

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018060977201**

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

RE: MDB Capital (Respondent)
Member Firm
CRD No. 42677

Pursuant to FINRA Rule 9216, Respondent MDB Capital 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

MDB Capital has been a FINRA member firm since September 1997 and is headquartered in Addison, Texas. In January 2022, the firm became a wholly owned subsidiary of MDB Capital Holdings, LLC. The firm has approximately 35 registered representatives and two branch offices.¹

At all relevant times herein, MDB Capital provided a range of brokerage services to retail and institutional customers, including investment banking services to start-up technology and biopharma companies.

OVERVIEW

From May 2016 to October 2022, MDB Capital failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to address certain conflicts of interest and to prevent the misuse of material non-public information (MNPI). Therefore, the firm violated FINRA Rules 3110 and 2010. The firm consents to a censure, a fine of \$50,000, and an undertaking to remediate the issues identified in this AWC.

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

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's cycle examination program and reviewed activity relating to the firm's incubation of three start-up companies.

From May 2016 to October 2022, the firm acted as an incubator for three start-up companies by providing them advice on financing, deal structures, raising capital, and business strategy. During this period, the firm also took the companies public and recommended shares in the companies' stock to the firm's retail and institutional customers. For these services, the firm and its registered representatives received compensation, which included cash, warrants, and shares of the start-up companies' stock. Three of the firm's representatives also served on the start-up companies' boards of directors, both before and after the initial public offering, and received directors' salaries. In their roles as board members, the representatives sometimes came into possession of MNPI. The representatives also traded in the companies' stock and spoke with firm customers about trading in the stock.

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 firm's supervisory system, including its written supervisory procedures, must be tailored to the business in which the firm engages. A firm's duty to supervise under Rule 3110 includes (1) the duty to review trading by the firm and its registered representatives and (2) the duty to prevent the misuse of MNPI by registered representatives of the firm.

A violation of Rule 3110 is also a violation of FINRA Rule 2010, which requires a member, in the conduct of its business, to "observe high standards of commercial honor and just and equitable principles of trade."

From May 2016 to October 2022, the firm's supervisory system, including its written supervisory procedures, was not reasonably designed to meet its supervisory obligations, given its business model.

Although the firm's written supervisory procedures prohibited certain trading practices, such as manipulative trading, they did not address all relevant potential conflicts arising from the firm's representation of the start-up companies, which issued stock traded by firm representatives and customers. For example, at times, representatives' interests may have been best served by buying stock while customers' interests may have been best served by selling stock.² The firm's written supervisory procedures required certain trade blotter reviews by a designated supervisor but did not describe how the reviews should be

² Beginning in or about June 2020, the firm generally prohibited the solicitation of purchases or sales of securities after their initial public offerings.

conducted by the supervisor or specifically address trading in the start-up companies' stock. In practice, the firm's surveillance of trading in the start-up companies' stock relied on a supervisor's review of a daily trade blotter that did not clearly identify trades subject to certain conflicts of interest. At times other firm supervisors engaged in an ad hoc review of trading blotters that was not pursuant to any written criteria or documented by the firm.

The firm's supervisory system also did not reasonably address the potential for misuse of MNPI where firm representatives served on the boards of the startup companies. The firm had a general "Need to Know" policy and required representatives to sign an annual insider trading attestation acknowledging having read that policy and disclosing if they were aware of any policy violations. The attestation did not ask representatives if they possessed or had possessed MNPI. The "Need to Know" policy and the firm's WSPs more generally did not address when its representatives served on the boards of its start-up companies or establish reasonable procedures to prevent the dissemination of MNPI to these representatives' colleagues and customers. Instead, the firm's supervisory system relied on the start-up companies and representatives to independently identify and notify the firm when they came into possession of MNPI in order to place affected securities on a restricted list. As a result, the firm's supervisory system was not reasonably designed to prevent the misuse of MNPI.

Therefore, the firm violated FINRA Rules 3110 and 2010.

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

- a censure;
- a \$50,000 fine; and
- an undertaking that, within 180 days of the date of the notice of acceptance of this AWC, a member of Respondent'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 written supervisory procedures, reasonably designed to achieve compliance with rules related to the issues identified in this AWC, including FINRA Rule 3110. The certification shall include a narrative description and supporting exhibits sufficient to demonstrate Respondent's remediation and implementation. FINRA staff may request further evidence of Respondent's remediation and implementation, and Respondent agrees to provide such evidence. Respondent shall submit the certification to Katherine Florio, Principal Counsel, FINRA Department of Enforcement, Brookfield Place, 200 Liberty Street, New York, NY 10281, katherine.florio@finra.org, with a copy to EnforcementNotice@finra.org. Upon written request showing good cause, FINRA staff may extend this deadline.

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.

May 4, 2025

Date

Christopher Marlett

MDB Capital

Respondent

Christopher Marlett

Print Name: _____

Title: CEO

Reviewed by:

Steve Insel

Steven J. Insel
Counsel for Respondent
Elkins Kalt Weintraub Reuben Gartside LLP
10345 W. Olympic Boulevard
Los Angeles, CA 90064

Accepted by FINRA:

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

May 19, 2025

Date

Katherine Florio

Katherine Florio
Principal Counsel
FINRA
Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281