

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

BRADLEY C. REIFLER  
(CRD No. 1589414),

Respondent.

Disciplinary Proceeding  
No. 2016050924601

Hearing Officer—RES

**HEARING PANEL DECISION**

August 7, 2018

**Respondent is barred from associating with any FINRA member firm in any capacity, for refusing to answer questions in two sessions of on-the-record testimony. Respondent is also ordered to pay costs.**

*Appearances*

For the Complainant: Matthew M. Ryan, Esq., John Narducci, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Bradley Reifler, *pro se*.

**DECISION**

**I. Introduction**

In an investigation into whether Respondent Bradley Reifler perpetrated a fraudulent scheme to misappropriate millions of dollars, FINRA Staff requested that Reifler give on-the-record testimony (“OTR”). In two OTRs, Reifler refused to answer questions asked by FINRA Staff. The Hearing Panel finds that Reifler’s conduct violated FINRA Rules 8210 and 2010, and bars Reifler from associating with any FINRA member firm in any capacity.

## **II. Findings of Fact**

### **A. Respondent**

Bradley Reifler entered the securities industry in 1986.<sup>1</sup> He was registered with FINRA from March 2011 to November 2015 as a General Securities Representative and General Securities Principal through associations with former FINRA member firms Forefront Capital Markets LLC and Wilmington Capital Securities, LLC.<sup>2</sup> He appears to have controlled Forefront Capital Markets, although when asked at the hearing what his title at the firm was, he testified he did not remember.<sup>3</sup> In August 2015, Forefront Capital Markets withdrew its registration as a broker-dealer with the Securities and Exchange Commission.<sup>4</sup> Reifler testified that Forefront Capital Markets withdrew because Reifler's companies<sup>5</sup> no longer focused on banking or the brokerage business and did not need a broker-dealer.<sup>6</sup>

Reifler was Chairman of the Board, Chief Executive Officer, and chief managing officer of Forefront Income Trust ("FIT"), a closed-end interval fund that came into existence in December 2014 and began deploying capital in June 2015.<sup>7</sup> Until November 2015—when Reifler voluntarily terminated his FINRA registration—he was registered with FINRA while he managed FIT.<sup>8</sup>

### **B. North Carolina Mutual Life Insurance Company Files a Civil Action Against Reifler**

In September 2016, North Carolina Mutual Life Insurance Company ("NCM") filed a civil action in federal court against Reifler, the "Forefront Entities,"<sup>9</sup> and others.<sup>10</sup> NCM was the

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<sup>1</sup> CX-4, at 15; Tr. 59, 180. This Decision cites the hearing transcript as "Tr." and Enforcement's exhibits as "CX-\_\_."

<sup>2</sup> CX-4, at 3; Tr. 56-57, 181.

<sup>3</sup> Tr. 181.

<sup>4</sup> Tr. 184.

<sup>5</sup> Reifler's companies included: Forefront Advisory, LLC; Forefront Capital, LLC; Forefront Capital Advisors LLC; Forefront Capital Holdings, LLC; and Reifler Capital Advisors. CX-4, at 5, 15; CX-9, at 2-3.

<sup>6</sup> Tr. 274.

<sup>7</sup> Tr. 41, 43, 181; CX-2, at 1; CX-3, at 14.

<sup>8</sup> Tr. 180-81. FINRA has jurisdiction over Reifler under Article V, Section 4 of FINRA's By-Laws because: (1) the Complaint was filed on September 26, 2017, within two years after the effective date of termination of Reifler's registration with a FINRA member firm (November 16, 2015); and (2) the Complaint charges Reifler with failing to answer questions in two OTRs within the two-year period after the date on which he ceased to be registered with a FINRA member firm.

<sup>9</sup> In the civil action, NCM collectively defined the "Forefront Entities" as Forefront Capital Holdings, LLC; Forefront Capital, LLC; and Stamford Brook Capital, LLC. CX-9, at 2-3.

<sup>10</sup> CX-9, at 1-2; Tr. 73, 187.

beneficiary of a trust (“Trust”) holding millions of dollars in reserve for the payment of liabilities and obligations arising from life insurance policies.<sup>11</sup> In the civil action, NCM alleged that through a fraudulent investment advisory agreement, a company Reifler controlled became the investment manager of the Trust (“Investment Manager”).<sup>12</sup> Sometime after April 24, 2015—and without NCM’s approval—representatives of the Forefront Entities invested the Trust’s funds in investments directly or indirectly linked to the Forefront Entities.<sup>13</sup> One of these unauthorized investments was a \$10 million loan of Trust funds to Forefront Partners, LLC.<sup>14</sup> Another was a loan to Forefront Talking Capital Investment, LLC.<sup>15</sup>

These allegedly unauthorized investments, apparently made through FIT, required NCM to pay Forefront Capital Markets a commission. NCM alleged that an unauthorized person executed a document waiving the Trust’s right to a discounted commission of 1.5 percent, instead of 3 percent, for investments in FIT over \$5 million.<sup>16</sup> So the Trust *paid* a commission of \$300,000, instead of \$150,000, on an allegedly unauthorized \$10 million investment. Moreover, documents from the Investment Manager purported to show that FIT paid a \$495,048.73 dividend on December 31, 2015, but NCM alleged the Trust never received this dividend.<sup>17</sup>

NCM’s complaint charged the following against Reifler and the Forefront Entities:

- breach of fiduciary duty to NCM, alleging that defendants invested Trust funds in loans made to affiliates of the Forefront Entities;<sup>18</sup>
- constructive fraud, alleging that defendants invested Trust funds in investments in which Reifler and the Forefront Entities would benefit;<sup>19</sup>
- fraud, alleging that defendants failed to advise NCM they intended to invest Trust funds in ways that would benefit Reifler and the Forefront Entities;<sup>20</sup>

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<sup>11</sup> CX-9, at 6-7.

<sup>12</sup> CX-9, at 8, 10. These are only allegations that NCM has not proven in court. This Decision refers to the allegations solely to demonstrate the scope of the FINRA investigation described in this Decision.

<sup>13</sup> CX-9, at 10.

<sup>14</sup> CX-9, at 11.

<sup>15</sup> CX-9, at 12.

<sup>16</sup> CX-9, at 13. The minimum amount of investment required for the discount to apply is referred to as the “break point.” See <https://www.investopedia.com/terms/b/breakpoint.asp>.

<sup>17</sup> CX-9, at 15.

<sup>18</sup> CX-9, at 24-25.

<sup>19</sup> CX-9, at 25-26.

<sup>20</sup> CX-9, at 26-27.

- unfair and deceptive trade practices injuring NCM;<sup>21</sup>
- piercing the corporate veil, alleging Reifler controlled and dominated the Forefront Entities for the purpose of committing fraud;<sup>22</sup> and
- civil conspiracy, alleging Reifler invested Trust funds in investments through which he stood to benefit personally.<sup>23</sup>

The NCM litigation is still pending.

### **C. FINRA Staff Investigates Matters Relating to FIT**

A FINRA cycle examiner learned about FIT in an examination of FINRA member firm First Dominion Capital Corporation.<sup>24</sup> In a review of the firm’s emails, the examiner found what appeared to be FIT marketing material, which prominently displayed the heading “99% Meet the 1%.”<sup>25</sup> The marketing material stated as follows:

What if we all had access to the same investment opportunities and strategies previously reserved for the 1%? Would we all have a chance to prosper?

Of course we would. At Forefront Income Trust we believe in equal opportunity investments for all. Unlike Wall Street firms, we don’t make money until you make your first 8% of pre-advisory fee net investment income. We don’t believe in management fees, our investment opportunities start at \$1,000 and are designed to be unaffected by movements in the stock market. We specialize in maximizing potential returns while mitigating risks.

Simply put, we create equal investment opportunities for all.<sup>26</sup>

The FINRA examiner was concerned that the marketing material appeared to be directed to non-accredited investors.<sup>27</sup> FINRA Staff took the OTR of First Dominion Capital’s Chief Compliance Officer and of the registered person whose email file contained the marketing material.<sup>28</sup> The Chief Compliance Officer testified he had read the marketing material in a

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<sup>21</sup> CX-9, at 27-28.

<sup>22</sup> CX-9, at 28-29.

<sup>23</sup> CX-9, at 29-30.

<sup>24</sup> Tr. 39-40.

<sup>25</sup> Tr. 40-41; CX-1.

<sup>26</sup> CX-1.

<sup>27</sup> Tr. 42-43.

<sup>28</sup> Tr. 45.

supervisory review of the registered person's emails, and that he too had concerns about FIT as an investment.<sup>29</sup>

FINRA Staff thought associated persons recommending FIT might violate FINRA rules that govern suitability or high standards of commercial honor and just and equitable principles of trade, and thus sought to learn more about FIT and its underlying assets.<sup>30</sup> They commenced an examination relating to FIT, and soon learned public investors had invested in FIT and that Forefront Capital Markets was involved in some of those transactions. They also learned about NCM's civil action against Reifler and the Forefront Entities. FINRA Staff decided to take testimony to understand who was investing in FIT.<sup>31</sup>

FINRA Staff issued a FINRA Rule 8210 request for information to Reifler.<sup>32</sup> After a three-week extension of the deadline, Reifler responded to the request by handwriting "answers" on it and emailing it back to FINRA Staff.<sup>33</sup> He did not provide the requested documents.<sup>34</sup> (He never produced documents relating to the underlying assets and investments of FIT.<sup>35</sup>) He answered Question 5 of the Rule 8210 request as follows:

Q. Describe your role and responsibilities at [Forefront Capital Markets], if any, regarding the sale of FIT to the following individuals and/or entities; and identify and produce all related documents.

A. No role regarding sale. Word of mouth. Never sold FIT, friends wanted to invest.<sup>36</sup>

#### **D. Reifler Refuses to Answer Questions in the First OTR**

FINRA Staff requested that Reifler appear for an OTR under FINRA Rule 8210.<sup>37</sup> Their purpose was to learn more about FIT.<sup>38</sup> They also wanted to gain an understanding, from Reifler's point of view, of the allegations in the NCM civil action.<sup>39</sup>

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<sup>29</sup> Tr. 46.

<sup>30</sup> Tr. 53-54; FINRA Rules 2010, 2111.

<sup>31</sup> Tr. 76.

<sup>32</sup> CX-15; Tr. 88.

<sup>33</sup> CX-15; CX-16, at 1; Tr. 88-89, 196.

<sup>34</sup> Tr. 90, 197.

<sup>35</sup> Tr. 171.

<sup>36</sup> CX-16, at 2; Tr. 90. The Rule 8210 request informed Reifler that "[u]nder FINRA Rule 8210, [he was] obligated to respond to this request fully, promptly, and without qualification." CX-15, at 2.

<sup>37</sup> CX-18; Tr. 95, 200-01. The Rule 8210 request advised Reifler of his right to be represented by counsel. CX-18, at 2; Tr. 264.

<sup>38</sup> Tr. 163-64.

Reifler appeared for testimony on May 30, 2017.<sup>40</sup> FINRA Staff reminded Reifler that his testimony had been requested under FINRA Rule 8210 and the refusal to answer questions could lead to sanctions.<sup>41</sup> Still, Reifler refused to answer a number of questions including, but not limited to, the following:

Q. How often does the board meet for FIT?

A. All FIT questions really are not under FINRA's jurisdiction.<sup>42</sup> So I'm going to shorten this by letting you know that I'm not going to answer many questions about FIT.

Q. Sir, we're going to pose questions to you today and you can choose whether or not to answer them. However, what I will say here your appearance here was requested pursuant to FINRA Rule 8210 and a failure to provide information when requested pursuant to FINRA Rule 8210 could subject you to sanctions including a fine, a suspension, if not a bar from the industry.

A. I've been doing this for 35 years. I certainly know many of the rules. I'm certainly probably twice your age. I appreciate your threat but however, there's absolutely no jurisdiction to SEC funds of FINRA [sic]. I am more than happy to answer any question that you have jurisdiction under. But you have no jurisdiction under FIT. And therefore I will politely refuse to answer under the reason that you have no jurisdiction.<sup>43</sup>

\* \* \*

Q. Who would know whether a broker-dealer is involved in the FIT investment?

A. I believe that you're only allowed to ask me questions about the Exchange Act of 1934, not the Securities Act. So I'm unfortunately not going to be discussing that. FINRA has no statutory authority to prosecute—this was a case. The Exchange Act is the only statute that Congress gave FINRA the

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<sup>39</sup> Tr. 165-66.

<sup>40</sup> CX-20, at 1.

<sup>41</sup> Tr. 203.

<sup>42</sup> A "jurisdiction" defense against answering the questions of FINRA Staff is without merit. *Dep't of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at \*22 (NAC July 16, 2015) ("FINRA's authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently wide to encompass any unethical, business-related conduct.").

<sup>43</sup> CX-20, at 4-5.

authority to enforce and therefore the only statute on which FINRA is deemed to have expertise the petition contended.<sup>44</sup>

\* \* \*

Q. Who was the largest investor to FIT?

A. No idea—I do have an idea but I’m not discussing it.<sup>45</sup>

\* \* \*

Q. Where did FIT get the money to make those loans?

A. May I call you Matt or Mr. Ryan?

Q. However you’re more comfortable, Mr. Reifler.

A. Thank you, Mr. Ryan. I know that we can shorten today’s OTR considerably if you would show me the kind respect of recognizing what your jurisdiction is and what it isn’t even though I know we may have a difference of opinion. I’m not going to answer FIT-related questions. So any questions that you ask related to FIT I’m not obliged to answer. If it has to do with the broker-dealer at the time I was registered and whatnot, I’d be more than happy to answer.<sup>46</sup>

\* \* \*

Q. Is Forefront Partners receiving this warrant in connection with the FIT investment in Banjo & Matilda?

A. Jurisdiction.<sup>47</sup>

\* \* \*

Q. What is Port Royal North Carolina Mutual Reassurance Trust?

A. It’s not related to anything here.<sup>48</sup>

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<sup>44</sup> CX-20, at 16-17. An “Exchange Act” defense—a variation of the “jurisdiction” defense—is without merit. The Exchange Act *requires* FINRA to promulgate rules to promote just and equitable principles of trade. 15 U.S.C. § 78o-3(b)(6) (“An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that ... [t]he rules of the association are designed ... to promote just and equitable principles of trade.”).

<sup>45</sup> CX-20, at 18.

<sup>46</sup> CX-20, at 24-25.

<sup>47</sup> CX-20, at 33-34.

\* \* \*

Q. The Port Royal-NCM LLC, does that have any meaning to you?

A. Jurisdiction.<sup>49</sup>

\* \* \*

Q. I'd like to introduce another two exhibits. They're going to be 55 and 56. One is new account application form [sic] into Forefront Income Trust. It is a five-page document, the last page including an e-mail from Cole Reifler to [SB] and [SD] about subject line is Re: New FIT account.

And 56 will be the wire details related to this investment.

A. Mr. Ryan, we can shorten this if you would—I know you want it on the record. But on the record that I will not answer due to jurisdictional issues any questions that have the word FIT in it. So to really shorten this up, have a shorter day and so I kindly ask you. I know you're the guy where you can say okay.<sup>50</sup>

\* \* \*

Q. Why would a potential investor in FIT forego a break point?

A. Jurisdiction.<sup>51</sup>

Reifler also refused to answer a number of other questions asked by FINRA Staff.<sup>52</sup>

### **E. Reifler Refuses to Answer Questions in the Second OTR**

Because of Reifler's refusal to answer questions in his May 2017 OTR, FINRA Staff requested under FINRA Rule 8210 that he reappear for testimony to answer questions about FIT.<sup>53</sup> When Reifler delayed in agreeing to a date for the OTR, they sent him a letter describing his lack of cooperation with the investigation.<sup>54</sup>

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<sup>48</sup> CX-20, at 24.

<sup>49</sup> CX-20, at 30.

<sup>50</sup> CX-20, at 38-39.

<sup>51</sup> CX-20, at 51.

<sup>52</sup> CX-20, at 8-9, 11, 13-15, 18-24, 26-34, 36-38, 40-55, 57-59, 62-69.

<sup>53</sup> Tr. 108-09, 208; CX-30, at 1. The Rule 8210 request advised Reifler of his right to be represented by counsel. CX-30, at 2; Tr. 264.

<sup>54</sup> CX-17.



Reifler appeared for testimony on June 29, 2017.<sup>55</sup> FINRA Staff reminded Reifler that his testimony had been requested under FINRA Rule 8210 and the refusal to answer questions could lead to sanctions.<sup>56</sup> Still, Reifler refused to answer a number of questions including, but not limited to, the following:

Q. Sir, I will represent to you that FIT obtained this money from North Carolina Mutual, apparently at a time when you were registered with FINRA. What I want to know is what involvement did you have and what did you do with that money?

A. What does that have to do with FINRA?

Q. Will you please answer my question.

A. What does that have to do with FINRA?<sup>57</sup>

\* \* \*

Q. Are you authorized to sign on any Port Royal North Carolina Mutual Reassurance Trust custodial accounts?

A. In litigation.

Q. Sir, are you—

A. It is in litigation.

Q. Are you authorized to sign any Port Royal North Carolina Mutual Reassurance Trust with custodial accounts?

A. I am not supposed to answer any questions that have to do with any litigations with North Carolina Mutual. I have been generous to answer your questions. I now refuse to answer any questions that are currently in litigation.<sup>58</sup>

\* \* \*

Q. So you know [ML]?

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<sup>55</sup> CX-31, at 1.

<sup>56</sup> Tr. 209.

<sup>57</sup> CX-31, at 13.

<sup>58</sup> CX-31, at 15. A “current litigation” defense is without merit. *Darrell Jay Williams*, 50 S.E.C. 1070, 1072 (1992) (Respondent “was clearly obligated to supply the information that the NASD requested, and the possibility of litigation in connection with the underlying transaction provided no excuse for his failure to do so.”).

A. I am not answering any questions regarding North Carolina Mutual.

Q. When did he become president and chief executive officer?

A. No idea.

Q. Do you know him as Mike?

A. I am not answering any questions regarding current litigation.<sup>59</sup>

\* \* \*

Q. Mr. Reifler, it is FINRA's understanding that this promissory note is dated July 31, 2015 and was executed on behalf of the borrower by you. You were registered with FINRA on July 31, 2015. Please tell me what the underlying collateral was supporting that promissory note?

A. Refuse to answer on the grounds that it is current litigation. And in the future just so I don't have to say I refuse to answer I am going to say current litigation.

Q. Thank you for the shorthand. I would next like to talk about the promissory note between on the one hand Forefront Talking Capital Investment, LLC Ikarim Business Services, Ltd.-Verizon U.K. and on the other hand Port Royal North Carolina Mutual Reassurance Trust. What was the underlying collateral supporting that note?

A. I forgot what I said was the new shorthand.

Q. I think it was "current litigation."

A. Current litigation. Thank you.<sup>60</sup>

\* \* \*

Q. North Carolina Mutual alleged that upon information and belief the \$495,048.73 dividend to which North Carolina Mutual was entitled was paid to an account controlled by the Forefront entities, Reifler or Flatley.

I read the Answer filed by Port Royal and Port Royal answered, "upon information and belief admitted."

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<sup>59</sup> CX-31, at 28.

<sup>60</sup> CX-31, at 30-31.

Why does Port Royal think that the dividend was paid to an account controlled by the Forefront entities, Reifler or Flatley?

A. Current litigation.

Q. Do you know why Port Royal thinks that? That is just a yes or no.

A. Current litigation. Not responding.<sup>61</sup>

Reifler also refused to answer a number of other questions that FINRA Staff asked.<sup>62</sup>

Reifler's refusal to answer questions in the May and June 2017 OTRs halted FINRA's investigation.<sup>63</sup> On cross-examination by Reifler in the hearing, the FINRA examiner testified that most of the information FINRA Staff had been seeking in the OTRs was not available from the public record or from FIT:

So for instance we asked for [Reifler's] role and responsibility of Forefront Capital Markets, the supervisory review of brokerage transactions, exception reports, due diligence and new customer CIP program. That information was not provided on investors who invested into FIT prior, through Forefront Capital Markets. So we didn't have that documentation.<sup>64</sup>

The two OTRs took place within the two-year period following Reifler's termination of his registration with FINRA.<sup>65</sup>

#### **F. In a Pre-Hearing Order, the Hearing Panel Rejects Reifler's "Defenses" for Not Answering FINRA Staff's Questions**

Enforcement filed the Complaint on September 26, 2017. In an Order granting partial summary disposition, the Hearing Panel rejected the "jurisdiction" and "current litigation" defenses Reifler invoked as reasons for not answering FINRA Staff's questions in his OTRs.<sup>66</sup> Because of the Order, the hearing was limited to the following issues: whether Reifler failed to answer one or more of FINRA Staff's questions; whether such questions were relevant within the meaning of FINRA Rule 8210(a); and sanctions.

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<sup>61</sup> CX-31, at 32. Flatley was one of the defendants in the NCM civil action.

<sup>62</sup> CX-31, at 13-16, 18-21, 25-26, 28, 31-32.

<sup>63</sup> Tr. 120.

<sup>64</sup> Tr. 176-77.

<sup>65</sup> Tr. 162, 201, 209.

<sup>66</sup> Order Granting Department of Enforcement's Mot. for Partial Summary Disposition and Denying Respondent Bradley Reifler's Mot. for Summary Disposition (Mar. 20, 2018).

### III. Conclusions of Law

Considering the hearing testimony and exhibits, the Hearing Panel concludes that Reifler refused to answer questions in OTRs in violation of FINRA Rules 8210 and 2010. FINRA Rule 8210 provides that “[n]o member or person shall fail to provide information or testimony ... pursuant to this Rule.”<sup>67</sup> The Rule requires that an associated person respond fully, completely, and truthfully to an information or testimony request from FINRA. An associated person’s failure to answer a single question can violate FINRA Rule 8210.<sup>68</sup> Reifler refused to answer at least 65 questions.<sup>69</sup> By not answering, he foreclosed the possibility of follow-up questions.

The unanswered questions were relevant within the broad meaning of FINRA Rule 8210(a). FINRA Rule 8210(a) provides that FINRA Staff has the right to “require a member, person associated with a member, or any person subject to FINRA’s jurisdiction ... to testify ... with respect to any matter involved in [an] investigation.”<sup>70</sup> FINRA Staff asked Reifler questions pertaining to the investigation, which concerned whether, in connection with FIT, Reifler or other associated persons had violated FINRA Rule 2010 by failing to observe high standards of commercial honor and just and equitable principles of trade.

An associated person violates FINRA Rule 2010 if he misappropriates an investor’s funds by loaning the funds to entities he controls or by investing the funds without authorization in a mutual fund that he manages.<sup>71</sup> It does not matter that the mutual fund and the entities are not registered with FINRA. In this case, self-interested loans and unauthorized investments of millions of dollars originating from NCM were matters FINRA Staff was investigating with regard to Reifler. FINRA Staff had the authority to invoke FINRA Rule 8210 to investigate whether Reifler committed misconduct in violation of FINRA Rule 2010.

In sum, Reifler refused to answer questions in testimony, and the questions were relevant within the meaning of FINRA Rule 8210(a). The Hearing Panel concludes that Reifler violated FINRA Rules 8210 and 2010.

### IV. Sanctions

The Hearing Panel now imposes sanctions for Reifler’s violation of FINRA Rules 8210 and 2010. The purpose of FINRA’s disciplinary process is to protect the investing public,

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<sup>67</sup> FINRA Rule 8210(c).

<sup>68</sup> *Dep’t of Enforcement v. Asensio Brokerage Servs., Inc.*, No. CAF30067, 2006 NASD Discip. LEXIS 20, at \*47-48 (NAC July 28, 2006).

<sup>69</sup> CX-20; CX-31.

<sup>70</sup> FINRA Rule 8210(a).

<sup>71</sup> *Dep’t of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at \*3 (NAC Dec. 17, 2015) (Respondents “violated their fiduciary duties by using the fund’s assets to make self-interested loans instead of buying equities, overvalued their contributions to the fund, and loaned money to their struggling broker-dealer to keep it in business.”).

support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.<sup>72</sup>

The Hearing Panel considers the Principal Considerations of FINRA's Sanction Guidelines ("Guidelines") that are applicable to all sanction formulations. The first that is relevant here is the respondent's disciplinary history.<sup>73</sup> Reifler has such a history. In 1999, the Commodity Futures Trading Commission ("CFTC") issued a disciplinary order fining him \$59,033 for violating the Commodity Exchange Act and regulations thereunder.<sup>74</sup> In 2016, the State of Massachusetts issued a disciplinary order fining Reifler \$36,000 for his failure to disclose the CFTC order.<sup>75</sup>

The second relevant Principal Consideration is whether the respondent engaged in numerous acts or a pattern of misconduct.<sup>76</sup> In two separate OTRs, Reifler refused to answer at least 65 questions. This constitutes numerous acts of misconduct.

The third relevant Principal Consideration is whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA.<sup>77</sup> Reifler was the only source of the information FINRA needed, so his refusal to answer questions in testimony concealed information and halted FINRA's investigation. His handwritten answers to FINRA Staff's Rule 8210 request for information also delayed the investigation and concealed information from FINRA.<sup>78</sup>

The fourth relevant Principal Consideration is whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence.<sup>79</sup> Reifler's misconduct was intentional. He deliberately refused to answer the questions put to him by FINRA Staff. He relied on discredited and spurious "defenses" to avoid answering questions.

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<sup>72</sup> FINRA Sanction Guidelines at 2 (2018) (General Principle No. 1), <http://www.finra.org/industry/sanction-guidelines>.

<sup>73</sup> Guidelines at 7 (Principal Consideration No. 1: An individual respondent's disciplinary and arbitration history).

<sup>74</sup> CX-4, at 19-22; Tr. 60.

<sup>75</sup> CX-4, at 24-25; Tr. 126.

<sup>76</sup> Guidelines at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct).

<sup>77</sup> Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA).

<sup>78</sup> The Hearing Panel declines to consider whether Reifler testified falsely to FINRA Staff, as Enforcement asked us to do in the hearing. On the current record, the evidentiary basis for a finding of false testimony is lacking.

<sup>79</sup> Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

With the Principal Considerations in mind, the Hearing Panel addresses the specific sanction for Reifler's FINRA Rule 8210 violation. The Sanction Guideline for failure to respond to requests made pursuant to FINRA Rule 8210 provides that, if the individual did not respond in any manner, a bar should be standard.<sup>80</sup> The single consideration specific to this Guideline is the importance of the information requested as viewed from FINRA's perspective.<sup>81</sup>

The Hearing Panel finds that Reifler did not respond in any manner to FINRA Staff's Rule 8210 requests. Viewing his testimony on a question-by-question basis, multiple times he refused to answer individual questions in any manner. Taken on an aggregate basis, his testimony in its entirety provided no useful information to FINRA Staff. The information sought was important from FINRA's perspective: Reifler's management of FIT and his use of investors' funds were the reason for the investigation. Reifler's refusal to answer questions halted the investigation.<sup>82</sup>

Based on these factors and the Principal Considerations, a bar is the appropriate sanction. For refusing to answer questions in OTRs in violation of FINRA Rules 8210 and 2010, Reifler is barred from associating with any FINRA member firm in any capacity.

## **V. Order**

Respondent Bradley Reifler refused to answer questions in two separate OTRs, in violation of FINRA Rules 8210 and 2010. For this violation, Reifler is barred from associating with any FINRA member firm in any capacity.

Reifler is also ordered to pay the costs of the hearing in the amount of \$2,968.81, consisting of an administrative fee of \$750 and the cost of the transcript. The costs shall be due on a date set by FINRA, but not less than 30 days after this Decision becomes FINRA's final

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<sup>80</sup> Guidelines at 33.

<sup>81</sup> Guidelines at 33.

<sup>82</sup> Tr. 120.

action in this disciplinary proceeding. The bar shall be effective immediately if this Decision becomes FINRA's final action in this disciplinary proceeding.<sup>83</sup>

For the Hearing Panel



Richard E. Simpson  
Hearing Officer

Copies to: Bradley C. Reifler (via email, first-class mail, and overnight courier)  
Matthew M. Ryan, Esq. (via email and first-class mail)  
John Narducci, Esq. (via email)  
Jeffrey D. Pariser, Esq. (via email)

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<sup>83</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.