

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Bradley C. Reifler
Millbrook, NY,

Respondent.

DECISION

Complaint No. 2016050924601r

Dated: January 17, 2023

On remand from the Securities and Exchange Commission for redetermination of sanctions. Held, sanctions reaffirmed.

Appearances

For the Complainant: Jennifer L. Crawford, Esq., Megan P. Davis, Esq., Matthew Ryan, Esq., Kevin Hartzell, Esq., Lisa Colone, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

I. Background

This matter is before us on remand from the Securities and Exchange Commission (“Commission”) for a redetermination of the sanctions. In our initial decision, the National Adjudicatory Council (“NAC”) found that Reifler violated FINRA Rules 8210 and 2010 by refusing to answer dozens of questions posed by FINRA investigators during two on-the-record interviews (“OTRs”). In assessing sanctions for this misconduct, the NAC treated Reifler’s refusal to answer some, but not all, questions posed during the OTRs as a complete failure to respond to FINRA Rule 8210 requests for information under the FINRA Sanction Guidelines (“Guidelines”)¹ and barred him. *Dep’t of Enf’t v. Reifler*, Complaint No. 2016050924601, 2019 FINRA Discip. LEXIS 44 (FINRA NAC Sept. 30, 2019).

¹ *FINRA Sanction Guidelines*, at 33 (2019), https://www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. For purposes of this remand, we apply the same version of the Guidelines that was in effect when the NAC issued its initial decision.

Reifler appealed the NAC's decision to the Commission. On January 21, 2022, the Commission issued a decision wholly affirming the NAC's liability findings. The Commission found that Reifler repeatedly failed to answer FINRA's questions while testifying under oath during two OTRs, and his refusals to respond violated FINRA Rules 8210 and 2010. The Commission took exception, however, to the portion of the sanction guideline the NAC relied upon to bar Reifler for his violations. The Commission found that, because Reifler answered many questions during his OTRs, and partially responded to FINRA's written Rule 8210 requests, the NAC should have evaluated his refusals to respond under the Guidelines as a partial, rather than a complete, failure to respond. Accordingly, the Commission set aside the bar and remanded the case to FINRA to "review and include in the record the entirety of the transcripts of both OTRs" and evaluate the sanctions for Reifler's rule violations under the partial but incomplete response guideline. *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *23 (Jan. 21, 2022).

On remand, we considered the sanctions anew based on the full record, including the entire transcripts of both OTRs, the parties' briefs, and the Commission's remand order. As discussed below, we bar Reifler in all capacities for violating FINRA Rules 8210 and 2010.

II. Facts

We summarize the facts relevant to our sanctions determination.² Reifler entered the securities industry in 1986. He was registered as a general securities representative from 1986 to 2015, and a general securities principal from 1996 to 2015. From October 2010 until the firm withdrew its broker-dealer registration in August 2015, Reifler was the principal owner, chief executive officer ("CEO"), and an associated person of Forefront Capital Markets, LLC ("Forefront"). Thereafter, Reifler was associated with Wilmington Capital Securities, LLC, as a general securities representative and a general securities principal until November 2015. Since November 2015, Reifler has not been associated with a FINRA member firm.

A. FINRA Investigated a Fund that Reifler Created and Controlled

In 2014, while registered with Forefront, Reifler created the Forefront Income Trust ("FIT"), a closed-end interval fund. Reifler was FIT's chairman of the board of directors, CEO, and chief managing officer. He also was a chief managing officer of FIT's sole investment adviser, Forefront Capital Advisors LLC.

During a routine cycle examination of another member firm, FINRA staff obtained marketing materials for FIT. The language used in the materials raised concerns about FIT's investors and FINRA staff opened a separate cause examination to seek more information. FINRA staff learned that associated persons of Forefront had sold FIT shares to several individual investors. According to FINRA staff, because FIT "had a very low threshold for initial investment," the cause examination considered whether the sales of FIT securities complied with, among other rules, FINRA's suitability rule.

² For a more detailed discussion of the facts in this matter, see the Commission's January 21, 2022 decision.

At least ten investors purchased FIT shares while Reifler was registered with FINRA. FIT's largest investment was a \$10 million purchase in May 2015 by Port Royal North Carolina Mutual Reassurance Trust ("Port Royal"), an entity associated with North Carolina Mutual Life Insurance Company ("NCM"). Due to the transaction size, Port Royal was entitled to a 50 percent reduction in the commission it was charged. However, Port Royal waived that reduction and paid Forefront, Reifler's brokerage firm, the full \$300,000 commission.

FINRA staff further discovered that, in September 2016, NCM sued Reifler and several affiliated companies that he controlled, alleging that the defendants had engaged in a fraudulent scheme to invest NCM's assets in investments designed to benefit themselves.³ NCM claimed that it did not authorize Port Royal's investment in FIT. NCM also alleged that: the defendants made unauthorized loans of NCM's funds to entities that Reifler controlled; NCM had not authorized Port Royal's waiver of the reduced commission; and a large dividend FIT owed to NCM had been diverted to a bank account that Reifler controlled. Reifler denied these claims. FINRA staff expanded its investigation to examine whether NCM's allegations involved potential FINRA rule violations.

B. FINRA Issued a Rule 8210 Request for Information and Documents

On March 24, 2017, FINRA staff requested that Reifler provide information and documents pursuant to FINRA Rule 8210. The request specifically asked about Reifler's roles and responsibilities at Forefront with respect to FIT sales—including Port Royal's \$10 million investment in FIT. The request also asked for information regarding the due diligence and supervisory review performed, and suitability determinations made, related to FIT sales. The request provided that Reifler was "obligated to respond to this request fully, promptly, and without qualification." After obtaining a deadline extension, Reifler responded to the request with short, handwritten notations. Most of Reifler's notations either denied knowing about Forefront's sales of FIT shares or disclaimed his role in, or responsibility for, the matters identified in the request. Reifler provided no response to the question concerning the Port Royal \$10 million investment in FIT. Furthermore, Reifler did not provide any of the requested documents.

C. Reifler Failed to Respond Completely to FINRA Staff's Questions During Two OTRs

On two separate occasions, FINRA staff requested that Reifler appear for sworn testimony, pursuant to FINRA Rule 8210. Each OTR request included an attached addendum that, among other things, informed Reifler of his obligation "to provide testimony that is truthful, accurate and complete," and "to answer all questions asked by FINRA staff." The addendum also explicitly warned that, should Reifler fail to provide complete and full testimony, he could be subject to "FINRA disciplinary action and the imposition of sanctions, including a bar from the securities industry."

³ See generally *Compl., N.C. Mutual Life Ins. Co. v. Stamford Brook Cap., LLC*, Case No. 1:2016cv01174, ECF No. 1 (M.D.N.C. Sept. 23, 2016).

1. Reifler Refused to Answer Questions at the May 30, 2017 OTR

On May 30, 2017, Reifler appeared for his OTR as directed. At the start of the OTR, Reifler testified that he was the founder of FIT and attended its board meetings. But when FINRA staff asked how often FIT's board met, Reifler stated that he was "not going to answer many questions about FIT" because "[a]ll FIT questions really are not under FINRA's jurisdiction." Reifler later asserted that because FIT was regulated by the Commission as a registered investment company, it was not subject to FINRA's jurisdiction. Reifler also refused to answer some questions on the grounds that FINRA sought publicly available information about FIT, while also stating that he had "no idea what's public." Although Reifler refused to answer questions in many instances, he primarily either answered or responded curtly that he did not know or remember the answers to the questions posed.⁴ Reifler also refused to answer several questions about the NCM litigation, asserting that FINRA lacked jurisdiction. Some of the questions Reifler refused to answer concerned NCM's allegations that Port Royal's \$10 million FIT investment and the waiver of the 50 percent sales commission discount were unauthorized.

FINRA staff also questioned Reifler about FIT's sales practices. Reifler refused to answer questions about whether he had told any friends about FIT who later made an investment in it, stating that he did not "want to discuss the investors in FIT." Reifler refused to say whether he was involved in FIT sales to certain investors while he was associated with FINRA members. And Reifler refused, again on jurisdictional grounds, to answer questions regarding the commission Forefront received from an individual investor's purchase of FIT shares in July 2015.

Reifler also refused to answer multiple questions regarding the details of certain loans FIT made, including whether he had introduced to FIT, or had any involvement in, the companies that received the loans. During the OTR, FINRA staff disputed Reifler's assertions that FINRA lacked jurisdiction and warned that his refusal to answer questions could subject him to disciplinary sanctions. Based on our review of the entire OTR transcript, Reifler refused to answer approximately 130 of FINRA's questions.

2. Reifler Refused to Answer Questions at the June 29, 2017 OTR

On June 29, 2017, Reifler appeared for a second OTR. On that day, Reifler provided more answers pertaining to FIT and NCM's allegations. For example, Reifler finally acknowledged that Port Royal invested \$10 million in FIT, and he answered some questions regarding NCM's own investment in FIT. But Reifler refused to answer several questions,

⁴ In its decision, the Commission predicated its liability findings on Reifler's refusals to answer certain questions. The Commission neither predicated liability on Reifler's claimed lack of knowledge or recollection nor his cursory handwritten notations that responded to the staff's March 24, 2017 request. *Reifler*, 2022 SEC LEXIS 167, at *12 n.15. We include these facts to acknowledge that Reifler answered some of FINRA's requests for information, but we do not consider the sufficiency of his responses as part of our sanctions analysis.

stating that they pertained to matters “currently in litigation” with NCM. For example, Reifler responded that he was “[n]ot answering” when FINRA staff asked him “[w]hat did you do with [NCM]’s funds?” At one point, Reifler stated that he was “not going to answer any questions regarding [NCM], Port Royal, or any related subjects to that.” Although he was not represented by counsel at either OTR, Reifler asserted that his refusal to answer questions regarding the NCM litigation was “based on attorney advice.” While the June 29, 2017 OTR was less extensive, Reifler nonetheless refused to answer more than 50 of FINRA’s questions.

III. Discussion

Consistent with the Commission’s remand order, we have analyzed the Guidelines for individuals who provide a partial but incomplete response to information requests in violation of FINRA Rule 8210. As discussed below, although Reifler provided some of the information FINRA requested, we determine that his repeated refusals to answer important questions during the course of two OTRs significantly impeded FINRA’s investigation. We further find that no factors mitigated his serious misconduct. Accordingly, we bar Reifler from associating with any FINRA member in all capacities.

A. A Bar is the Standard Sanction under the Guidelines for FINRA Rule 8210 Violations, Absent Mitigating Factors

FINRA Rule 8210 is the primary means by which FINRA obtains the information necessary to carry out its investigations and fulfill its regulatory mandate to ensure that members and its associated persons adhere to FINRA’s rules. *Dep’t of Enf’t v. Jarkas*, Complaint No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *46 (FINRA NAC Oct. 5, 2015), *aff’d*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285 (Apr. 1, 2016). The rule “is at the heart of the self-regulatory system for the securities industry and is an essential cornerstone of [FINRA’s] ability to police the securities markets and should be rigorously enforced.” *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *50-51 (Feb. 13, 2015) (internal quotation marks and citation omitted). A failure to comply with FINRA Rule 8210 therefore constitutes a “serious violation” that subverts FINRA’s ability to carry out its regulatory responsibilities and thereby threatens the investing public and the markets. *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *33 (June 14, 2013).

For individuals who provide a partial but incomplete response to a request made pursuant to FINRA Rule 8210, the Guidelines instruct us that “a bar is standard,” unless the respondent can demonstrate that the information provided substantially complied with all aspects of the request.⁵ Where mitigation exists, adjudicators should consider suspending the individual in any or all capacities for up to two years.⁶ The Guidelines also provide three violation-specific

⁵ *Guidelines*, at 33.

⁶ The Guidelines also recommend a fine of \$10,000 to \$77,000 for providing a partial but incomplete response. *See id.*

considerations in determining sanctions where an individual has provided a partial but incomplete response to a FINRA Rule 8210 request, including: (1) the “[i]mportance of the information requested that was not provided as viewed from FINRA’s perspective, and whether the information provided was relevant and responsive to the request;” (2) the “[n]umber of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response;” and (3) “[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.”⁷

Based on these considerations, we find that Reifler failed to demonstrate that he substantially complied with all aspects of FINRA’s Rule 8210 requests. We agree with the Commission and acknowledge that “Reifler answered some questions, including multiple questions that related to FIT and the NCM litigation, and earlier provided some answers to written Rule 8210 requests.” *Reifler*, 2022 SEC LEXIS 167, at *21. It is true that Reifler answered many questions at both OTRs. But as Reifler admits in his brief on remand: “It is undeniable that I did not answer ALL the questions concerning FIT and [NCM].” The record supports his admission. The entire OTR transcripts reveal that scores of questions falling within FINRA Rule 8210’s scope about FIT, Port Royal, and NCM went unanswered. All told, Reifler refused to answer approximately 180 questions that in substance went to the heart of, and concerned information necessary to assist in, FINRA’s investigation. The following are some examples:

Q. Did you solicit investments in FIT while registered at Wilmington?

A. Not discussing FIT.

* * *

Q. Has FIT ever made a loan to a borrower in which you or an entity with which you were affiliated had an ownership or financial interest?

A. Not discussing FIT. There’s no jurisdiction, so I respectfully refuse to answer the question.

* * *

Q. Did you ever sit on the investment committee for FIT?

A. I’m not discussing FIT. They have nothing to do with the broker-dealer registration or anything having to do with the broker-dealer.

* * *

Q. This [FIT new account form for Port Royal] is dated May 1, 2015. I’ll represent to you that you were registered with FINRA during that time, Mr. Reifler. What involvement did you have with the investment for Port Royal . . . into FIT?

⁷ *Id.*

A. Nothing as it relates to FINRA.

* * *

Q. How was Forefront [] receiving commissions related to the sales activity connected to FIT?

A. I'm not discussing FIT.

* * *

Q. Sir, as I stated, FIT received funds directly or indirectly from [NCM] at a time when you were registered with FINRA.

A. Yes. There is a current litigation. I am not supposed to answer.

Q. What did you do with [NCM]'s funds?

A. Not answering. In litigation.

* * *

Q. Who would be responsible for determining suitability for the investment into FIT?

A. Jurisdiction.

* * *

Q. Was [Forefront] responsible for assessing the suitability of a FIT investment?

A. Jurisdiction.

Because of Reifler's refusals to respond, FINRA staff was unable to discern the extent to which Reifler solicited investments in FIT, what FIT's process was for making loans, or whether FIT had loaned money to, or invested in, any entities that Reifler was affiliated with. FINRA staff also was unable to verify NCM's claims to evaluate whether Reifler engaged in potential misconduct under FINRA rules. Moreover, FINRA staff received no information from Reifler addressing their suitability concerns, including whether FIT was suitable for non-accredited investors or the person(s) responsible, if any, for making suitability determinations. Reifler's partial but incomplete responses unquestionably failed to materially satisfy all FINRA's Rule 8210 requests and effectively thwarted FINRA's investigation.

The subject matter of the information that Reifler withheld was of vital importance from FINRA's perspective. FINRA staff sought information about potential sales practice violations in connection with investments in FIT. FINRA's investigation also concerned NCM's allegations against Reifler and the affiliated entities he controlled, including claims that, among other things, he participated in a fraudulent scheme that involved an unauthorized \$10 million investment in FIT, diverting NCM's assets, and an unauthorized waiver of a commission discount from which Forefront purportedly benefited. When these transactions occurred, Reifler was Forefront's principal owner and CEO. Reifler also was registered with FINRA the entire time he controlled FIT as its chairman of the board, CEO, and chief managing officer. Yet

Reifler refused to respond fully to questions about FIT and NCM's allegations even though he was best suited to provide this information. Reifler's refusals to testify on these important matters hindered FINRA staff's ability to determine whether he violated FINRA rules.

In addition, FINRA had to exert a substantial degree of regulatory pressure to obtain answers from Reifler. First, FINRA sent Reifler a written Rule 8210 request for information and documents that, even after an extended deadline for his response, Reifler only answered partially. Then, FINRA sent two Rule 8210 requests for Reifler's sworn testimony.⁸ Reifler's refusals to answer scores of questions at both OTRs amounted to a wall of noncooperation that unnecessarily expended staff time and resources. On remand, Reifler claims that he intended to answer the staff's questions later. But, as an associated person, Reifler agreed to comply with, and remain subject to, FINRA's rules, including the requirement that he completely and timely provide information necessary for FINRA's investigation. *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *31 (Nov. 14, 2008) (highlighting that, for requests made pursuant to FINRA Rule 8210, "timely compliance is essential to the prompt discovery and remediation of wrongdoing"), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). To date, FINRA has yet to receive Reifler's full testimony about his roles, responsibilities, and involvement in FIT's transactions or NCM's claims.

Finally, Reifler failed to provide any valid reasons for his deficiencies in responding. Reifler claims he was concerned that "FINRA had a finite set of facts" and it appeared to him that FINRA staff was "not only making inquiries but deciding on the merits of the answers based on limited information." According to Reifler, "FINRA had already made their decision that I was guilty of the accusations." He further claims that FINRA staff was drawing "inaccurate conclusions" and the "damage to the [NCM] litigation would be irreversible."

For several reasons, we find that Reifler's explanations lack merit. Reifler's belief about the staff's mindset during his OTRs is unsupported conjecture. We see no evidence that Reifler was the subject of any improper prosecutorial decisions. In fact, the purpose of a FINRA investigation is to provide FINRA staff a clear picture of the nature and extent of potential rule violations. Indeed, at the start of his OTRs, FINRA staff explicitly informed Reifler: "At this point the staff has not made any determination as to whether there have been any violations." Reifler provides no evidence that FINRA staff had prejudged him, or the matters discussed, at his OTRs. Moreover, as the Commission earlier found, "[a] recipient of a Rule 8210 request cannot avoid compliance due to other litigation." *Reifler*, 2022 SEC LEXIS 167, at *18. Therefore, irrespective of Reifler's belief that FINRA staff was drawing certain conclusions about the NCM litigation—which also is unfounded—Reifler was not at liberty to second-guess FINRA's requests for information, refuse to answer the staff's questions at his OTRs based on a hunch, or set conditions on his compliance. *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *49 (Sept. 24, 2015); *see also Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *15-16 (Apr. 17, 2014) (emphasizing that "Rule 8210(a) has no requirement that [FINRA] explain its reasons for making the information request or justify its relevance.") (internal quotation marks omitted). Rather, Reifler was

⁸ The record further shows that Reifler sought to postpone his first OTR three times and delayed scheduling his second OTR four times, all which FINRA staff accommodated.

required to comply fully with FINRA's Rule 8210 requests. And neither the pressure of third-party litigation nor the possibility of an adverse outcome alleviated that obligation.

B. There Are Other Aggravating Factors and No Mitigating Ones

We next consulted the general and principal considerations applicable to all violations under the Guidelines and find that several aggravating factors support a bar. First, Reifler has a disciplinary history.⁹ In 1999, the Commodity Futures Trading Commission ("CFTC") ordered a cease and desist and fined Reifler \$59,033 jointly with his company, Reifler Trading Corporation, for violating the Commodity Exchange Act and CFTC regulations related to an unregistered individual. In 2016, the State of Massachusetts ordered a cease and desist, censure, and \$36,000 fine, jointly against Reifler and Forefront for failing to disclose the CFTC's order. We find Reifler's disciplinary history aggravating because it reflects a disregard for complying with his regulatory obligations. *See The Dratel Grp., Inc.*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035, at *38-40 (Mar. 17, 2016) (finding respondents' disciplinary history aggravating because it showed "a broader pattern of noncompliance" raising serious concerns about their ability to comply with their regulatory obligations in the future).

Second, Reifler's perpetual failures to answer approximately 180 questions at his OTRs—after repeated warnings from FINRA that such failures could subject him to sanctions including a bar from the securities industry—constituted protracted acts of defiance and a pattern of misconduct that we find to be aggravating.¹⁰ Third, Reifler's misconduct was intentional. He admits that he deliberately chose not to answer certain questions about FIT and NCM's allegations.¹¹ Fourth, Reifler not only delayed FINRA's investigation by withholding pertinent information, but he also succeeded in impeding it.¹² *Cf. David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *35 (July 27, 2015) (barring respondent when his refusal to cooperate in an investigation "thwarted FINRA's ability to determine whether he should be subject to discipline"). We determine that Reifler's repeated failures to answer questions during two OTRs, notwithstanding the responses he partially provided, subverted FINRA staff's ability to verify the sales practice concerns and serious allegations of misconduct made against him. As the Commission previously has held, "[s]uch inhibition of FINRA's regulatory functions is a serious violation justifying stringent sanctions." *Mielke*, 2015 SEC LEXIS 3927, at *52.

Moreover, we find that no mitigating factors warrant a lesser sanction. Reifler claims that, after being in the securities industry for more than 35 years, he understands the importance

⁹ *See Guidelines*, at 2 (recommending that adjudicators consider imposing more severe sanctions when an individual respondent's disciplinary history shows a pattern of, among other things, "disregarding regulatory requirements").

¹⁰ *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8 and 14).

¹¹ *See Guidelines*, at 8 (Principal Considerations in Determining Sanctions, No. 13).

¹² *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 10).

of investigations, and his history and “moral compass” should have been considered. But as a securities veteran, Reifler also knew or should have known that, because FINRA has no subpoena power, “[a] failure to fully respond to FINRA’s Rule 8210 requests threatens the self-regulatory system and, in turn, investors by impeding [FINRA’s] detection of violative conduct.” *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *49 (May 8, 2015) (internal quotation marks omitted). Indeed, FINRA ensured that Reifler had ample notice of his regulatory obligations. Each request made for Reifler’s testimony pursuant to FINRA Rule 8210 warned that he must answer all questions asked by FINRA staff and his failure to do so could subject him to a disciplinary sanction, “including a bar from the securities industry.” FINRA staff then reiterated this warning verbally at his OTRs. Despite these repeated warnings, Reifler continuously refused to answer the questions posed by FINRA staff in violation of FINRA Rules 8210 and 2010. Reifler’s self-serving statements are not mitigating.

Reifler next claims that a bar is unnecessary and unjustified and, despite his indictment in the NCM case, any accusations made against him should not guide the severity of his sanction. In December 2020, Reifler was indicted by a grand jury in the District Court for the Middle District of North Carolina on four counts of wire fraud and one count of perjury for, among other things, his alleged participation in a scheme to defraud a North Carolina-based life insurance company out of more than \$34 million in assets. *See U.S. v. Reifler*, No. 1:20CR512-1 (M.D.N.C. Dec. 1, 2020). But any sanction we impose here is not premised on the underlying merits of the NCM lawsuit or Reifler’s indictment. Rather, we are assessing what sanction(s) to impose for Reifler’s partial but incomplete responses to FINRA’s Rule 8210 requests. Therefore, the status of the NCM litigation or Reifler’s indictment neither aggravates nor mitigates his FINRA rule violations nor influences any part of our sanctions determination.¹³

We, however, disagree with Reifler that a bar is an unnecessary or unjustified sanction in this case. “[A]lthough a failure to respond to FINRA’s requests for information is not a crime or fraud, it is an extremely grave violation that should presumptively result in a bar or expulsion.” *Dep’t of Enf’t v. CMG Inst. Trading*, Complaint No. 2008012026601, 2010 FINRA Discip. LEXIS 22, at *29 (FINRA NAC Oct. 7, 2010). Absent mitigation, an industry bar is appropriate and remedial to protect the investing public and deter individuals, like Reifler, who have demonstrated blatant disregard for complying with rules that required his complete testimony during a FINRA investigation. *See Evansen*, 2015 SEC LEXIS 3080, at *34 n.76 (finding a partial but incomplete response merits a bar when respondent demonstrates a “willingness to defy the regulatory process and impede FINRA’s investigation into potentially serious misconduct”); *see also PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008) (finding that violators of FINRA Rule 8210 “present too great a risk to the markets and investors to be permitted to remain the securities industry”), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009).

Nor do we find that Reifler’s stated intention to never reassociate with a FINRA member warrants a reduced sanction. In determining appropriate sanctions for a FINRA Rule 8210 violation, the Guidelines do not contemplate such promises as a mitigating factor. Otherwise,

¹³ We also neither consider any arguments that Reifler raises in his remand brief nor the two documents he attaches to his brief as evidence of the “absurdity of the indictment.”

any respondent could avoid being barred for violating FINRA Rule 8210 and experience no consequences for their lack of cooperation during an investigation simply by either leaving the securities industry voluntarily or stating they have no intention of returning. And Reifler points to no instances where a stated intention to never return to the securities industry alleviates a “serious violation justifying stringent sanctions.” *Mielke*, 2015 SEC LEXIS 3927, at *52; *see also Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *23 (Sept. 10, 2010) (rejecting respondent’s argument that his departure from employment in the securities industry should mitigate the sanction of a bar). Thus, his claim for mitigation on this basis is unavailing.

Reifler also complains that a FINRA investigator acted unprofessionally towards him by refusing to discuss a compromise before the hearing and by refusing to remove public information about the sanction the Hearing Panel imposed pending resolution of this appeal. Contrary to Reifler’s assertion, the record reflects that, on January 5, 2018, FINRA’s Chief Hearing Officer ordered mediation and both parties confirmed at a pre-hearing conference on the record that they had at least one settlement discussion. In any event, for purposes of determining sanctions, we do not consider any aspect of settlement discussions that may or may not have transpired. *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *34 (Oct. 31, 2018) (“FINRA had no obligation to settle this proceeding on [Riemer’s] terms, and settlement negotiations are irrelevant to the sanctions determination.”) (internal quotation marks and citations omitted). Moreover, FINRA is required to publicly release information about any disciplinary decision issued pursuant to the Rule 9000 Series involving the suspension or bar of an associated person. *See* FINRA Rule 8313 (“Release of Disciplinary Complaints, Decisions and Other Information”); *see also Robert E. Strong*, Exchange Act Release No. 57426, 2008 SEC LEXIS 467, at *41-42 (Mar. 4, 2008) (rejecting applicant’s argument that an NASD press release depicting the nature of the complaint against him was an “unfair punitive measure”). We therefore find no evidence of impropriety by the FINRA investigator or unfairness towards Reifler throughout these proceedings. Reifler’s assertions are unsubstantiated, and we give them no mitigative weight.

Lastly, we reconsidered the arguments that Reifler previously raised on appeal before the NAC, including that (1) FINRA lacked jurisdiction, (2) he relied on his counsel’s advice to not answer certain questions, and (3) he was in active litigation at the time. We find, however, that none of these arguments are mitigating. First, the Commission already has determined that “Reifler was a person subject to FINRA’s jurisdiction” and that “FINRA requested testimony within the scope of Rule 8210.” *Reifler*, 2022 SEC LEXIS 167, at *14. We therefore have no basis to find that Reifler’s refusals to testify because he *mistakenly* believed that FINRA lacked jurisdiction is a mitigating factor. *See, e.g., Berger*, 2008 SEC LEXIS 3141, at *20 (rejecting the argument on remand that a bar is excessive because respondent had a purported “objectively reasonable” belief that he was not subject to NASD’s jurisdiction). Therefore, Reifler’s jurisdiction argument for mitigation fails.

Second, for a reliance on the advice of counsel claim to be successful mitigation under the Guidelines, Reifler must demonstrate his “reasonable reliance on competent legal . . . advice.” *Guidelines*, at 7. “To constitute mitigation, however, the claim must have sufficient content and sufficient supporting evidence.” *Berger*, 2008 SEC LEXIS 3141, at *38. Here, we find no evidence that Reifler sought or received, after providing full disclosure, legal advice

about his obligations as an associated person of a FINRA member firm to comply with FINRA Rule 8210. Nor has Reifler supplied any evidence that he sought and received legal advice from retained counsel about refusing to answer FINRA's questions during his OTRs. Reifler was neither represented by counsel at his OTRs nor does the record show, other than his unsubstantiated claim during his OTR, that he consulted with counsel regarding his obligation to respond, or refrain from responding, to a request for information made pursuant to FINRA Rule 8210. In short, we find no evidentiary basis for Reifler's advice of counsel claim. *See SEC v. McNamee*, 481 F.3d 451, 456 (7th Cir. 2007) (rejecting the argument that "reliance on advice of counsel exculpates his conduct" because respondent "offered nothing more than his say-so"); *see also Berger*, 2008 SEC LEXIS 3141, at *40 (finding that respondent "must provide sufficient evidence to the body making the sanction determination" that he "made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice"). Third, as we explained above, the fact that Reifler was the subject of active litigation neither excuses his partial but incomplete responses nor mitigates his sanction. *See, e.g., Brian Prendergast*, 55 S.E.C. 289, 310-311 (2001) (finding that an associated person may not set conditions on compliance with FINRA's rules due to potential litigation concerns).

Given the foregoing considerations, we determine that Reifler's misconduct was serious and his unwillingness to provide complete responses to FINRA's Rule 8210 requests about potential securities-related wrongdoing demonstrates his unfitness for association with any FINRA member firm. Accordingly, we bar Reifler in all capacities. The bar we impose is consistent with the relevant Guidelines and appropriate to protect the investing public against individuals, like Reifler, who present a continuing threat to FINRA's ability to detect and remediate industry misconduct.

IV. Conclusion

Reifler failed to respond fully to FINRA's requests for information, in violation of FINRA Rules 8210 and 2010. Accordingly, we bar Reifler from associating with any FINRA member in any capacity. Reifler is further ordered to pay costs of \$2,968.81 for the Hearing Panel proceeding, and \$1,500.72 for the NAC appeal proceeding. The bar will become effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

Alan Lawhead,
Vice President and Director – Appellate Group