FINRA's First Disciplinary Action Targeting Firm's Use of Social Media Influencers

WRITTEN BY

Jay A. Dubow | Ghillaine A. Reid | Casselle A.E. Smith | Sophia Harmelin

The Financial Industry Regulatory Authority's (FINRA) Enforcement Division recently announced its first settlement involving a firm's supervision of social media influencers. The respondent, M1 Finance LLC (M1), is a financial technology company that provides self-directed trading to retail investors through its mobile application and website. In connection with FINRA's targeted exam of M1's use of social media influencers to acquire new customers, FINRA found that social media posts made by influencers on the firm's behalf were not fair or balanced, or contained exaggerated, unwarranted, promissory, or misleading claims. According to FINRA, M1 also failed to establish, maintain, and enforce a reasonably designed supervisory system for its influencers' social media posts, and failed to preapprove and preserve records of these retail communications.

As FINRA previously stated in Regulatory Notices 10-06 and 17-18, social media posts will be considered "retail communications" for the purpose of Rule 2210 if the member firm either (1) paid for or was involved in the preparation of the content prior to posting; or (2) explicitly or implicitly endorsed or approved the content. Between January 2020 and April 2023, M1 recruited and paid approximately 1,700 social media influencers more than $2.75 million for generating leads that resulted in more than 39,400 new accounts for the firm. M1 provided the influencers with graphics and guides highlighting M1's specific products and services, which the influencers could use to make their posts more effective. Each influencer was also assigned a unique hyperlink to include in their social media posts, which directed potential customers to a page on the firm's website where they could open and fund an M1 brokerage account. M1 paid each influencer a flat fee for every new account opened and funded through their assigned hyperlink.

This compensation structure may have unintentionally incentivized the kind of puffery that (while commonplace on social media) violates the content standards governing FINRA members' communications with the public. For example, M1 influencers posted videos promising positive returns (*e.g.*, stating "it is a general principal that anyone who starts a ROTH IRA … in their 20s will become a millionaire by the time they're 60") without a balanced discussion of the risks associated with investing. M1 influencers also misled customers about specific products, such as M1's margin lending program — touting the firm's low interest rates and flexible repayment options, while failing to mention the significant impact of maintenance margin requirements and fluctuating interest rates. Other posts stated that M1's services were completely free — while failing to disclose that certain fees may apply or to provide a link to the firm's fee schedule. Consequently, FINRA found that M1's influencer communications about the firm were unfair and unbalanced, or made claims that were exaggerated, unwarranted, promissory, or misleading, violating FINRA Rules 2210(d)(1) and 2010.

Additionally, because the influencers' posts qualified as retail communications under FINRA Rule 2210(b)(1)(A),

an appropriately registered principal of the firm must review and approve each post before use, which M1 failed to do. The firm also failed to maintain records of the influencers' posts as required under Exchange Act Rule 17a-4(b)(4) and FINRA Rules 2210(b)(4)(A) and 4511, and failed to establish, maintain, and enforce written supervisory procedures or systems designed to supervise social media posts disseminated on the firm's behalf in violation of FINRA Rules 3110 and 2010.

Without admitting or denying FINRA's charges, M1 agreed to pay an $850,000 fine and to implement a supervisory system for its influencers. The firm revised its policies and procedures to require that a registered principal of the firm review and approve influencer posts prior to use. The firm also implemented a system to retain social media communications disseminated by influencers on the firm's behalf. In the press release announcing the M1 settlement, FINRA Enforcement Head Bill St. Louis cautioned that "FINRA will continue to consider whether firms are using practices and maintaining supervisory systems that are reasonably designed to address the risks related to social media influencer programs." In his remarks at this year's annual SIFMA Compliance & Legal Seminar, St. Louis emphasized the importance of social media supervision by member firms who engage in it, and indicated there are more cases involving the use of social media influencers by fintech companies on the enforcement docket.

RELATED INDUSTRIES + PRACTICES

- Securities Investigations + Enforcement
- White Collar Litigation + Investigations