FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015048047101

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

RE: MTG LLC d/b/a Betterment Securities, Respondent
Member Firm
BD No. 47788

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent MTG LLC, d/b/a Betterment Securities ("Betterment Securities" or the "Firm") 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 herein.

I.

ACCEPTANCE AND CONSENT

A. The Firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Betterment Securities became a member of FINRA on October 21, 1999. In 2011, Betterment Securities became a wholly owned subsidiary of Betterment Holdings, Inc. Today, the business of Betterment Securities is to provide brokerage services to customers of the registered investment advisor, Betterment LLC, which is also a wholly owned subsidiary of Betterment Holdings. Betterment LLC operates as an online wealth management service. Betterment Securities' customer base is made up of the clients of Betterment LLC. The Firm's place of business is New York, New York. Betterment Securities has one office and approximately 12 registered representatives.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history with the Securities and Exchange Commission (the "SEC"), FINRA, any other self-regulatory organization or any state securities regulator.

OVERVIEW

Betterment LLC is an online wealth management service, which was created in 2010 and uses software algorithms and technology to manage its customers' investment portfolios. Betterment Securities provides brokerage services to the customers of Betterment LLC and is a carrying firm. As a carrying firm, Betterment Securities has a primary responsibility to protect its customers' assets. Betterment Securities' brokerage business grew quickly as Betterment LLC grew. The Firm had approximately $120,000 in annual revenues in 2011 and more than $1.2 million in annual revenues in 2014. Betterment Securities holds its customers' securities in omnibus accounts at its clearing firm. In June 2014 the value of securities in the omnibus account was approximately $608 million.

During this period of significant growth in its business, the Firm did not ensure that its practices complied with certain FINRA and SEC financial and operational rules and interpretations. First, during the period from October 2013 through January 2015, the Firm structured its transactions on days when it was required to calculate its reserve deposit differently than on other days in order to reduce its Customer Reserve Account obligations. Specifically, the Firm generally moved customer deposits to its omnibus account to fund its pre-settlement withdrawal program. However, on days when the Firm was required to compute its customer reserve requirement, the Firm did not move customer deposits and instead used loans from its clearing firm to fund that program. Thus, the Firm engaged in "window dressing" by altering its practices on reserve computation days specifically to reduce its reserve formula computation and thereby reduce its reserve requirement. Second, during the period from October 2013 through August 2014, the Firm did not properly segregate customers' wholly owned securities in a good control location. These practices, along with other errors in the Firm's computation of its reserve requirement, constitute violations of the reserve formula and possession and control requirements of Section 15 of the Securities Exchange Act of 1934 ("SEA") and Rule 15c3-3 promulgated thereunder and FINRA Rule 2010 during the period from October 2013 through January 2015.

In addition, from June 2012 through December 2014 the Firm did not make and keep certain of its books and records in the manner required by SEC and FINRA rules. For example, the Firm did not create and maintain certain records of cash movements in the form required by SEC and FINRA rules. In addition, the Firm's systems maintained its stock record on a trade date basis, rather than settlement date basis. By this conduct, the Firm violated Section 17 of the SEA and Rules 17a-3 and 17a-4 promulgated thereunder and FINRA Rules 4511 and 2010 during the period from June 2012 through December 2014.

Further, the Firm did not have a supervisory system reasonably designed to ensure

its compliance with the Customer Protection Rule and books and records rules. In particular, the Firm did not implement a supervisory system in which certain decisions relating to financial and operational rules were made and supervised by people with appropriate expertise. For example, the Firm's former principal, who had no training or experience in applying SEC and FINRA financial and operational rules, had primary responsibility for the Firm's compliance with SEA Rule 15c3-3 during the Relevant Period. Further, the Firm did not involve its FINOP in certain decisions affecting the reserve computation and only provided the FINOP with monthly statements and record compilations instead of more complete access to its bank accounts and its omnibus accounts. By reason of the foregoing, the Firm violated NASD Rule 3010 (for the time period prior to December 1, 2014) and FINRA Rule 3110(a) (for the time period on and after December 1, 2014) and FINRA Rule 2010 during the Relevant Period.

FACTS AND VIOLATIVE CONDUCT

The Customer Protection Rule

SEA Rule 15c3-3, known as the Customer Protection Rule, is aimed at protecting customers' funds and securities.

The customer reserve provisions of Rule 15c3-3 require broker-dealers that receive customer funds or securities to maintain a Special Reserve Account for the Exclusive Benefit of Customers (the "Customer Reserve Account"). Rule 15c3-3(e)(3) requires broker-dealers to perform weekly computations, as of the close of the last business day of the week, to determine the amount to be deposited in the Customer Reserve Account. The formula requires a broker-dealer to calculate amounts it owes customers, or credits, and amounts that customers owe the firm, or debits. If credits exceed debits, the broker-dealer must deposit the net difference in its Customer Reserve Account. In connection with the reserve computation, NYSE Interpretation Memo No. 89-10 (issued in 1989; subsequently adopted by FINRA), instructed that "[a]ny...device, window dressing or restructuring of transactions made solely to reduce an excess of credits over debits in the formula computation and not otherwise a normal business transaction" may be considered "a circumvention of the requirement of SEA Rule 15c3-3(e)(2) and an avoidance of the deposit requirement of SEA Rule 15c3-3(e)(1)."[1]

The possession or control provisions of Rule 15c3-3 require broker-dealers to protect securities that customers leave in the firm's custody. Under SEA Rule

[1] *See* Interpretations of Financial and Operational Rules, compiling interpretations provided by the staff of the SEC's Division of Trading and Markets and published by FINRA, Rule 15c3-3(e)(2)/02, available on FINRA's public website at http://www.finra.org/industry/interpretationsfor

15c3-3(b), broker-dealers must promptly obtain and thereafter maintain physical possession or control of all customers' fully-paid and excess margin securities.[2] To comply with the Rule, broker-dealers segregate or lock up customers' fully paid and excess margin securities in a "good control location" separate from the broker-dealer's own assets. Rule 15c3-3(c)(2) provides that an omnibus account at a clearing firm is a good control location to the extent that the broker-dealer instructs the clearing firm to maintain customer securities free of any charge, lien or claim of any kind.

Violations of Rule 15c3-3 are also violations of FINRA Rule 2010, which requires FINRA member firms to "observe high standards of commercial honor and just and equitable principles of trade."

Betterment Securities' Pre-Settlement Withdrawal Program

From October 2013 through January 2015, Betterment Securities had a practice of providing early payments to its customers selling securities. The Firm sent the cash proceeds from securities sales to customers two days before those trades settled. The pre-settlement withdrawal program was generally funded through customer free credit balances that Betterment Securities moved into its omnibus accounts.

Specifically, to fund the pre-settlement withdrawal payments, the Firm moved the deposits of purchasing customers from its sweep account to its omnibus account one day before settlement of the purchase transactions. Customer deposits in the omnibus account needed to be reserved for in the Customer Reserve Account to protect them from risk. During the one week period from June 2, 2014 through June 6, 2014, customer purchases averaged approximately $4 million a day.

Using customer free credit balances to fund the pre-settlement withdrawal program was beneficial to the Firm. If the Firm did not use those balances to facilitate the pre-settlement withdrawal program, it would instead have needed to create debit balances in its omnibus accounts when it provided pre-settlement withdrawals. Debit balances in the omnibus accounts were essentially loans from the Firm's clearing firm on which the Firm paid interest. Thus, funding this program with customer free credit balances meant that the Firm could provide its selling customers with early liquidity without accruing interest expenses.

Window Dressing in Violation of the Reserve Requirement of Rule 15c3-3

The practice of moving customer deposits to the omnibus account before settlement date to fund pre-settlement withdrawals had an effect on the Firm's reserve calculation. Customer funds held in the omnibus accounts were credits,

[2] Betterment Securities does not offer its customers margin credit.

for which the Firm needed to reserve under 15c3-3. Customer funds held in the sweep account were not credits for the purpose of the reserve calculation. Therefore, if Betterment Securities moved any deposits from its sweep accounts to its omnibus accounts on a reserve calculation day, the Firm would be required to include those deposits in its reserve calculation.

The Firm organized its transactions to avoid reserve requirements arising from the movement of customer deposits to its omnibus account before settlement. On most days, the Firm moved customer deposits from its sweep account to the omnibus account before settlement date and used the resulting customer free credits to fund pre-settlement withdrawals for selling customers. The Firm deviated from this practice at week and month-end, when the reserve computation was required to be calculated. On reserve calculation days, the Firm did not move customer deposits to its omnibus account. Instead, on those days, the Firm funded the pre-settlement withdrawals by creating a debit balance in its omnibus account, which was essentially a loan from its clearing firm on which Betterment Securities accrued interest. As a result, the Firm avoided reserving for those customer deposits that it generally moved to its omnibus account. Thus, Betterment Securities engaged in window dressing by structuring its transactions specifically to reduce an excess of credits over debits in its reserve computation.

By reason of the foregoing, Betterment Securities violated Section 15 of the SEA, Rule 15c3-3(e) promulgated thereunder, and FINRA Rule 2010 during the period from October 2013 through January 2015.

Other Customer Reserve Account Computation Errors

The Firm also made other errors in its reserve calculation. The pre-settlement withdrawal program caused the Firm to incur certain receivables and debits in its omnibus account. For example, Betterment Securities had loans arising from the unsecured debit balances in its omnibus accounts. This loan activity should have been treated as a credit in the reserve formula, but was not. In one reserve calculation on May 30, 2014, this meant that approximately $1.1 million should have been treated as a credit in the reserve formula, but was not. The Firm also incorrectly classified receivables from its clearing firm as receivables from customers. For example, this misclassification resulted in the Firm overstating customer related debits in the customer reserve formula by $816,000 in one reserve calculation on May 30, 2014.

By reason of the foregoing, Betterment Securities violated Section 15 of the SEA, Rule 15c3-3(e) promulgated thereunder, and FINRA Rule 2010 during the period from October 2013 through January 2015.

Possession or Control

Betterment Securities holds its customers' securities in omnibus accounts at its clearing firm. From October 2013 through August 2014, Betterment Securities did not provide its clearing firm with daily segregation instruction requirements for fully paid customer securities. Instead, Betterment Securities instructed its clearing firm by email that its omnibus accounts should be maintained free of any charge, lien, or claim of any kind. However, the clearing agreement in place between Betterment Securities and its clearing firm at that time allowed the clearing firm to demand payment on any debit balance in the omnibus accounts. Betterment Securities had debit balances in its omnibus accounts at the clearing firm as a result of the pre-settlement withdrawal program described above. For example, in June 2014, Betterment Securities had an average debit balance of approximately $770,000 in its omnibus accounts at the clearing firm.

Because the clearing firm had a claim on debit balances in the omnibus accounts, the omnibus accounts were not a good control location. To the contrary, customer securities that were in the omnibus accounts were potentially available for use by the clearing firm, to the extent of existing debit balances.

By reason of the foregoing, Betterment Securities violated Section 15 of the Securities Exchange Act and Rule 15c3-3(b) promulgated thereunder and FINRA Rule 2010 from October 2013 through August 2014.

Betterment Securities Did Not Maintain its Books and Records Pursuant to FINRA and SEC Rules

Section 17 of the SEA and Rule 17a-3 promulgated thereunder require that broker-dealers make and keep current certain books and records, including, among others, blotters and ledgers of every receipt and disbursement of cash and securities records. Rule 17a-4 requires that broker-dealers preserve those records. FINRA Rule 4511 provides, in part, "[m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." The books and records rules, "are an integral part of the investor protection function" because the "records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards."[3]

[3] Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 C.F.R. Part 241, at p. 3 of 15 (May 1, 2001).

Rule 17a-3(a)/01,[4] states that subsidiary ledgers required by Rule 17a-3 relating to securities in transfer, dividends and interest received, and securities borrowed and loaned should be posted no later than two business days following the date of the securities or money movement. Rule 17a-3(a)/01 also states that ledger accounts itemizing each cash account of every customer for all credits and debits should be posted no later than the first business day following the transaction. Rule 17a-3(5) states that firms must make and keep "A securities record or ledger reflecting separately for each security as of the clearance dates all 'long' or 'short' positions...carried by such member, broker or dealer for its account or for the account of its customers."

Between June 2012 and July 2014, the Firm failed to timely create and maintain the records detailing cash movements relating to the purchase and sale of customer securities and the receipt and disbursement of dividends required by Rule 17a-3(a)/01. Although the Firm electronically captured daily records of cash movements, it did not create and maintain records of those cash movements in the form required by FINRA and SEC Rules. As a result, the Firm would not have been able to timely provide those records to its auditors or the SEC. When requested by FINRA examiners, the Firm was unable to timely provide these records.

In addition, between June 2012 and July 2014, the Firm kept a trade date, rather than a settlement date, stock record. As a result, although the Firm did maintain and review information relating to settlement of transactions, the Firm's stock record lacked information about transactions that were not completed as expected on settlement date. The stock records therefore did not comply with rule 17a-3(5).

By reason of the foregoing, Betterment Securities violated Section 17 of the Exchange Act, Rules 17a-3 and 17a-4 promulgated thereunder, and FINRA Rules 4511 and 2010 during the Relevant Period.

Betterment Securities' Supervisory System Was Not Reasonably Designed to Ensure Compliance With Applicable Rules

NASD Rule 3010(a) and FINRA Rule 3110(a), which superseded NASD Rule 3010(a) on December 1, 2014, require firms to establish and maintain supervisory systems reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

Violations of NASD Rule 3010(a) and FINRA Rule 3110(a) are also violations of

[4] *See* Interpretations of Financial and Operational Rules, compiling interpretations provided by the staff of the SEC's Division of Trading and Markets and published by FINRA, Rule 17a-3(a)/01, available on FINRA's public website at http://www.finra.org/industry/interpretationsfor. *See also* SEC Release No. 34-10756, May 3, 1974.

FINRA Rule 2010.

During the Relevant Period, Betterment Securities' supervisory system was not reasonably designed to ensure compliance with SEC and FINRA financial and operational rules. The Firm's supervisory system and procedures were not commensurate with the volume of transactions managed by the Firm and the fact that the Firm carried customer securities.

The Firm did not have a system or procedures reasonably designed to ensure that operations affecting the Firm's compliance with the Customer Protection Rule were overseen by an individual with appropriate training and expertise. The Firm's former principal had insufficient prior training and practical experience in FINRA and SEC financial and operational rules. Nevertheless, the former principal oversaw the creation of the Firm's pre-settlement withdrawal program and the related reserve accounting. The Firm's FINOP was not involved with this process, nor were other individuals with expertise in financial operations. The Firm also allowed the former principal to supervise its possession or control compliance without sufficient oversight. As a result, no appropriately trained employee confirmed that customer securities were properly segregated in good control locations.

In addition, the Firm did not have reasonable procedures in place to ensure its compliance with books and records rules. As a result, the Firm did not make and keep certain records required by SEC and FINRA rules. Further, the Firm's FINOP was part-time and external. The Firm gave the FINOP, who was typically onsite once a month, limited responsibilities that did not include day-to-day compliance with the Customer Protection Rule. The Firm did not have a system to ensure that its FINOP had sufficient access to the materials he needed to help the Firm comply with the rules. For example, the Firm provided the FINOP with month end statements and compilations of records.

By reason of the foregoing, during the Relevant Period, the Firm violated NASD Rule 3010(a) (for the period before December 1, 2014) and FINRA Rule 3110(a) (for the period on and after December 1, 2014) and FINRA Rule 2010.

B. The Firm also consents to the imposition of the following sanctions:

1. A Censure; and

2. A fine in the amount of $400,000.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted

an Election of Payment form showing the method by which the Firm proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against the Firm;

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, the Firm 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 acceptance or rejection of this AWC.

The Firm 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

The Firm 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 the Firm; and

C. If accepted:

1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

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 the subject matter thereof in accordance with FINRA Rule 8313; and

4. the Firm 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. The Firm 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 the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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 or its staff.

The undersigned, on behalf of Betterment Securities, 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 the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

06/11/2018
Date (mm/dd/yyyy)

Betterment Securities
By:
Name: Ben Alden
Title: General Counsel

Reviewed by:

David Sieradzki
Counsel for Respondent
Schulte Roth & Zabel LLP
1152 Fifteenth Street, NW, Suite 850
Washington, DC 20005
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Accepted by FINRA:

6/20/2018
Date

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

Jessica L. Brach
Senior Counsel
FINRA Department of Enforcement
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Corrective Action Statement of MTG, LLC d/b/a Betterment Securities

This Corrective Action Statement is submitted by Respondent, MTG, LLC d/b/a Betterment Securities ("Betterment Securities" or the "Firm"), describing actions the Firm has taken in response to the issues described in Letter of Acceptance, Waiver and Consent No. 2015048047101, stemming from a 2014 FINRA examination of Betterment Securities. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff (the "Staff").

Betterment Securities values the trust it has earned from customers and regulators. The actions taken by the Firm in response to the 2014 examination, and the Firm's ongoing track record of compliance, reflect the Firm's commitment to operate its business in accordance with all applicable rules and regulations. Significantly, every one of the Firm's FINRA examinations after the 2014 FINRA examination were completed without any deficiency findings.

Betterment Securities takes seriously its responsibility to customers and its obligations under the Securities Exchange Act and FINRA rules and regulations. Throughout FINRA's 2014 examination, the Firm worked cooperatively with the Staff and began implementing recommended changes before the examination was complete, including a series of systems, policy and procedure enhancements.[1] The Firm addressed the remaining changes suggested by FINRA well before the 2014 examination's completion.

In addition to enhancing its policies and procedures, the Firm has hired additional personnel and made other changes to improve overall supervision and ensure ongoing compliance with applicable rules:

- **Enhance FinOp Role.** Increased the amount of time that its FinOp dedicates to the Firm, both onsite and overall. The Firm also gave the FinOp increased responsibilities and expanded the FinOp's ability to access and review information for the purpose of maintaining compliance.
- **Expand Oversight.** Strengthened its operational oversight and has five Series 27 principals to function as the FinOp's onsite designees and support the FinOp on a daily basis.
- **Install New Compliance Leadership.** In August of 2017, the Firm hired a new Chief Compliance Officer with over 18 years of broker-dealer compliance experience.
- **Review of Written Procedures.** Conducted a thorough review and update of its Written Supervisory Procedures to address issues identified by the Staff.

[1] Among other items, in response to the Staff's concerns, the Firm ended what the AWC referred to as the "Pre-Settlement Withdrawal Program." The Firm originally conceived of the program as a method to give its customers faster access to the cash proceeds of securities sales. Specifically, the program allowed customers – as a courtesy and at no additional cost – to access cash proceeds from securities sales on the day after the transaction was executed rather than the standard three days, which is when securities transactions settle.