Reg BI only in general terms. The WSPs did not address the obligations set forth in Reg BI at all, nor did the WSPs describe how the firm's associated persons should implement, comply with, and supervise the firm's obligations under Reg BI. In December 2023, the firm updated its WSPs to address Reg BI in greater detail.

Therefore, from June 2020 until December 2023, Mariner willfully violated Exchange Act Rule 15c-1(a)(1) and violated FINRA Rules 3110 and 2010.

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<sup>2</sup> *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33397 (July 12, 2019).



**B. Mariner failed to reasonably supervise a representative's recommendation of an NT-ETP.**

NT-ETPs are designed to return a multiple of an underlying index or benchmark, the inverse of the benchmark, or both over the course of one trading session, typically lasting a single day. In June 2009, FINRA Regulatory Notice 09-31 reminded firms that, due to the effect of compounding, the performance of NT-ETPs over periods longer than a single trading session “can differ significantly from the performance (or inverse of the performance) of their underlying index or benchmark during the same period of time.” As a result, NT-ETPs “typically are not suitable for retail investors who plan to hold them for more than one trading session[.]”

FINRA Rule 3110(a) requires that each member 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. The duty to supervise under FINRA Rule 3110(a) 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.

Mariner prohibits representatives from soliciting NT-ETP investments. Nevertheless, in February 2022, a Mariner representative recommended that a 90-year-old customer purchase a daily-reset NT-ETP. The representative identified the purchase as “solicited” on the firm’s books and records, which should have alerted the firm to the representative’s non-compliance with the firm’s prohibition. However, the firm failed to identify or investigate this red flag. The customer subsequently held the NT-ETP for 292 days at a realized loss of \$26,864.84.

Therefore, Mariner violated FINRA Rules 3110 and 2010.

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

- a censure;
- a \$25,000 fine; and
- restitution of \$26,864.84 plus interest as described below.

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 customer listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$26,864.84, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from February 24, 2022, 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.

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 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 understands that this settlement includes a finding that it willfully violated Rule 15c-1(a)(1) of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes Respondent subject to a statutory disqualification with respect to membership.

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 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.

3-5-2025  
Date

W James Edral  
Mariner Investment Group  
Respondent

Print Name: W James Edral  
Title: CEO

Accepted by FINRA:

March 18, 2025  
Date

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

Daniella Roseman  
Daniella Roseman  
Counsel  
FINRA  
Department of Enforcement  
1601 Market Street  
Suite 2700  
Philadelphia, PA 19103

**ATTACHMENT A**  
**SCHEDULE OF RESTITUTION**

<b>Customer</b>	<b>Restitution Amount (Exclusive of Interest)</b>
Customer A	\$26,864.84