FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2023077022001

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

RE: Greenbird Capital LLC (Respondent)
Member Firm
CRD No. 306692

Pursuant to FINRA Rule 9216, Respondent Greenbird Capital 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

Greenbird Capital LLC has been a FINRA member since 2020. The firm, which is headquartered in Boca Raton, FL, has 6 registered representatives and one branch office.[1]

OVERVIEW

From May 2021 through December 2023, Greenbird Capital did not establish, maintain, and enforce a system, including written procedures, reasonably designed to supervise the firm's solicitations of private placements and the telemarketing activities of its registered representatives with respect to the national do-not-call list and calls during prohibited times. Therefore, the firm violated FINRA Rules 3110, 3230(d) and 2010, and is censured and fined $50,000.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2023 cycle examination of Greenbird Capital.

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

A. Greenbird Capital lacked a system reasonably designed to supervise solicitations of private placements.

FINRA Rule 3110(a) requires a 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 a 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, which requires members to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

Section 5 of the Securities Act of 1933 prohibits the offer or sale of securities unless either a registration statement is in effect as to such securities or the sales are exempt from registration. Section 4(a)(2) of the Securities Act exempts from registration "transactions by an issuer not involving any public offering." Rule 506(b) of Regulation D provides a safe harbor under Section 4(a)(2) for private offerings of unregistered securities if certain conditions are met. One such condition is that the offering must not involve a general solicitation to market the securities. Rule 502(c) of Regulation D, in turn, generally sets forth the forms of prohibited general solicitations.

The SEC has issued guidance stating that a broker-dealer, acting on behalf of an issuer, can demonstrate the absence of general solicitation under Rule 502(c) by establishing a pre-existing, substantive relationship with the prospective investors. A "pre-existing relationship is one . . . that was established through . . . a registered broker-dealer . . . prior to the registered broker-dealer['s] . . . participation in the offering."[2] "A 'substantive' relationship is one in which the issuer (or a person acting on its behalf) has sufficient information to evaluate, and does in fact evaluate, a prospective offeree's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor."[3] A broker-dealer can establish a pre-existing, substantive relationship with a prospective investor through a previous investment in securities offered by the issuer or through the broker-dealer. It can also do so through submission and approval of an investor qualification questionnaire that is unrelated to any specific offering and elicits sufficient information for the firm to determine the financial circumstances and sophistication of the client.

From May 2021 through December 2023, Greenbird Capital sold investments in 14 private placements in reliance on the Rule 506(b) safe harbor, raising approximately $24 million in capital.

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[2] SEC Compliance and Disclosure Interpretations, Question 256.29, dated Aug. 6, 2015, available at https://www.sec.gov/corpfin/securities-act-rules.

[3] *See id.*, Question 256.31.

During this period, the firm did not establish or implement a system, including written procedures, reasonably designed to identify general solicitations of private placement offerings made pursuant to Rule 506(b) of Regulation D. The firm's written procedures did not prohibit registered representatives from engaging in a general solicitation of such offerings or provide any guidance on what constituted a pre-existing, substantive relationship. In addition, Greenbird Capital did not have a system to reasonably monitor and document when the firm had established a substantive relationship with a prospective investor, or to confirm—before a prospective investor was solicited for an offering—that the firm had such a relationship with that investor.

In connection with the offerings made during the relevant period, registered representatives made hundreds of thousands of calls to prospective investors without a reasonable system to ensure that the firm established substantive relationships with those individuals prior to soliciting the individual for a specific investment. As a result, with respect to certain of the investors in at least one of the offerings referenced above, the firm was unable to reasonably verify that a pre-existing, substantive relationship existed prior to the solicitation.

B. Greenbird Capital failed to establish, maintain and enforce a system reasonably designed to achieve compliance with FINRA Rule 3230.

FINRA Rule 3230(a) provides that "[n]o member or person associated with a member shall initiate any outbound telephone call to . . . [a]ny person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry" unless certain exceptions apply. The rule also prohibits initiating telemarketing calls before 8 a.m. or after 9 p.m. local time unless the call recipient is a broker or dealer, or the representative has an established relationship with, or prior consent from, the call recipient.

FINRA Rule 3230(d) requires members to institute procedures to comply with Rule 3230(a) prior to engaging in telemarketing. A violation of FINRA Rule 3230 also constitutes a violation of FINRA Rule 2010.

From May 2021 through December 2023, the firm failed to establish, maintain, and enforce a system reasonably designed to achieve compliance with FINRA's telemarketing rules. The firm had no system or procedure to monitor outbound calls made by the firm's registered representatives for numbers on the national do-not-call list. In addition, although a principal of the firm occasionally checked whether registered representatives called customers during the times permitted by FINRA Rule 3230, the firm did not specify when, or how often, such reviews took place.

Subsequent to the relevant period herein, the firm implemented the use of a pre-existing relationship form, revised its written supervisory procedures to include language addressing general solicitation and the pre-existing relationship form, and stopped engaging in cold calling.

By failing to establish, maintain, and enforce a system, including written procedures, reasonably designed to supervise the firm's solicitations of private placements and the telemarketing activities of its registered representatives with respect to the national do-not-call list and calls during prohibited times, Greenbird violated FINRA Rules 3110, 3230(d) and 2010.

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

- a censure; and
- a $50,000 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 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 imposed in this matter.

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, 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.

July 16, 2025
Date

Nikolas Costello
Greenbird Capital LLC
Respondent

Print Name: Nikolas Costello

Title: CCO/COO

Reviewed by:

John Hitchings
Michael H. Ference
John Hitchings
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Accepted by FINRA:

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

July 24, 2025
Date

Maya Krugman
Maya Krugman
Senior Counsel
FINRA
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200 Liberty Street
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