

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 77470 / March 29, 2016

Admin. Proc. File No. 3-16756

In the Matter of the Application of

STEPHEN GRIVAS

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY
PROCEEDINGS

Conversion

Associated person of member firm of registered securities association converted funds of an investment fund he managed and transferred those funds to the broker-dealer with which he was associated in order to cure the broker-dealer's net capital deficiency. Held, association's findings of violation and imposition of sanctions are sustained.

APPEARANCES

Martin P. Unger of Wexler Burkhart Hirschberg & Unger LLP for Stephen Grivas.

Alan Lawhead, Jennifer Brooks, and Gary Dernelle for FINRA.

Appeal filed: August 14, 2015

Last brief received: January 6, 2016

Stephen Grivas was formerly associated with Obsidian Financial Group, LLC ("Obsidian Financial"), a former FINRA member firm. Grivas seeks review of a FINRA disciplinary action based on his alleged violation of FINRA Rule 2010, which requires that FINRA members must, "in the conduct of [their] business, observe high standards of commercial honor and just and

equitable principles of trade.”¹ FINRA found that Grivas violated Rule 2010 by taking \$280,000 from an investment fund he managed and transferring that money to the broker-dealer with which he was associated to cure the broker-dealer’s net capital deficiency. As a result of this violation, FINRA barred Grivas from association with any FINRA member firm.

On appeal, Grivas does not dispute that he transferred the funds or that he did so without authorization. Instead, he principally argues that his alleged misconduct was not actionable under Rule 2010 because it was not “in the conduct of [his] business” as an associated person of a broker-dealer.² Based on our independent review of the record, we sustain FINRA’s finding of violation and the bar imposed. We find that Grivas violated Rule 2010 because his business-related conduct—the conversion of funds—reflected a failure to observe the high standards of commercial honor required of registered persons.

I. FACTS

A. Grivas’s background.

Grivas entered the securities industry in 1992 and became associated with Obsidian Financial in April 2008. Obsidian Financial is owned by Obsidian Capital Holdings, LLC (“Obsidian Holdings”), of which Grivas is an approximately 25 percent shareholder and managing member.

Obsidian Financial ceased operating a securities business in February 2013 and was expelled from FINRA membership on October 16, 2013, for failure to file a quarterly financial report. Grivas is not currently associated with any FINRA member firm.³

B. Grivas formed the Fund to purchase restricted shares of Facebook stock.

In May 2011, Grivas formed Obsidian Social Networking Fund I, LLC (“the Fund”). As set out in its private placement memorandum (“PPM”), the purpose of the Fund was to purchase shares of Facebook, Inc. (“Facebook”) stock prior to Facebook’s anticipated initial public offering. In May 2011, Grivas also formed Obsidian Social Networking Management, LLC (“Obsidian Management”) to act as the Fund’s manager. Grivas was the manager and sole

¹ This requirement also applies to associated persons. *See* FINRA Rule 0140(a) (“Persons associated with a member shall have the same duties and obligations as a member under the Rules.”).

² Grivas objects that he did not receive portions of the record on appeal, and, as a result, he cited to entire documents rather than specific pages in the record. Grivas, however, concedes that he has received an index of the record as required by Commission Rule of Practice 420(e). *See* 17 C.F.R. § 201.420(e). Grivas’s citations have not affected our review of his appeal.

³ Grivas was suspended from associating with any member firm on October 29, 2013, for failure to comply with an arbitration award or settlement agreement or to satisfactorily respond to a FINRA request to provide information concerning the status of his compliance with the arbitration award or settlement agreement.

member of Obsidian Management. The PPM and the operating agreement for the Fund indicated that Obsidian Management owed a fiduciary duty to the Fund. Obsidian Management retained Stacy Marcus and her company, Social Strategy LLC, as a consultant to the Fund. Marcus and her company were hired to, among other things, locate Facebook stock for the Fund and maintain spreadsheets tracking the Fund's assets and costs.

The Fund offered and sold interests in the Fund through Obsidian Financial and two other broker-dealers. The Fund began collecting investments in September 2011. By the time the offering closed in March 2012, the Fund had raised \$11,202,305 from 54 investors, 24 of whom were existing Obsidian Financial customers.

The Fund used the proceeds of the offering to purchase 260,000 shares of Facebook on April 4 and 17, 2012, at a cost of \$9,976,750. Because of the limited availability of Facebook shares in the secondary market, the Fund was not able to use all the money it had raised to invest in Facebook shares. Thus, after paying Obsidian Management's management fee, as well as other expenses, the Fund still had \$297,094 remaining as of May 18, 2012. Pursuant to the terms of the PPM, the Operating Agreement, and the parties' understanding, these funds were to be distributed to members minus any remaining fees and reserves.

C. Grivas transferred \$280,000 from the Fund to Obsidian Financial.

Obsidian Financial began experiencing net capital difficulties by May 2012.⁴ To cure the deficiency, Grivas transferred \$280,000 from the Fund to Obsidian Financial. On June 14, 2012, Grivas first wired \$280,000 from the Fund to Obsidian Management. Grivas then transferred the funds to Olympus Capital Group ("Olympus"), an entity that Grivas owned and which he used for personal investment purposes. Later on June 14th, Grivas wired \$280,000 from Olympus to Obsidian Holdings, Obsidian Financial's parent. The following day, Grivas wired \$280,000 from Obsidian Holdings to Obsidian Financial.

On June 15, 2012, the same day it received the \$280,000 of Fund money, Obsidian Financial submitted a Securities Exchange Act of 1934 ("Exchange Act") Rule 17a-11(b) notification to FINRA and the Commission stating that the firm had a net capital deficiency of \$110,000 during the period of May 15, 2012, through June 15, 2012. The notification further stated that Obsidian Financial was now in capital compliance because it had received a capital contribution of \$280,000 on June 15, 2012.

D. Grivas failed to notify Fund investors of the transfer.

Grivas did not tell anyone that he planned to withdraw \$280,000 from the Fund and transfer it to Obsidian Financial. Grivas also did not disclose the transfer to anyone after it had occurred or make any notation of the transfer in any of the Fund's books and records.

⁴ Securities Exchange Act Rule 15c3-1 establishes certain net capital requirements that all broker-dealers must have and maintain.

Marcus and her company maintained spreadsheets that kept track of the assets and expenses for the Fund. On multiple occasions after June 14, 2012, Marcus sent these spreadsheets to Grivas to review. Grivas knew that Marcus relied on the amounts in these spreadsheets when communicating with Fund members about the expected amount of their refunds. Yet Grivas never informed Marcus that, because of his withdrawal, the amount in the Fund's operating account was \$280,000 less than indicated on her spreadsheets.

E. FINRA investigated Grivas and Grivas repaid the Fund.

In June 2012, FINRA's Department of Enforcement (the "Department") began an investigation of Obsidian Financial. As part of this investigation, both Grivas and Marcus appeared for on-the-record testimony ("OTR"). On February 20, 2013, the day before Marcus's OTR and over eight months after the \$280,000 transfer, Grivas told Marcus for the first time that Obsidian Management had withdrawn \$280,000 from the Fund's operating account. On May 8, 2013, two months after his OTR and almost eleven months after the \$280,000 transfer, Grivas repaid the \$280,000 into the Fund's operating account.

F. FINRA found that Grivas violated FINRA Rule 2010 and barred Grivas from the securities industry.

On April 30, 2013, the Department filed a single-cause complaint against Grivas alleging that he had converted \$280,000 from the Fund to meet the regulatory capital requirements of Obsidian Financial in violation of FINRA Rule 2010. The Hearing Panel issued its decision on February 14, 2014, finding that Grivas had converted monies of the Fund in violation of FINRA Rule 2010 and barring Grivas from the securities industry.⁵

On appeal, FINRA's National Adjudicatory Counsel ("NAC") affirmed the Hearing Panel's findings and the sanctions it imposed. The NAC barred Grivas from association with any FINRA member firm in any capacity for his violation of Rule 2010 and found that this sanction appropriately fell within the FINRA Sanction Guidelines. This appeal followed.

II. Analysis

A. Standard of Review

We base our findings on an independent review of the record and apply the preponderance of the evidence standard for self-regulatory organization ("SRO") disciplinary actions.⁶ Pursuant to Exchange Act Section 19(e)(1), in reviewing an SRO disciplinary action, we determine whether the aggrieved person engaged in the conduct found by the SRO, whether

⁵ Grivas was also ordered to pay hearing costs of \$5,649.95.

⁶ See *David M. Levine*, Exchange Act Release No. 48760, 2003 WL 22570694, at *2, *9 n.42 (Nov. 7, 2003).

such conduct violates the SRO's rules, and whether such SRO rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.⁷

B. Grivas engaged in the conduct found by FINRA.

We find that Grivas engaged in the conduct found by FINRA. As described above, the record establishes, and Grivas does not dispute, that he intentionally withdrew \$280,000 from the Fund and transferred it through several intermediaries to Obsidian Financial to cure that firm's net capital deficiency. Grivas was not authorized to withdraw money from the Fund for the purpose of transferring it to Obsidian Financial; furthermore, it was not his money, nor was he entitled to possess it.

C. Grivas's conduct violated FINRA Rule 2010.

We agree that Grivas's conduct violated FINRA Rule 2010, which requires that associated persons, in the conduct of their business, "observe high standards of commercial honor and just and equitable principals of trade." This Rule is "designed to enable [FINRA] to regulate the ethical standards of its members"⁸ and "encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security."⁹ In determining whether conduct violates Rule 2010, the Commission examines whether the wrongdoing reflects on the associated person's capacity "to comply with the regulatory requirements of the securities business and to fulfill [his or her] fiduciary duties in handling other people's money."¹⁰

Grivas's conduct fits within the broad range of misconduct proscribed by Rule 2010. His intentional and unauthorized transfer of money from the Fund to his broker-dealer constituted an act of conversion, which we have consistently found to violate Rule 2010.¹¹ Conversion is defined under FINRA's Sanction Guidelines as the "intentional and unauthorized taking of

⁷ 15 U.S.C. § 78s(e)(1).

⁸ *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *7 (Jan. 9, 2015), *aff'd West v. SEC*, --- F. App'x ---, 2016 WL 386062 (2d Cir. Feb. 2, 2016) (citations and internal quotation marks omitted).

⁹ *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (per curiam) (citations and internal quotation marks omitted).

¹⁰ *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 WL 31769236, at *4 (Oct. 23, 2002) (citing *James A. Goetz*, Exchange Act Release No. 39796, 1998 WL 130849, at *3 (Mar. 25, 1998)).

¹¹ *See, e.g., John M. E. Saad*, Exchange Act Release No. 62178, 2010 WL 2111287, at *4-5 (May 26, 2010), *rev'd on other grounds and remanded*, 718 F.3d 904 (D.C. Cir. 2013). FINRA Rule 2010 has the same wording and maintains the requirements previously contained in the National Association of Securities Dealers' ("NASD") Rules of Fair Practice Article III, Section 1, and later NASD Conduct Rule 2110. Commission precedent addressing these provisions is equally applicable to the Commission's consideration of charges under Rule 2010.

and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.”¹² Grivas’s conduct meets each element of this definition. First, Grivas’s transfer of money from the Fund to Obsidian Financial was intentional. He incurred additional time and effort to transfer the money through a series of intermediaries before the money was received by Obsidian Financial. Second, Grivas’s transfer was not authorized. We note that he took pains to conceal the transfer through the use of intermediaries and told no one, including Marcus, about the transactions. Finally, the record supports a finding that the \$280,000 did not belong to Grivas nor was he “entitled to possess it.” Therefore, we find, as did FINRA, that Grivas’s transfer of funds from the Fund to Obsidian Financial constituted conversion.

Grivas’s conversion of Fund assets was in the conduct of his business as required for a violation of Rule 2010. The conversion directly concerned and affected his broker-dealer, Obsidian Financial, by permitting the firm to cure a net-capital deficiency and continue to operate.¹³

Grivas contends that the unauthorized withdrawal involved only the Fund, Obsidian Management, and Grivas. According to Grivas, this conduct therefore does not fall within Rule 2010’s scope because it does not involve his investment banking or securities business as an associated person.¹⁴ This view of the facts is far too narrow.¹⁵ The initial transfer from the Fund

¹² See FINRA Sanction Guidelines (Mar. 2015 ed.) (“Guidelines”) at 36 & n.2. The Commission has previously used this definition in evaluating FINRA disciplinary actions under Rule 2010 and its predecessors. See, e.g., *Denise M. Olsen*, Exchange Act Release No. 75838, 2015 WL 5172954, at *4 n.19 (Sept. 3, 2015); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *8 (Feb. 10, 2012). Grivas asserts that the Commission should instead rely on common law definitions of conversion that have previously been referenced by the NAC in its decisions. As Grivas concedes, however, his transfer of assets from the Fund would equally satisfy these common law definitions of conversion.

¹³ See *West*, 2015 WL 137266, at *8 (sustaining finding that associated person violated Rule 2010 predecessor by misusing customer funds to pay member firm’s operating expenses).

¹⁴ In support of this asserted limitation on Rule 2010, Grivas cites mainly cases examining the scope of FINRA’s arbitration rules. But this disciplinary proceeding is governed by FINRA’s Code of Procedure, not its Code of Arbitration Procedure. Nor does Grivas explain why limits on the scope of FINRA’s arbitration rules apply to the scope of Rule 2010, given Rule 2010’s broad focus on the ethical standards of FINRA members and associated persons.

¹⁵ Grivas alternatively frames his argument as challenging FINRA’s jurisdiction over the subject matter of this proceeding. His argument, however, is more appropriately understood as addressing whether the facts alleged are actionable under Rule 2010. See *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 253-54 (2010) (“[T]o ask what conduct § 10(b) reaches is to ask what conduct § 10(b) prohibits, which is a merits question. Subject-matter jurisdiction, by contrast, refers to a tribunal’s power to hear a case. It presents an issue quite separate from the question whether the allegations the plaintiff makes entitle him to relief.”) (internal citations and quotation marks omitted). As in *Morrison*, whether FINRA may appropriately sanction a member or associated person for conduct that it finds violates Rule 2010 is a merits question.

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to Obsidian Management must be understood in its broader context, as the first step in the transfer from the Fund to Obsidian Financial to meet that member firm's net capital requirement. Grivas should not benefit from the fact that he did not transfer the converted funds directly and instead used multiple intermediaries he controlled. Instead, this indirect transfer of funds suggests that Grivas was trying to hide the conversion and that he knew the conduct was prohibited. In any event, the ultimate purpose of the conversion was to benefit Obsidian Financial and thus the conversion was squarely within the conduct of Grivas's business.

Even if Grivas's asserted limitation on the universe of relevant facts was correct, Grivas's conversion of money from an investment fund would itself satisfy Rule 2010's requirement that the misconduct be in the conduct of Grivas's business. Grivas acted as the Fund's manager through Obsidian Management. His management of the Fund and conversion of fund assets in breach of his fiduciary duty to the Fund is business-related conduct, even if that management was not of a FINRA member firm.¹⁶ Among other reasons, the Fund and the FINRA member firm, Obsidian Financial, were interrelated: Obsidian Financial served as one of the brokers for the Fund's offering and 24 members of the Fund were customers of Obsidian Financial at the time they invested in the Fund.

Grivas is also incorrect that the misconduct must bear a "close relationship" to the associated person's "investment banking or securities business." This language is not in Rule 2010 and is contrary to the precedent interpreting that rule.¹⁷ Nor must the conduct relate to the associated person's customers¹⁸ or to a securities transaction¹⁹ in order to be covered by Rule

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There is no dispute that FINRA has jurisdiction over a registered representative associated with a member firm or that FINRA has jurisdiction to discipline associated persons. *See* 15 U.S.C. § 78o-3(b) and (h); FINRA By-Laws of the Corporation Articles V and XIII.

¹⁶ *See Vail*, 101 F.3d at 39 (holding that "Vail's position as a fiduciary of the club managing the club's funds constituted business-related conduct" and thus was actionable under Rule 2010 predecessor).

¹⁷ *See Leonard John Ialeggio*, Exchange Act Release No. 37910, 1996 WL 632974, at *3 (Oct. 31, 1996); *Vail*, 101 F.3d at 39.

¹⁸ *See, e.g., Saad*, 2010 WL 2111287, at *4-5 (sustaining finding that associated person violated Rule 2010 predecessor by misappropriating funds of the member firm's parent by submitting a false reimbursement claim).

¹⁹ *See West*, 2015 WL 137266, at *9 (finding that FINRA had jurisdiction over misconduct that involved a firm's business dealings with a client, even though it did not concern a securities transaction); *Manoff*, 2002 WL 31769236, at *4 (sustaining finding that associated person violated Rule 2010 predecessor by misappropriating and using the credit card information of a co-worker obtained in the course of evaluating her finances); *Goetz*, 1998 WL 130849, at *3 (sustaining finding that associated person violated Rule 2010 predecessor by misrepresenting to his firm that he had made a donation to his daughter's private high school so that his firm would make a matching gift that would be offset against his daughter's tuition); *Ernest A. Cipriani*, Exchange Act Release No. 33675, 1994 WL 62106, *2-3 (Feb. 24, 1994) (sustaining finding that

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2010. Instead, whether misconduct is within Rule 2010's scope is ultimately a question of whether the conduct raises concerns that the associated person will not "comply with the regulatory requirements of the securities business" and will not "fulfill [his or her] fiduciary duties in handling other people's money."²⁰ Even if the misconduct does not involve a security, the misconduct can indicate the associated person's unfitness and FINRA can properly conclude that "on another occasion" the misconduct could very well involve securities.²¹

For example, in *Ialeggio*, the respondent was an associated person of a member firm and was employed by the member firm's parent company.²² The Commission found that Ialeggio had violated Rule 2010's predecessor by obtaining reimbursement from the member firm's parent company—not the member firm—for expenses he did not incur and by improperly inducing the parent company to pay for his country club initiation fees.²³ The Commission held that the Rule could apply to "misconduct not related directly to the securities industry" and even to misconduct where "no customer was involved and no customer's funds were jeopardized or misappropriated."²⁴

Similarly, in *Vail*, the Fifth Circuit sanctioned Vail for misappropriating funds from a political club and misrepresenting that the funds were in an account at Cigna, a member firm where Vail was a securities salesman.²⁵ The court noted the Commission's consistent holding that Rule 2010's predecessor applied "even if [the] activity does not involve a security" and determined that "Vail's position as a fiduciary of the club managing the club's funds constituted business-related conduct" and thus was sanctionable.²⁶

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associated person violated Rule 2010 predecessor by misappropriating customer's cash payments of life insurance premiums).

²⁰ *Manoff*, 2002 WL 31769236, at *4 (citing *Goetz*, 1998 WL 130849, at *3).

²¹ *Thomas E. Jackson*, Exchange Act Release No-11476, 1975 WL 160390, at *2 (June 16, 1975) ("Although Jackson's wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion it might.").

²² *Ialeggio*, 1996 WL 632974, at *1.

²³ *Id.* at *3.

²⁴ *Id.* On a subsequent appeal, the Ninth Circuit affirmed that Ialeggio's "cheating his employer was 'in the conduct of his business'" even though the employer that was cheated was the member firm's parent company, not the member firm itself. See *Ialeggio v. SEC*, 185 F.3d 867, at *1 (9th Cir. May 20, 1999) (unpublished).

²⁵ *Vail*, 101 F.3d at 39.

²⁶ *Id.* The Fifth Circuit also held that Vail's misrepresentations regarding the Cigna account's existence were within the scope of Rule 2010's predecessor. But the Fifth Circuit held that Vail's breach of his fiduciary duty to the club was a separate basis for finding Vail's conduct actionable. See *id.* We reject Grivas's contrary interpretation of *Vail*. Our view of *Vail* is further supported by the Commission's opinion in that action, in which the Commission

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We thus conclude that Grivas's conversion reflects a failure to observe high standards of commercial honor and just and equitable principals of trade and thus violates Rule 2010.

D. FINRA Rule 2010 is, and was applied in a manner, consistent with the purposes of the Exchange Act.

We find that FINRA Rule 2010 is, and was applied in a manner, consistent with the purposes of the Exchange Act. Rule 2010 reflects the mandate of Exchange Act Section 15A(b)(6), which requires, among other things, that FINRA design its rules to "promote just and equitable principles of trade."²⁷ This standard "provides more flexibility than prescriptive regulations and legal requirements" and, thus, prohibits dishonest practices even if those practices may not be illegal or violate a specific rule.²⁸ As a result, Rule 2010 is consistent with the purposes of the Exchange Act.

We also find that FINRA applied Rule 2010 in a manner consistent with the purposes of the Exchange Act. FINRA's finding that Grivas's conversion violated Rule 2010 was supported by the record and underscores the purpose of Rule 2010 as a tool to prohibit dishonest practices.

E. Grivas received sufficient notice of the claims against him.

Grivas also asserts that this proceeding should be dismissed because, while FINRA's complaint alleged that Grivas converted monies of "the Fund's investors," FINRA found only that Grivas converted assets of the Fund. We agree with FINRA that this is a "distinction without a difference."

The standard for determining whether pleadings in FINRA proceedings are sufficient is whether "the respondent understood the issue and was afforded full opportunity to justify its conduct during the course of the litigation."²⁹ Notice is sufficient when the respondent "is reasonably apprised of the issues in controversy and is not misled."³⁰

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sustained FINRA's finding that Vail violated Rule 2010's predecessor because "[a]s treasurer, Vail took on significant fiduciary duties to safeguard the Club's funds. In [misappropriating the Club's funds], Vail clearly breached those duties." *Henry E. Vail*, Exchange Act Release No. 35872, 1995 WL 380152, at *2 (June 20, 1995).

²⁷ 15 U.S.C. § 78o-3(b)(6).

²⁸ *Notice of Filing of a Proposed Rule Change*, Exchange Act Release No. 58095, 2008 WL 2971979, at *2 (July 3, 2008); *see also Rule Change Approved Without Modification*, Exchange Act Release No. 58643, 2008 WL 4468749, at *5 (Sept. 25, 2008).

²⁹ *Saad*, 2010 WL 2111287, at *5 (quoting *Aloha Airlines, Inc. v. Civil Aeronautics Bd.*, 598 F.2d 250, 262 (D.C. Cir. 1979) (internal quotation marks omitted)).

³⁰ *Id.* (citations and internal quotation marks omitted).

FINRA’s Complaint states that “Grivas converted approximately \$280,000 of investor funds raised through a fund that he formed”³¹ While the converted funds actually belonged to the Fund, Grivas cannot argue that this distinction prevented him from being reasonably apprised of the issues in controversy or misled him about the Department’s theory of liability. Indeed, on multiple occasions, the Complaint indicates that the \$280,000 was converted “from the Fund.”³² Grivas stipulated that he transferred \$280,000 from the Fund and FINRA based its decision on this transfer. Grivas was never prevented from introducing evidence or argument at the hearing on the basis of any purported distinctions. Indeed Grivas argued, unsuccessfully, that the Department’s claim was deficient because the converted funds were from an investment fund, not investors.³³

We conclude that Grivas had sufficient notice of the issues being litigated and had ample opportunity to and did present arguments—none of which had merit—in response to the Department’s allegations that formed the basis of the sanction imposed.

III. Sanctions

A. The bar FINRA imposed on Grivas is neither excessive nor oppressive and is necessary for the protection of investors.

Pursuant to Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find it is “excessive or oppressive” or imposes an unnecessary or inappropriate burden on competition.³⁴ As part of this review, we consider any aggravating or mitigating factors³⁵ and whether the sanctions imposed by FINRA are remedial in nature and not punitive.³⁶ We find the

³¹ Compl. ¶ 1.

³² See, e.g., *id.* ¶¶ 14, 18.

³³ Grivas cites without analysis to *Department of Enforcement v. Zenke*, 2009 FINRA Discip. Lexis 37 (NAC Dec. 14, 2009). In that case, the NAC reversed a hearing panel’s finding of liability and dismissed the Department’s claims because the Department had changed its theory of liability during the hearing. The circumstances in *Zenke* are far different than those here where Grivas was on notice of the bases of the Department’s charge against him which did not change at the hearing.

³⁴ 15 U.S.C. § 78s(e)(2). Grivas does not claim, and the record does not show, that FINRA’s action imposed an unnecessary or inappropriate burden on competition.

³⁵ *Saad*, 718 F.3d at 906; *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007). The Guidelines include a list of non-exhaustive aggravating and mitigating factors (i.e., “Principal Considerations”), and state that, “as appropriate, Adjudicators should consider case-specific factors in addition to those listed.” Guidelines at 6-7.

³⁶ *Paz Sec., Inc.*, 494 F.3d at 1065; see also Guidelines at 2 (“Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.”).

bar imposed on Grivas to be consistent with the statutory requirements and we sustain the imposition of this penalty.

FINRA's Sanction Guidelines state that "a bar is [a] standard" sanction for conversion "regardless of [the] amount converted."³⁷ This approach reflects the judgment that, absent mitigating factors, conversion "poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry."³⁸ Indeed, conversion is antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money,³⁹ and one who intentionally misappropriates funds entrusted to him demonstrates a lack of fitness to be in the securities industry. As a result, the Commission has consistently sustained FINRA's decision to impose a bar for conversion.⁴⁰

Grivas does not contest that, assuming FINRA has authority to sanction him, a bar would be an appropriate remedy. Indeed, Grivas agrees this is a matter "not in dispute."⁴¹ Grivas also does not argue that there are any mitigating factors that would warrant a lesser sanction.

We agree with FINRA that Grivas's intentional, unauthorized transfer of \$280,000 from an investment fund to his associated broker-dealer to cure its net capital deficiency constitutes the type of dishonesty and disrespect of one's duties as a securities professional that warrants a bar. We thus find that the imposition of a bar here is remedial, not punitive.

A bar is further supported by the fact that Grivas attempted to conceal his misconduct and allowed inaccurate records to be maintained and inaccurate statements to be made to Fund members.⁴² Grivas's conversion harmed the Fund by removing \$280,000 and putting those

³⁷ Guidelines at 6-7. Although we are not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 (June 14, 2013).

³⁸ *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *5 n.27 (Nov. 8, 2007).

³⁹ See *Mullins*, 2012 WL 423413, at *18 (Conversion "is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets.") (internal quotation omitted); *Joseph H. O'Brien II*, Exchange Act Release No. 34105, 1994 WL 234279, at *3 (May 25, 1994) ("In converting [customer] funds, O'Brien abused the trust that is the cornerstone of the relationship between a securities professional and his customer.").

⁴⁰ See, e.g., *Olson*, 2015 WL 5172954, at *8; *Mullins*, 2012 WL 423413, at *19-20; *Eliezer Gurfel*, Exchange Act Release No. 41229, 1999 WL 172666, at *4 (Mar. 30, 1999), *petition denied*, 205 F.3d 400 (D.C. Cir. 2000); *Cipriani*, 1994 WL 62106, at *3.

⁴¹ See Reply Br. at 1 & n.1.

⁴² Cf. Guidelines at 6 (listing as Principal Consideration 10, "Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, [or] deceive . . . the member firm with which he or she is/was associated"); *Olson*, 2015 WL 5172954, at *4

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funds at risk and provided a benefit to Grivas by allowing Obsidian Financial to continue operating.⁴³ Grivas also has a preexisting disciplinary history, which raises concerns about his fitness and further supports the imposition of a bar in the public interest.⁴⁴ Finally, while we recognize that Grivas eventually repaid the converted funds, we find that this has little if any mitigating effect because he did so only after FINRA had begun its investigation.⁴⁵

Based on these factors, we conclude that barring Grivas from the securities industry is neither excessive nor oppressive and is necessary and in the public interest.

An appropriate order will issue.⁴⁶

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

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(“[B]ecause Olson concealed her misconduct from the Firm for over a month, we find her deception to be a significant factor supporting a bar.”).

⁴³ See *id.* at 6-7 (listing as Principal Consideration 11, “whether the respondent’s misconduct resulted directly or indirectly in injury to . . . other parties, and . . . the nature and extent of the injury” and as Principal Consideration 17, “Whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain”).

⁴⁴ See *id.* at 6 (listing as Principal Consideration 1, “The respondent’s relevant disciplinary history”). The Iowa Securities Bureau previously brought an action against Grivas for unethical practices related to misrepresentations and omissions to a customer. On May 16, 1997, without admitting or denying the charges, Grivas consented to cease and desist from future violations of Iowa Code Chapter 502 (the Iowa Uniform Securities Act and its rules), paid a \$2,000 fine, and withdrew for one year as a securities agent in the State of Iowa.

⁴⁵ See *id.* (Principal Consideration No. 4, listing as a mitigating factor “Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct”); see, e.g., *Gurfel*, 1999 WL 172666, at *4 (sustaining bar for conversion where respondent had repaid funds). The NAC also found that Grivas’s failure to acknowledge his misconduct was an aggravating factor. On appeal, Grivas has taken greater responsibility for his actions, not questioning the NAC’s finding that he lacked authority to transfer the funds. This belated change in position, however, does not outweigh the other factors that support imposing a bar for Grivas’s actions.

⁴⁶ We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77470 / March 29, 2016

Admin. Proc. File No. 3-16756

In the Matter of the Application of

STEPHEN GRIVAS

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by FINRA against Stephen Grivas, and the assessment of costs imposed, is sustained.

By the Commission.

Brent J. Fields
Secretary