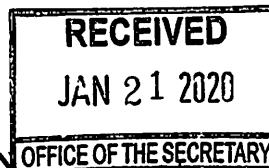


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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application of

Bradley C. Reifler

For Review of Disciplinary Action Taken by

FINRA

Administrative Proceeding No. 3-19589

**FINRA'S MOTION TO STRIKE DOCUMENTS APPENDED TO  
REIFLER'S BRIEF IN SUPPORT OF THE APPLICATION FOR REVIEW**

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January 17, 2020

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SECURITIES AND EXCHANGE COMMISSION  
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In the Matter of the Application of

Bradley C. Reifler

For Review of Disciplinary Action Taken by

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Administrative Proceeding No. 3-19589

**FINRA'S MOTION TO STRIKE DOCUMENTS APPENDED TO  
REIFLER'S BRIEF IN SUPPORT OF THE APPLICATION FOR REVIEW**

On January 13, 2020, FINRA received Reifler's brief in support of his application for review of FINRA's decision to bar him for refusing to answer questions at two on-the-record interviews. Attached to Reifler's brief were 12 "addenda." The addenda are labeled Addendum A through Addendum K, inclusive of an Addendum F and Addendum F-1, and fall into one of two categories: (1) documents that are not contained in the certified record; and (2) altered and reordered documents from the certified record without reference to the certified record page number.

The Commission should strike the first category of documents – documents that are not contained in the certified record – because Reifler has not made the required motion under Commission Rule of Practice 452 to introduce these documents and has not met the rigorous standards required under the rule. Indeed, Reifler has not even attempted to explain why he failed to seek to introduce these documents during the FINRA proceedings. Nor has he explained the materiality of such documents, their relation to his refusals to answer questions at the on-the-record interviews, or how these documents are material to FINRA's proceeding.

The Commission should also strike the second category of documents – altered and reordered documents already contained in the certified record without reference to the certified record page number – because the documents raise questions about their authenticity and completeness, Reifler has not explained why these documents are material in light of the fact that they already appear, in sum and substance, in the record, and he has not explained why he failed to seek to introduce these documents previously. Accordingly, the Commission should strike Reifler’s addenda in total and decide Reifler’s application for review on the basis of the certified record only.

## **I. BACKGROUND**

On September 13, 2019, FINRA’s National Adjudicatory Council (“NAC”) issued a decision finding that Reifler violated FINRA Rules 8210 and 2010 because he refused to answer FINRA staff’s questions during two on-the-record interviews. RP 1843-53.<sup>1</sup> FINRA staff’s questions focused on Reifler’s role as chief executive officer, chief managing officer, and chairman of the board of directors of a closed-end interval fund named Forefront Income Trust. RP 855, 1844-46. Specifically, FINRA staff was investigating whether Forefront Income Trust had been marketed to non-accredited investors, and whether Reifler and other Forefront-related entities had engaged in a fraudulent scheme. RP 716-17, 837-40, 983, 1844. The NAC found that Reifler failed to respond in any manner to FINRA staff’s questions, and that the questions that the staff had asked Reifler were important, and it barred Reifler in all capacities for his refusals to respond during the two on-the-record interviews. RP 1851.

Reifler filed an application for review of FINRA’s disciplinary action, and, on October 31, 2019, FINRA filed a certified copy of the record with the Commission and served a copy of

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<sup>1</sup> “RP” refers to the page number in the certified record.

the index to the certified record on Reifler. RP 1855-56; *see also* Letter from Jante Turner to Vanessa Countryman, dated October 31, 2019, filed with FINRA's certified record. FINRA's certified record contained the same numbering as the record before the NAC, and the index to the certified record included a description of each document and exhibit in the record along with the exhibit numbers assigned during the proceeding before the FINRA Hearing Panel.

On January 13, 2020,<sup>2</sup> Reifler filed his brief in support of the application for review with the Commission. Reifler's brief attached 12 addenda labeled Addendum A through Addendum K. There were also two Addendum F included with Reifler's brief – "Addendum F" and "Addendum F-1." Six of the 12 addenda, Addendum A, B, C, F-1, J, and K, are documents that are not contained in the certified record. The remaining six addenda, Addendum D, E, F, G, H, and I, are altered and reordered documents from the certified record that do not refer to a certified record page number.<sup>3</sup>

## II. ARGUMENT

The Commission should strike the documents attached to Reifler's brief because he has not made the required motion under Commission Rule of Practice 452 to introduce these documents and has not met the standard under the rule to adduce additional evidence. Further, the Commission should strike the altered and reordered certified record documents that Reifler

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<sup>2</sup> Reifler's brief is dated December 30, 2019, but FINRA did not receive the brief until January 13, 2020, which is in accordance with the Commission's extension order of December 23, 2019.

<sup>3</sup> For example, Addendum D is a copy of a Forefront Income Trust new account application, which is contained in the certified record. But Addendum D has no certified record page number identified on it. In addition, Addendum D is an unredacted copy of the application, while the copy contained in the certified record at CX-10 (RP 1171-74) is redacted to remove personal confidential information. Similarly, the documents contained in Addendum G have no certified record page number reference and are comprised of a mix of documents at RX-1 (RP 1507-14) and RX-2 (RP 1515-18), albeit in a different and unexplained order.

submitted with his brief because the documents raise questions about their authenticity and completeness.

**A. The Commission Should Strike the Documents That Are Not Contained in the Certified Record (Addendum A, B, C, F-1, J, and K)**

As an initial matter, the Commission should strike the documents that are not contained in the certified record because Reifler has not sought to introduce additional evidence pursuant to Commission Rule of Practice 452 and has not met the requirements of the rule. 17 C.F.R. § 201.452 (2019). Commission Rule of Practice 452 allows a party to move to adduce additional evidence on appeal. A moving party must demonstrate “with particularity” that “such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.” *Id.* Reifler has failed to make any motion to adduce, much less met the high standard for the admission of additional evidence.

It is well-settled that the Commission will not admit documents on appeal where the party submitting the document has not made the required motion, has not established why the documents are material, and has not shown that there are reasonable grounds for failing to adduce the evidence previously. *See, e.g., Capwest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at \*28 n.43 (Jan. 17, 2014) (excluding documents attached to an applicant’s brief on appeal where the applicant did not file a motion to introduce under Commission Rule of Practice 452 and did not explain why it did not adduce the documents earlier or their materiality); *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*46 n.83 (Apr. 18, 2013) (declining to admit a document attached to applicant’s brief where he did not make a motion pursuant to Commission Rule of Practice 452 and did not explain why he could not have adduced the document previously), *aff’d*, 575 F. App’x 1 (D.C. Cir. 2014); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*58-

59 (Nov. 9, 2012) (declining to admit exhibits on appeal where the applicant made “no attempt to seek permission” to introduce them and, accordingly, did “not explain[] his failure to introduce the exhibits earlier”).

Reifler failed to make a motion under Commission Rule of Practice 452 to introduce additional evidence. Nor has he met the standards articulated in the rule. Reifler has not explained how these documents relate to his refusal to answer questions at the two FINRA on-the-record interviews or why he did not seek to adduce these documents below. The Commission therefore should strike the non-certified record documents (Addendum A, B, C, F-1, J, and K) that Reifler submitted with his brief.

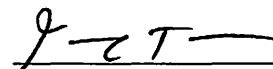
**B. The Commission Should Strike the Altered and Reordered Documents That Reifler Submitted with His Brief (Addendum D, E, F, G, H, and I)**

The other addenda that Reifler attached to his brief – Addendum D, E, F, G, H, and I – are documents that are already contained in the certified record that FINRA filed with the Commission. But these documents do not contain certified record page numbers on them. In some instances, the documents are not exact copies of the documents contained in the certified record, and, in other instances, the documents have been reordered, rearranged, or recompiled for some inexplicable reason. The altering of these documents, coupled with their lack of certified record page numbers and reordering, calls into question the authenticity and completeness of the documents contained in these addenda. Moreover, Reifler has not explained the materiality of the alterations he has made to the documents, and has failed to explain why he did not seek to adduce these documents during the proceedings below. The Commission therefore should strike the altered and reordered certified record documents that Reifler attached to his brief and rely on the unaltered and complete documents that comprise the certified record.

### III. CONCLUSION

The 12 addenda that Reifler attached to his brief improperly include new documents and altered and reordered documents from the certified record. The Commission should strike the new documents because Reifler did not file a motion to adduce the documents, and he provides no explanation of the materiality of the documents or his failure to adduce the documents at an earlier time. The Commission should strike the altered and reordered documents from the certified record because the certified record already contains authenticated and complete copies of these documents, and like the new documents, Reifler has failed to explain why he failed to adduce these documents previously and the materiality of the documents. In sum, the Commission should strike Reifler's 12 addenda, ignore Reifler's references to the addenda in his brief, and decide Reifler's application for review on the basis of the certified record only.

Respectfully Submitted,



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