Michael M. Smith
Associate General Counsel

Direct: 202.728.8177
Fax: 202.728.8264

November 2, 2020

VIA ELECTRONIC MAIL

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Room 10915
Washington, D.C. 20549-1090
apfilings@sec.gov

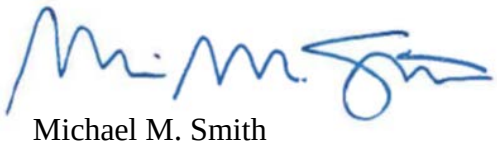
RE: In the Matter of the Application of Silver Leaf Partners LLC
Administrative Proceeding No. 3-19896

Dear Ms. Countryman:

Enclosed please find the Brief of FINRA In Opposition to Application for Review in the above-captioned matter.

Please contact me at michael.smith@finra.org if you have any questions.

Sincerely,



Michael M. Smith

Enclosure

cc: Jeffrey Sexton
Melanie Campbell
Paula Jackson

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

SILVER LEAF PARTNERS, LLC

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-19896

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

Alan Lawhead
Vice President and
Director – Appellate Group

Jennifer Brooks
Associate General Counsel

Michael M. Smith
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, D.C. 20006
(202) 728-8177
Michael.Smith@FINRA.org

November 2, 2020

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MW	Mark Wade
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BEFORE THE
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WASHINGTON, D.C.

In the Matter of the Application of

SILVER LEAF PARTNERS LLC

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Administrative Proceeding No. 3-19896

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

Silver Leaf Partners appeals a decision by FINRA's National Adjudicatory Council (the "NAC") finding the firm violated FINRA rules by paying more than $2.6 million in transaction-based compensation to an "unregistered finder," Sam Halim, and seven nonmember entities affiliated with its registered persons and failing to reasonably supervise its corporate advisory business and its payment of transaction-based compensation. The NAC fined Silver Leaf $100,000, ordered it to retain an independent consultant to review its policies, systems, and procedures, and suspended it from engaging in its corporate advisory business until it certified its implementation of the consultant's recommendations. The record and relevant legal authority support the NAC's decision.

Silver Leaf raises numerous procedural, factual, and legal arguments in its brief, most of which are unsupported by citations to the record or legal authority. It appears, however, that Silver Leaf raises five primary arguments. First, Silver Leaf argues that FINRA lacks jurisdiction over the misconduct because it occurred in connection with foreign securities

transactions. Second, Silver Leaf argues it did not know about or approve the payments to Halim. Third, Silver Leaf argues its payment of transaction-based compensation to the nonmember entities was a "reasonable mistake" for which it should not be sanctioned. Fourth, Silver Leaf argues its limited supervision of its corporate advisory business was sufficient because the business consisted solely of making introductions. Last, Silver Leaf argues that its supervision of transaction-based compensation was sufficient because its written supervisory procedures ("WSPs") prohibited payments to unregistered persons.

Silver Leaf's arguments have no merit. First, FINRA has jurisdiction over Silver Leaf's misconduct because payment of transaction-based compensation and failure to supervise are business-related conduct. Second, the record shows Silver Leaf knew about and facilitated the payment of transaction-based compensation to Halim and the nonmember entities. Third, Silver Leaf's payment of transaction-based compensation to the nonmember entities was in no way a reasonable mistake; the SEC staff previously warned the firm that these payments violated FINRA rules. Fourth, Silver Leaf's corporate advisory business was not limited to making introductions; the record shows Silver Leaf was deeply involved in these transactions from beginning to end, yet the firm had no WSPs for the business and virtually no supervisory system for it. Last, Silver Leaf's WSPs did not address the firm's payment of transaction-based compensation to "finders" like Halim or nonmember entities affiliated with its registered persons.

The NAC's findings are supported by the record and the sanctions imposed are appropriately remedial. The Commission should sustain the decision in all respects.

I. Facts

A. Silver Leaf's Business

During the relevant period, Silver Leaf engaged in three business lines: institutional brokerage, fund marketing, and corporate advisory. RP 636, 3580.[1] The fund marketing and corporate advisory businesses are at issue here.

Silver Leaf's fund marketing business provided "introductory and marketing services" to private fund managers seeking introductions to institutional investors. RP 636. Typically, Silver Leaf entered into a contract with a fund manager under which it promised to use its best efforts to identify prospective investors and introduce them to the fund. RP 1855, 2726-27.

Through its corporate advisory business, Silver Leaf found counterparties for clients "seeking introductions to investor capital, debt, or other financial arrangements," including stock loans and block trades. RP 636.

In both businesses, if an introduction led to a transaction, Silver Leaf received a fee based on the transaction's size. RP 638. Silver Leaf retained part of the fee as an override and passed the rest on to the person who made the introduction. RP 639.

Fyzul Khan and Kevin Meehan were Silver Leaf's co-owners and were at the center of the firm's misconduct. RP 637; 1765-66. Khan was the majority owner, chief executive officer, chief compliance officer, and managing member. RP 6, 4171, 4411. He oversaw the fund marketing and corporate advisory businesses. RP 849. Meehan was the firm's vice chairman, president, chief financial officer, and financial operations principal. RP 1738-40, 1748. He handled the finance and accounting functions. RP 637.

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[1] "RP __" refers to the page in the certified record.

Khan was responsible for general compliance supervision. RP 637. He approved the WSPs and was tasked with reviewing and updating them. RP 4288, 4290. He also supervised the firm's associated persons, reviewed and approved transactions, and reviewed correspondence. RP 4290. As Khan put it, he supervised "the entire business." RP 3487.

B. Silver Leaf Fails to Supervise Its Corporate Advisory Business; Pays Transaction-Based Compensation to Halim

1. Chapler Registers with Silver Leaf; Brings High-Risk Corporate Advisory Business With Him

Jay Chapler registered with Silver Leaf in 2010. RP 2045. Khan gave him the title of managing director and head of investment banking (i.e., corporate advisory). RP 2753. Khan testified that, up until then, Silver Leaf had engaged in corporate advisory transactions only in a "haphazard way without a formalized focus around it." RP 3583-84. Indeed, prior to Chapler's arrival, Khan had never supervised a stock loan introduction. RP 3696-99. Khan said Chapler's hiring "was the start of formalizing" the firm's corporate advisory business. RP 3583.

Chapler had particular expertise in non-recourse stock loans. *See* RP 2071-73; 2076-78; 2972-74. In these transactions, the borrower transfers ownership of stock to the lender, and the lender provides loan proceeds equal to a fraction of the stock's value. Once the borrower delivers the shares, the lender is free to sell them. When the borrower pays back the loan, the lender must return the shares to the borrower. If the borrower fails to pay back the loan, the lender's only recourse is selling the stock (assuming it has not already done so).

Chapler specialized in "second-tier" stock loans and block trades that did not interest larger firms. RP 2071-75. These transactions involved less liquid stocks with smaller market capitalizations. RP 2073-74.

Meehan and Khan admittedly understood that Chapler's business involved more risk to the firm than its other businesses. Khan explained, "When we do marketing for a fund, there is an offering document, there is a prospectus. There are attorneys associated with their audit statements. There are a lot of things you could rely on. But . . . we are not making a placement. We are not making representations to you or Mr. or Mrs. investor. You rely on the fund documents." RP 3625. By contrast, Khan explained, in a corporate advisory deal, there was no such "protective collateral." RP 3625-26.

Similarly, Meehan testified that Chapler's corporate advisory transactions were "bigger" than the firm's fund marketing transactions, "[a]nd with the bigger is more risk in terms of . . . mistakes being made, things going wrong, compliance oversight and things like that." RP 1834-35. He was concerned about the "unknown risk of one of these block trades failing," because the larger the dollar value, "the bigger they fail, [and] the larger a clawback would be on our fees." RP 2011.

2. Chapler Introduces Silver Leaf to BHP

Chapler introduced Khan to BHP, a Bahamian entity based in Toronto. RP 1868, 2114, 2890. Chapler represented to Khan that BHP's principals, Scott Dori and Mark Wade, were very wealthy. RP 645-46, 3614-15. Khan did not independently verify this information; Khan said what he knew about Dori's and Wade's net worth "was all inferential from what Mr. Chapler told [him.]" RP 3614-15.

Khan was not sure how BHP's business worked or where its capital came from. RP 3617. Khan testified, "[F]amily offices like BHP are very private and it is very difficult to understand when you deal with them if the capital that they are deploying is just their capital, if it

is leveraged, if they are working with other family offices. . . . [T]hey are opaque in many ways and they are intended to be, that is what they do." RP 3617.

In April 2012, Silver Leaf and BHP executed an agreement under which Silver Leaf would introduce "prospective borrowers suitable for BHP's collateralized stock loan and block purchase business as an independent agent[.]" RP 4407. In return, on transactions referred by Silver Leaf, BHP would pay Silver Leaf "a reasonable commission based on the net loan or block purchase amount." *Id.* BHP would pay the commission "within five business days from the date that each loan tranche is funded." *Id.*

When asked what services Silver Leaf was expected to perform, Chapler replied, "Mostly the introduction and you know we would facilitate it as well." RP 2107-08. Chapler continued, "[I]t is like any transaction, nothing is black and white. It is not like cookie cutter that every transaction is the same. So there is some back and forth . . . some structuring to some degree. . . . So we were the facilitator besides making the introduction. So we continued on throughout the transaction." *Id.*

3. Chapler Introduces Silver Leaf to Halim

Halim was an unregistered person who did business in Turkey and had extensive contacts there. RP 2056-59. Halim was a U.S. citizen and the chief executive officer of a Florida corporation, North American Physicians, Inc. ("NAPI"). RP 3590-91, 4647, 5701-02.

Chapler met Halim in 2011 or 2012 and found him to be "a very good networker." RP 2141-42. Chapler thought Halim could be a good source of "deal flow" for the firm. RP 2142.

Chapler introduced Halim to Khan, and the three discussed how Halim would help Chapler source corporate advisory transactions, particularly in Turkey and Middle Eastern

markets. RP 2926-27. Khan was impressed; he saw Halim as a "jet-setting doctor turned banker" and a "potential new broker" for the firm. RP 3590-91, 3593.

4. Chapler Agrees to Share Commissions with Halim

Chapler and Halim executed an agreement under which Chapler would share commissions from transactions Halim referred.[2] RP 4651-58. Chapler and Halim exchanged copies of the agreement through Silver Leaf's email system, but Khan denied seeing them during his email review. RP 3622-23; 4651-58.

5. Silver Leaf Increases Its Override on Chapler to Compensate for the Firm's Increased Risk From His Corporate Advisory Business

In 2012, Khan decided that Silver Leaf should be compensated for the additional risk associated with Chapler's business. RP 3625-26. In April 2012, Silver Leaf increased its override on Chapler's corporate advisory transactions from 10 to 25 percent. *See* RP 4621-22. Khan directed Meehan to send an email to Chapler explaining the change. RP 3623-24, 4621-22. In his email, Meehan wrote that, although he and Khan "very much like the opportunities that [Chapler's] business model presents[,] . . . it is different from what we had anticipated. It has the possibilities for greater success fees but also puts [Silver Leaf] in the direct role of brokering a transaction; that's good but also risky." RP 4621. Meehan closed by writing, "We will split on a net basis *so if you have third parties that need to get paid* then their payment will come off the top before our splits." RP 4622 (emphasis added).

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[2] Chapler did business through his entity, DEMC Capital, LLC. RP 2046. The agreement was between DEMC Capital and Halim. RP 4652.

6. Silver Leaf Pays Transaction-Based Compensation to Halim for the UCAK Block Trade

In August 2012, Halim referred a potential transaction for a Turkish company, Isiklar Holdings A.S. RP 2153-54. Isiklar wanted to sell a block of stock in its subsidiary, Usas Ucak Servisi A.S., which traded on the Istanbul Stock Exchange under the symbol UCAK. *See id.*; RP 2955-56, 5711-17. Chapler brought the transaction to Equities First Holdings, LLC, a Delaware company based in Indianapolis. *See* RP 2155; 5711-17.

After introducing the parties, Chapler and Halim helped them come to terms. According to Chapler, he and Halim went back and forth between the parties "like a real estate agent," and "in the end, [they] were just facilitating the transaction, getting feedback from the seller and getting feedback from the buyer and trying to make sure that everybody is in agreement." RP 2155-56.

Isiklar agreed to sell Equities First 21 million UCAK shares in several tranches. RP 5711-17. The price would be about 80 percent of the stock's value, as reflected by the price on the Istanbul exchange. RP 5712. Silver Leaf would receive a total fee of four percent of the stock's value, comprising a three-and-a-half percent "origination fee" plus a one-half percent fee for acting as a principal. RP 2177, 4166, 5712.

The first tranche was completed on September 4, when Isiklar sold 300,000 shares to Equities First for $331,919. RP 2174-75, 4166. Two days later, Isiklar's agent in Turkey wired Silver Leaf's fee of $13,233. RP 4161.

Meehan calculated a split of Silver Leaf's fee between Silver Leaf, Chapler, and Halim. Meehan sent an email to Chapler attaching a spreadsheet. RP 4165-66. Under the heading "Payout Calculation," the spreadsheet showed, "Wire Received 9/6/12 $13,233," and under that,

showed "$5,954.85 45% to Sam [Halim]." RP 2179; 4165-66. Khan denied seeing this email during his email review. RP 3628-29.

Silver Leaf deposited Halim's and Chapler's share of the firm's fee, a total of $11,413, in Chapler's bank account. RP 2184, 4707.[3] Chapler then wired Halim's share, $5,954, to Halim's bank account. RP 2185, 4710.[4] The split of Silver Leaf's fee was consistent with Meehan's earlier email to Chapler; Halim was a "third part[y] that need[ed] to get paid," so Halim's 45 percent share came "off the top" of the firm's gross fee. *See* RP 4622.

The second tranche was completed on September 11, when Isiklar sold 2.2 million shares to Equities First for a total of $2,485,876. RP 4719-21. Two days later, Isiklar's agent in Turkey wired Silver Leaf's fee of $99,383. RP 4169. Silver Leaf then deposited a total of $85,612 in Chapler's bank account, representing Chapler's and Halim's fee for the second tranche. RP 2186-89, 4707, 4713. Chapler wired $44,722 of that money to Halim. RP 2188-89; 4710. As with the first tranche, Halim's share came "off the top."

7. Silver Leaf Facilitates Three Troubled Corporate Advisory Transactions for BHP

a. The LTHOL Stock Loan Ends With Threats of Litigation

In May 2013, Halim referred a potential transaction for a Turkish company, Latek Holding L.S., which traded on the Istanbul Stock Exchange under the symbol LTHOL. RP

[3] Silver Leaf deposited the payments into a bank account belonging to Chapler's entity, DEMC Capital. RP 2182-83, 4707-12;

[4] Payments to Halim were sent to a bank account owned by Halim's company, NAPI.

2241-43; 4671-73. Latek wanted to borrow $20 million against 30 million LTHOL shares. RP 4671-73. Chapler brought the transaction to BHP. RP 2241-43, 2260-61.

Latek's president, Levent Erdogan, agreed to transfer to BHP up to 30 million LTHOL shares in multiple tranches. RP 5387-99. The loan proceeds for each tranche would equal 65 percent of the stock's value, as determined by LTHOL's price on the Istanbul exchange. RP 5388-89. In each tranche, the exchange of shares and loan proceeds was supposed to occur simultaneously. RP 5389-90. When a tranche closed, BHP would pay Silver Leaf a fee of 1.95 percent of the gross loan amount. RP 5389. BHP was allowed to sell the shares it received, but could not short the stock or sell it at or below the stock's value at the time the tranche closed. RP 5388.

Once again, Chapler helped the parties negotiate these terms. Chapler said his role in the deal was to find "a group that needs cash and is willing to put up collateral . . . and then . . . also structure it. . . . [A] BHP boilerplate transaction does not fit everybody exactly. So . . . there is some negotiations back and forth. So our goal is to help facilitate the transaction[] by relaying back to BHP what the needs are of the client." RP 2260-61.

On June 24, Erdogan delivered the first tranche of 1.1 million shares to BHP. RP 5403. Three days later, Erdogan delivered an additional three million shares. RP 5417.

By June 28, BHP had not paid for any of the shares it had received, and Latek was threatening legal action. In an email to Halim, which Halim forwarded to Chapler, Halim's contact in Turkey wrote there was a "big dump today on [LTHOL] shares which comes from a foreign seller," believed to be BHP, and that Erdogan had cancelled a third planned tranche of six million shares "because [BHP] does not stick to the agreement and [is] selling below [the price at the time the tranche closed.]." RP 5405. Halim's contact wrote that, if Silver Leaf did

not "fix" this by buying back the shares, Erdogan was "going to take legal action against [Silver Leaf] and [BHP] after proving sells coming from [BHP]." *Id.* Halim's contact warned, "Don't trust [BHP] . . . they may play games behind [Silver Leaf's] back." *Id.*

Two days later, Latek accused BHP of improperly dumping Erdogan's shares to fund the loan and manipulating the stock price. In an email to Halim, which Halim forwarded to Chapler, Halim's contact wrote that BHP was "taking the shares dump[ing] them and t+2 they get the money . . . and that's why it takes so long . . . selling [Erdogan's shares] and giving his money back to him." RP 5409-10. The email continued, "there is a bigger picture . . . they r [sic] down pushing the stock and trying to make the lowest floor[] price for the rest of the 20-25 million shares . . . and after getting all the shares they would buy back and make the price higher to secure a good floor[] price and reasonable target for 300% goal." RP 5410.

Chapler testified he did not remember what he did after receiving this email, but "usually when that happens, [he] would go to BHP and say what is going on[?] Why is the stock going down[?] Why are you not delivering what you promised on. This is creating havoc with the client. Our job is to service the clients, not to create difficulty." RP 2294.

On July 5, BHP finally wired the loan proceeds for the first tranche.[5] Silver Leaf received a fee of $21,162 for the transaction, comprising its 1.95 percent origination fee and an additional two percent "back-end" fee, which Chapler said he negotiated with BHP "because of all of the headaches they gave us." RP 2349-51, 4177, 4194.

[5] Without citation, Silver Leaf asserts Latek "proceeded with the transaction" on July 5, and was "comfortable with proceeding with" BHP. Brief at 15. In reality, Latek did not deliver any shares after June 27. There is no evidence Latek felt "comfortable" with BHP on July 5, or that "[t]he transaction proceeded to the satisfaction of [Latek]," as Silver Leaf contends.

Around this time, Khan received two emails showing a split of Silver Leaf's fee between the firm, Chapler, and Halim. Khan received the first email on July 5, when he reviewed a message Chapler sent to Halim through the firm's email system. RP 3634-35, 4179, 5687. In the email, Chapler wrote there would be "15,510TL [Turkish lira] to split between Jay [Chapler] and Sam [Halim]," and that Halim would receive $11,847.91 RP 4179. Three days later, Chapler sent an email directly to Khan and Meehan attaching a spreadsheet showing a revised split of the firm's fee between the firm, Chapler, and Halim. RP 2318-20, 4193-94, 5687. According to the spreadsheet, Chapler and Halim were entitled to a total of $18,349, of which Chapler would receive $7,969 and Halim would receive $10,380. RP 4194.[6] Meehan replied to Chapler, copying Khan, "Jay this seems straightforward to me." RP 2321-22; 4725.

A few days later, on July 10, Silver Leaf paid Chapler $18,349. RP 2328-29, 4730. Chapler then wired $10,380 to Halim's bank account. RP 2329-30, 4734.

In the meantime, Chapler and BHP continued exchanging emails about Latek's complaints about BHP's conduct. Chapler wrote to BHP that if Latek "put[s] in a claim to the Capital Markets Board [of Turkey] . . . it will mess this up and all future transactions." RP 5420.

BHP responded by suggesting that Chapler "find a way to solve this and get them to transfer the [additional] 6M shares back" from the tranche Erdogan cancelled on June 28. RP 5419.

Chapler replied, "right now [Latek's] attorney claims that BHP is in default under 2(e) [of the loan agreement], 'simultaneous exchange of cash for share[s].' What is my counter argument?" RP 5419.

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[6] The spreadsheet shows that Chapler should be paid $7,969.30 and Halim should be paid $10,380.18. RP 2318-20, 4194. The calculation for Halim included an extra $2,410.88 for the "Turkey broker's" fee. *Id.*

Chapler testified that, at this point, he was "trying to make everybody happy. Trying to make sure each side did not want to strangle the other. That is our job as facilitators to keep everybody's interest in mind and facilitate at the same time. This is typical, this happens, . . . our job is to try to make it work, even though there are problems. That is why we get paid, otherwise we would not get paid." RP 2335-36.

Khan did not find these emails during any email review because, he admitted, he was not looking for them. RP 3722-24. Khan testified, "Mr. Chapler discussed with me what was happening. It was not necessary for me to look at or search the emails because he kept me up to date." *Id.*

The fee split for the second tranche occurred as it did for the first. Silver Leaf received a fee of $33,648. RP 4195. Chapler emailed Meehan a spreadsheet showing how the fee should be split among the firm, Chapler, and Halim. RP 4743-44. This time, however, rather than using Halim's name, Chapler referred to Halim as "Jay 2." RP 4744. Meehan testified he did not recall asking Chapler about "Jay 2." RP 1924. Khan denied seeing the email. RP 3663. Chapler's spreadsheet showed Chapler and Halim were entitled to a total fee of $29,052, and Halim's share was $16,434. RP 4744.[7] A few days later, Silver Leaf paid Chapler $29,052. RP 2359, 4730. Chapler then wired $16,434 to Halim. RP 2360, 4734.

Afterwards, Chapler went to Toronto to meet with BHP. Chapler said he wanted to tell BHP that it "can't conduct business this way," and "just [] scold them . . . on not conducting themselves as good as they should." RP 2299-2300. Chapler met with Mark Wade and one of BHP's traders, Mark Valentine. RP 2299-2300, 2303-04. Unknown to Silver Leaf, Valentine

[7] The fee calculation for Halim included an extra $3,817 for "Expenses." RP 4744.

had pleaded guilty to federal securities fraud in 2004, and the SEC barred him from participating in penny stock offerings in 2006. RP 2626-27, 5431-44.

b. The UCAK Stock Loan Ends With a Regulatory Investigation

Next, Halim referred another transaction for Isiklar. This time, Isiklar wanted to borrow against its UCAK shares.

Chapler brought the transaction to one of BHP's affiliates, Carlton Family Office. Chapler testified that BHP and Carlton were interchangeable; BHP had "set up" Carlton and they had the same owners. RP 2367.

Hoping to avoid the late-payment problems that plagued the LTHOL loan, Silver Leaf agreed to serve as escrow agent for this transaction. Chapler explained the firm wanted to create a process similar to delivery versus payment because "of the pain and frustration [Silver Leaf] experienced in the" LTHOL loan. RP 2461-62.

Khan thought it was a good idea for Silver Leaf to serve as escrow agent because it would allow the firm to control a potentially exploitive transaction. Khan explained that, in a stock loan, "there is basically opportunity . . . for exploitation . . . on both sides because of the nature of the illiquidity of the positions." RP 3738-39. However, Khan explained, "when you have the escrow agreement . . . you control the situation. Both sides are now in your control and you can make sure both sides have proper delivery." RP 3739.

Isiklar agreed to deliver a total of 50 million UCAK shares into escrow, and Carlton agreed to deliver loan proceeds totaling about 100 million Turkish lira ($50 million). RP 4751-52. Carlton was allowed to sell the shares it got from Isiklar but it could not short them or sell them at or below their value at the time the tranche closed. RP 4752.

Silver Leaf, Isiklar, and Carlton signed an escrow agreement governing the transfer of the shares and proceeds. RP 4745-49. The first tranche was supposed to occur as follows: (1) Isiklar would deliver 50 million shares into escrow, and Carlton would deliver loan proceeds for the first tranche into escrow; (2) Silver Leaf would release 25 million shares to Carlton; (3) four days later, Silver Leaf would release the loan proceeds for the first tranche to Isiklar. RP 4745-46.

When a tranche closed, Silver Leaf would receive a fee of five and a quarter percent of the loan amount, comprising a three percent fee on the loan, a one-quarter percent escrow fee, and a two percent "back end" fee. RP 2487, 4746, 4752. The "back end" fee was not disclosed to Isiklar. RP 2497.

In mid-August, Khan and Chapler exchanged emails regarding Chapler's and Halim's commissions on the transaction. Khan wrote that the firm would take a larger override on the escrow fee because someone else at the firm came up with the idea of using an escrow agreement. RP 4763-64. Chapler responded that Khan was incorrect; that he, Halim, and Isiklar had the idea to use an escrow agreement. RP 4763. Chapler wrote that if he told Halim he would be paid less because Silver Leaf "came up with the idea, [Halim] will think I have lost my mind and worse, he will significantly reduce his opinion of our operations[.]" *Id.*

Khan replied, "I have to talk to the 3 of you together [Chapler and two Silver Leaf employees]. You can have Sam [Halim] join too if you like." *Id.*

Later that day, Khan sent another email to Chapler and Meehan discussing how fees would be split going forward. Khan wrote, "This is my decision: [UCAK] & other Jay/[Halim] origination: 75/25[;] BHP & Dave C. origination: 85/15[;] Everything else: nothing to Jay/[Halim]." RP 4765.

The first tranche closed a few days later, but things did not go as planned. Isiklar transferred 50 million shares to escrow, and Silver Leaf delivered 25 million shares to Carlton, but Carlton delivered loan proceeds for only 5 million shares. *See* RP 5423.

Around that time, Chapler sent an email to Meehan attaching a spreadsheet showing how Silver Leaf's fee for the tranche should be split among Silver Leaf, Chapler, and Halim. RP 4787-91. The spreadsheet identified Chapler as "Broker 1" and Halim as "Broker 2." RP 4787-91, 2488-89, 2534-43. Meehan testified he did not recall asking Chapler who "Broker 2" was. RP 1933, 1939. And Khan denied seeing the email during his email review. RP 3691-92. Chapler's spreadsheet showed Silver Leaf was entitled to a total fee of about 525,000 Turkish lira (about $263,000). RP 4609, 4787-91. Of that amount, Chapler and Halim each were entitled to about 200,000 lira (about $100,000), the "Local Broker" was entitled to about 38,000 lira (about $19,000), and Silver Leaf was entitled to about 90,000 lira (about $45,000). *Id.*

At Chapler's direction, BHP wired Halim's and the "Local Broker's" share of Silver Leaf's fee directly to Halim, and wired the rest to Silver Leaf. *See* RP 2505-12, 4779.[8]

After receiving loan proceeds for only five million shares, Isiklar complained to Silver Leaf. Isiklar told Silver Leaf that Carlton was violating the loan agreement, and Carlton's "nonstop selling" of UCAK shares had drawn attention from Turkish regulators. In an email to Khan, Chapler, and Halim, Isiklar's chief executive officer, Reza Isik, protested that Carlton did not give Isiklar a loan on all 25 million shares. RP 5423. Instead, he wrote, Carlton "returned" 15 million shares, and gave Isiklar a loan for only half of the ten million shares it retained, and even that disbursement was short. *Id.* "In the meantime," Isik continued, "the Turkish Capital

[8] Chapler gave the wiring directions to BHP on August 21 and later revised the calculations. *See* RP 4779-91.

Markets Board has noticed the movement of 50 [million] shares . . . due to [the] continuous drop in [UCAK] share price because of nonstop selling of our shares by [Carlton]." *Id.* He wrote that Isiklar told the regulators it had transferred the shares to escrow as part of a stock loan transaction, but "this strange delay in loan disbursement puts us in a very awkward situation, making this look like a disguised sale instead of a proper loan." *Id.* He closed his email by demanding that Carlton deliver the money for the other five million shares it had received. *Id.*

About a month later, Isik emailed Khan and Chapler again, writing that he was still under investigation and needed Silver Leaf's help. RP 5427. Isisk asked Khan to come to Turkey and explain the stock loan transaction to the regulator. *Id.*

Khan refused to help. Khan told Isik that Silver Leaf did not know enough about Turkey's securities regulations or the firm's own client, Carlton. *Id.* In an email, Khan wrote that Silver Leaf was "not familiar with Turkish rules or regulations or the [Capital Markets Board]." *Id.* Khan continued, "The transaction with [Carlton] is what interests/concerns the [Capital Markets Board] and we do not know, and therefore cannot speak to, [Carlton's] intentions, positions, actions, or intended actions." *Id.*

The next day, Khan moved to protect Silver Leaf from liability resulting from Carlton's and BHP's misconduct. Khan drafted an indemnification agreement between Carlton and BHP as indemnitors, and Silver Leaf and its "agents (such as Mr. Sam Halim)," as indemnitees. RP 3776-78, 4681-84. The agreement acknowledged that BHP's "stock lending programs" can "result in complications, misunderstandings, liabilities, disagreements and other such disputes that may . . . have the effect or result of bringing [Silver Leaf] into legal, regulatory or other conflict dispute actions related thereto[.]" *Id.* Halim presented the agreement to Carlton and BHP, but neither signed it. RP 2605.

A week later, Isik again threatened repercussions for Silver Leaf. In an email to Halim, which Halim forwarded to Chapler, Isik wrote that if Carlton did not return the five million shares it still had not paid for, Isiklar would "pursue complaints at all relevant Canadian authorities to make sure BHP does not do this kind of destructive activity in Turkish markets in the future." RP 5430. "As for Silver Leaf," he continued, "we are preparing complaints to the SEC and FINRA as well as legal action towards all who have made us suffer immeasurably." *Id.*

When asked at the hearing whether he told Khan about Isiklar's threats, Chapler responded, "I'm sure I must have. . . . Anything that affects Silver Leaf in general, I would always tell [Khan][.]" RP 2596-97.

c. The GAMA Block Trade Ends With a $20 Million Arbitration Award Against the Firm

In October 2013, BHP approached Silver Leaf about selling a block of shares in Gading Development Tbk, which traded on the Indonesia Stock Exchange under the symbol GAMA. RP 2087, 4305. BHP told Silver Leaf it could market the transaction as a block trade at a 20 percent discount to market. RP 4305-06. Mark Valentine was the point person at BHP for this transaction. RP 4307.

Silver Leaf brought the transaction to its customer, Floyd Associates, Inc. RP 2608; 4304; 4306. Jacques Tizabi was the point person at Floyd. RP 2615-16. Unknown to Silver Leaf, NASD had barred Tizabi in 2005 for failing to cooperate with an investigation. RP 4586.

BHP, Floyd, and Silver Leaf worked together to structure a transaction that would achieve the desired 20 percent discount. Chapler proposed a market transaction followed by a free delivery of additional shares. RP 5447. The parties also discussed a stock loan. RP 2617.

In an October 29 email to Chapler, another Silver Leaf registered person wrote, "Not sure what happened to your solution yesterday, a free delivery of additional shares after transacting at

the market, but let's get the loan solution pinned down. One thing we really need to do is find out about it printing on the tape, cause [sic] I am hearing that it does and that could be a problem." RP 5447.

Chapler responded, "I have been on the phone with Fyzul [Khan] and [Silver Leaf's operations manager] for the last hour trying to work through this." RP 5447. Chapler testified that he and Khan were trying "to see if there was a framework that we could execute this . . . . [W]e were obviously trying to stay within what we were allowed to do and see if it was possible to execute this. So the conversations . . . were centered around is there a solution or not." RP 2621-22.

BHP and Floyd eventually settled on the free delivery format Chapler had proposed. They agreed that Floyd would purchase 426 million GAMA shares from BHP on the Indonesia exchange. RP 4309. A few days later, Floyd would receive a free delivery of an additional 107 million shares from BHP. *Id.* The free shares would provide the 20 percent discount.

Silver Leaf was not able to execute the proposed transaction. Apparently, its clearing firm balked at the free delivery component. RP 2617.

On October 31, BHP and Floyd initiated the transaction through BTIG, a FINRA-member broker-dealer. Floyd placed an order for 426 million shares. RP 4308. BTIG bought the shares from BHP for $18 million. *Id.* After that, the stock price began declining precipitously. RP 654.

Three days later, on November 3, Floyd notified BTIG that it was cancelling the trade because BHP had materially breached the parties' agreement. RP 4314.

In the meantime, Silver Leaf was still working to facilitate the transfer of 107 million GAMA shares from BHP to Floyd. On November 3, BHP provided a letter to Silver Leaf asking

the firm to deliver 107 million shares to Floyd on "Wednesday, November 6th, 2013 . . . for the purpose of executing a Loan Agreement between both parties." RP 5455-56.[9]

On November 4, the day after Floyd cancelled the trade, BTIG asked Khan for help. RP 4317. According to Silver Leaf, during a conversation with Khan, BTIG "expressed discomfort with the Floyd and BHP parties, and wanted to know what Silver Leaf knew about BHP and Floyd." RP 4317. Khan "advised [BTIG] that BHP and Floyd were both new relationships that were not yet well known to Silver Leaf, and advised BTIG to proceed with caution." RP 3787-88, 4317. Khan testified he did not disclose the problems Silver Leaf had encountered with BHP in prior transaction because, in his opinion, they were not relevant. RP 3788.

BTIG was unable to cancel the trade before settlement and took the shares into its own account. RP 654. BTIG eventually sold the shares at a $16 million loss. RP 4354-55.

BTIG filed an arbitration claim against Silver Leaf, BHP, and Floyd, alleging fraud, conspiracy to defraud, and aiding and abetting fraud. RP 4350. An arbitration panel concluded that Silver Leaf, BHP, and Floyd "were negligent in their failure to disclose material facts and in making other misrepresentations and omissions which led to BTIG's damages." RP 4354. The panel found them jointly and severally liable to BTIG for $20 million. RP 4354-55.

C. Silver Leaf Pays Transaction-Based Compensation to Nonmember Entities

Years before these events, around 2005, Silver Leaf began paying transaction-based compensation to entities affiliated with its registered persons rather than paying the individuals

[9] Ultimately, Silver Leaf did not deliver those shares.

directly. RP 3524-25. Silver Leaf did so at the request of its "fund marketers," i.e., registered persons working in its fund marketing business. RP 3521.

Following an examination in 2012, the SEC staff identified these payments as one of the firm's "deficiencies and weaknesses." In a letter to Khan, under the heading "Payments to Non-Registered Entities – NASD Conduct Rule 2420," the SEC staff wrote that Silver Leaf had "shared . . . compensation with 10 non-members of FINRA. The shared marketing fees . . . were paid to non-registered entities, which are affiliated with the firm's hedge fund marketers[.]" RP 4801-02. The staff identified payments to ten different entities between April and September 2011. RP 4804-05.

In response to the SEC staff's findings, Khan initially argued that paying the entities was permissible under NASD Rule 2420 because the firm's registered persons owned the entities. Khan wrote, "[i]n every case, the underlying owners of these [entities] are registered persons of Silver Leaf and payment is ultimately being made to a firm-registered broker." RP 4404. Khan offered to "have all of [Silver Leaf's] registered persons who conduct business in the name of any entity and receive payments through that entity [] make an annual representation that the only owners of such entity are Silver Leaf registered persons," and he asked the SEC staff "to reconsider their position in this regard." *Id.*

The SEC staff was not persuaded. In August 2012, an SEC staff attorney responded to Khan by email, writing that she had received Khan's letter, but the letter "does not include the steps you have taken or intend to take with respect" to the staff's findings regarding the payments to the entities. RP 4159.

In September 2012, Khan relented and agreed to halt paying the nonmember entities pending receipt of "no-action" relief from the SEC staff. In a letter to the SEC staff, Khan

acknowledged "that the 'no-action' letter process is the only appropriate method to seek relief from the technical requirements of NASD Conduct Rule 2420." RP 4167. Kahn assured the staff that "pending the no-action relief process, [Silver Leaf] will immediately begin to convert [its] payables to individual representatives rather than entities owned by them." *Id.*

About five months later, however, Silver Leaf resumed paying the entities without ever seeking, much less receiving, SEC no-action relief. After hearing "grumblings" from some of the firm's registered persons, Meehan asked the firm's payroll processor about reinstituting the payments. RP 5495. The payroll processor said the firm could pay transaction-based compensation to an entity as long as the registered person who owned the entity completed an IRS Form W-9 identifying him- or herself as the beneficial recipient of the payments and provided a letter stating he or she was the entity's sole owner. RP 5495-96. Meehan relayed this information to Khan, and Khan directed Meehan to resume paying the entities. RP 3551-53. Khan testified that, at the time, he did not give the issue much thought. RP 3554.

Between February 2013 and April 2015, Silver Leaf paid over $2.6 million in transaction-based compensation to seven nonmember entities (including Chapler's). RP 3070-71; 4613.

II. Procedural History

FINRA's Department of Enforcement opened its investigation in 2015. RP 3028-30. In September 2017, Enforcement filed a two-cause complaint alleging violations of FINRA's supervisory rules and its rule prohibiting payment of transaction-based compensation to nonmembers. RP 1-46.

After a six-day hearing, the Extended Hearing Panel issued its decision in January 2019. RP 6087. The Hearing Panel found Silver Leaf liable under each cause of action, fined it a total

of $100,000, barred it from facilitating "stock loan or block trading transactions," and ordered it to retain an independent consultant to conduct a comprehensive review of its policies, systems, and procedures. RP 6129-31.

On appeal, the NAC affirmed the Hearing Panel's findings of violations, the fine, and the requirement to hire an independent consultant. RP 6579-6616. Rather than a business-line bar, however, the NAC suspended Silver Leaf from engaging in its corporate advisory business until it certified its implementation of the independent consultant's recommendations. RP 6614-15. Silver Leaf appealed. RP 6617.

III. Argument

The Commission should dismiss Silver Leaf's appeal because Silver Leaf engaged in the conduct found; the conduct violates FINRA's rules; and those rules were applied in a manner, consistent with the purposes of the Exchange Act. *See* 15 U.S.C. § 78s(e)(1).

A. FINRA Has Jurisdiction over Silver Leaf's Misconduct

FINRA properly exercised its jurisdiction when bringing this enforcement action against Silver Leaf. The firm erroneously argues that FINRA lacks jurisdiction because the firm's misconduct purportedly occurred solely in connection with foreign securities transactions. *See* Brief at 6, 25-29.

FINRA's jurisdiction over its members and their associated persons is governed by its By-Laws and membership agreements. FINRA By-Laws Art. IV (each member agrees "to comply with the federal securities laws, the rules and regulations thereunder, . . . the By-Laws of [FINRA] . . . , the Rules of [FINRA], and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of [FINRA]"). FINRA has jurisdiction over all of Silver Leaf's business-related conduct. *See, e.g.*, *Daniel C. Adams*, 47 S.E.C. 919, 921 (1983) ("We

have previously held that [FINRA's] disciplinary authority is broad enough to encompass business-related activity that contravenes [its] standards even if that activity does not involve a security."). Contrary to Silver Leaf's view, FINRA's jurisdiction extends to business-related conduct outside the United States. *See, e.g.*, *Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Definition of the Term "Branch Office,"* Exchange Act Release No. 25322, 1988 SEC LEXIS 227, at *1 (Feb. 5, 1988) ("The proposed amendment . . . eliminates the restrictive language 'located in the United States,' contained in the definition of the term 'branch office,' making the definition applicable to all member branch offices, wherever located."); *Order Approving Proposed Rule Change*, Exchange Act Release No. 25428, 1988 SEC LEXIS 446, at *1 (Mar. 15, 1998) (approving amendment).

Silver Leaf cites no authority holding that conduct related to foreign securities transactions is outside FINRA's jurisdiction. *See* Brief at 6, 27. The two cases Silver Leaf cites to support its assertion, *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), and *SEC v. Benger*, 934 F. Supp. 2d 1008 (N.D. Ill. 2013), interpreted the scope of the Exchange Act, not FINRA's jurisdiction over its members. Silver Leaf's payments to nonmembers and its failure to reasonably supervise its business are business-related conduct, and FINRA therefore has jurisdiction over both.

B. Silver Leaf Paid Transaction-Based Compensation to Nonmembers

NASD Rule 2420 prohibits a FINRA member from paying transaction-based compensation to any "nonmember broker or dealer." A member may not evade the rule through indirect payments.[10] NASD Rule 2420 defines "nonmember broker or dealer" to include any

[10] *NASD Notice to Members 05-18*, 2005 NASD LEXIS 25, at *15 (Mar. 2005) ("A member also may not evade Rule 2420 through indirect payments").

nonmember who makes use of the means of interstate commerce to effect any transaction, or induce the purchase or sale, of any security, other than on a national securities exchange.[11] A violation of NASD Rule 2420 also violates FINRA Rule 2010. *Merrimac Corp. Sec. Inc.*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *16, n.25 (July 17, 2019).

1. Silver Leaf Paid Transaction-Based Compensation to Halim

Silver Leaf paid more than $50,000 in transaction-based compensation to Halim for the UCAK trade between Isiklar and Equities First. Silver Leaf does not dispute that Halim received transaction-based compensation or that Halim was a "nonmember broker." Instead, it argues that Chapler paid Halim, and the firm did not know about or approve those payments. The record belies Silver Leaf's argument.

Meehan knew Halim was being compensated for this transaction and facilitated the payments. A few days before the first tranche closed, Meehan sent an email to Chapler detailing how the firm's fee would be shared among Silver Leaf, Chapler, and Halim. RP 4165-66. When Silver Leaf received its fee, Meehan caused the firm to deposit an amount totaling Chapler's and Halim's combined fee into Chapler's bank account. RP 2148; 4707. Chapler then wired Halim's fee to Halim. RP 2185; 4710. The process was repeated with Silver Leaf's fee for the second tranche. RP 2186-89; 4169; 4710; 4713.

Meehan's conduct is attributable to Silver Leaf. "It is well established that a firm may be held accountable for the misconduct of its associated persons because it is through such persons that a firm acts." *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *59 n. 80 (Dec. 10, 2009) (affirming disciplinary action against a firm for the manipulation of a

[11] A "national securities exchange" is a securities exchange that has registered with the SEC under Section 6 of the Exchange Act. 15 U.S.C. § 78f (2020). None of the securities involved in this case were registered on a national securities exchange.

security sold to public investors by the firm's co-chief executive and head trader); *see also A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977) (noting that a firm "can act only through its agents, and is accountable for the actions of its responsible officers"). At the time of the payments, Meehan was Silver Leaf's co-owner, registered principal, vice-chairman, president, chief financial officer, and FINOP. Meehan was acting on Silver Leaf's behalf. Through Meehan, Silver Leaf paid transaction-based compensation to Halim.

Silver Leaf argues, without citing authority, that Meehan's conduct cannot be attributed to the firm because, it contends, the firm's "very specific supervisory procedures" required "pre-clearance by Khan of any payments made to third parties." Brief at 24. Even if Silver Leaf had such "very specific" procedures, which it did not, and Khan did not approve the payments to Halim, the firm still would be responsible for violations resulting from Meehan's conduct. Otherwise, a firm could immunize itself from liability under most rules simply by adopting policies requiring compliance with them.

Silver Leaf also contends that Chapler duped Meehan into paying Halim's compensation by leading Meehan to believe Halim was registered. *See* Brief at 13. Meehan's subjective belief about Halim's registration is not relevant because a violation of NASD Rule 2420 does not require a finding of scienter. In any event, Meehan's testimony about his claimed confusion is not credible; had Meehan believed Halim was registered, he would have paid him directly rather than funneling the payments through Chapler.

2. Silver Leaf Paid Transaction-Based Compensation to Nonmember Entities

Between February 2013 and April 2015, Silver Leaf deposited more than $2.6 million into bank accounts owned by seven nonmember entities. RP 3070-71, 4613. Each entity was affiliated with a person registered with Silver Leaf, and all of the payments represented

transaction-based compensation earned by the registered persons on securities transactions. *Id.* None of these facts is disputed.[12]

While Silver Leaf concedes paying the nonmember entities, it argues the payments did not violate NASD Rule 2420 because, it contends, the "intended broker payees" ultimately received the money. Without citing to the record, Silver Leaf claims that "Enforcement found not one single dollar paid to the brand entities as being received by anyone but the intended broker payees." Brief at 25. Even if true, the firm's actions are no less violative.[13] Silver Leaf's violation was complete when it paid transaction-based compensation to the nonmember entities; what the entities did with the money afterwards is not relevant to the firm's liability.

Silver Leaf also argues that Enforcement should not have charged the firm with any violation because "[t]his is not a 'Federal case' . . . it is, at most, a reasonable mistake." Br. at 25. Silver Leaf contends it believed it could pay the nonmember entities if its "payroll records [showed] payments to its individual brokers." Brief at 25.

This was not a "reasonable mistake." Silver Leaf knew in 2012 that the SEC staff viewed the payments to these entities as one of the firm's "Deficiencies and Weaknesses." Khan assured the SEC staff that Silver Leaf would halt the practice. Just a few months later, however, after hearing "grumblings" from its fund marketers, Khan ordered Meehan to resume paying the entities. Other than consulting with the firm's payroll processor, Silver Leaf did nothing to verify that it could pay transaction-based compensation to an entity if the firm's payroll records

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[12] Nor does Silver Leaf dispute that the nonmember entities were "nonmember brokers."

[13] Khan admitted that at least one nonmember entity was partially owned by an unregistered person. *See* RP 3904. The unregistered person was the entity's chief financial officer. RP 5465-66.

showed—falsely—that payment was made to the individual rather than the entity. Silver Leaf chose to appease its registered persons rather than complying with NASD Rule 2420.

3. Enforcement Is Not Required to Establish a Violation of the Exchange Act to Prove a Violation of NASD Rule 2420

Silver Leaf erroneously contends that Enforcement failed to establish any violation of NASD Rule 2420 because it did not prove that Halim and the nonmember entities were required to register as broker-dealers under Exchange Act Section 15(a). Citing *Morrison* and *Benger*, Silver Leaf argues that, to prove a violation of Section 15(a), Enforcement had to show that the securities transactions at issue were domestic, and that Enforcement failed to do so. Silver Leaf argues that, because Enforcement did not establish a violation of Section 15(a), it also failed to establish that its payments to Halim and the nonmember entities violated NASD Rule 2420. Silver Leaf's argument fails because Enforcement does not have to establish a *payee*'s violation of Section 15(a) to establish a *payor*'s violation of NASD Rule 2420.

NASD Rule 2420 plainly prohibits a FINRA member from paying transaction-based compensation to any "nonmember broker or dealer." The rule neither mentions the Exchange Act nor makes liability under the rule contingent on proving a violation of it. Indeed, FINRA consistently has interpreted NASD Rule 2420 "to prohibit the payment of commissions or fees derived from a securities transaction to any non-member that *may* be acting as an unregistered broker-dealer" in violation of the Exchange Act. *Order Approving Proposed Rule Change to FINRA Rules 0190 and 2040 in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311*, Exchange Act Release No. 73954, 2014 SEC LEXIS 5051, at *8 (Dec. 30, 2014) (emphasis added). To prove a violation of NASD Rule 2420, Enforcement must show only that the firm (1) paid transaction-based compensation (2) to a "nonmember broker or dealer."

Enforcement established both elements with respect to Silver Leaf's payments to Halim and the nonmember entities.[14]

Silver Leaf paid more than $2.6 million in transaction-based compensation to Halim and seven nonmember entities. The Commission therefore should affirm the NAC's findings that Silver Leaf violated NASD Rule 2420 and FINRA Rule 2010.

C. Silver Leaf Failed to Reasonably Supervise Its Business

Silver Leaf failed to reasonably supervise its corporate advisory business and its payment of transaction-based compensation. NASD Rule 3010 and FINRA Rule 3110 require each member to establish and maintain a system to supervise the activities of its registered representatives, registered principals, and associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[15] An adequate supervisory system must include WSPs tailored to the firm's business lines. *Dep't of Enforcement v. Midas Sec., LLC*, Complaint No. 2005000075703, 2011 FINRA Discip. LEXIS 62, *20 (FINRA NAC Mar. 3, 2011), *aff'd*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199 (Jan. 20, 2012). The WSPs must describe mechanisms for ensuring compliance and detecting violations, not merely set out what is prohibited. *John A. Chepak*, 54 S.E.C. 502, 506 (2000). Whether a particular supervisory system or set of WSPs is "reasonably designed to

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[14] FINRA generally has taken the position a member would not violate NASD Rule 2420 by paying transaction-based compensation to a person who, in the opinion of the SEC staff, was not, *in fact*, acting as an unregistered broker-dealer. FINRA, however, "has refrained from providing interpretive guidance on whether a person is acting as an unregistered broker-dealer, as the authority to interpret Section 15(a) of the Exchange Act rests with the SEC." *Order Approving Proposed Rule Change*, 2014 SEC LEXIS 5051, at *8-9. Silver Leaf did not obtain no-action relief from the SEC staff, and therefore cannot assert as its defense that Halim and the nonmember entities were not, in fact, required to register as broker-dealers.

[15] A violation of NASD Rule 3010 and FINRA Rule 3110 also violates FINRA Rule 2010. *Merrimac*, 2019 SEC LEXIS 1771, at *16, n.25.

achieve compliance" depends on the facts and circumstances of each case. *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

When red flags arise suggesting that misconduct may be occurring, the duty of supervision includes an obligation to investigate and "act upon the results of such investigation." *Michael T. Studer*, 57 S.E.C. 1011, 1023-24 (2004), *aff'd*, 260 F. App'x 342 (2d Cir. 2008). Supervisors "must respond with the utmost vigilance when there is any indication of irregularity, and take decisive action when they are made aware of suspicious circumstances." *KCD Fin., Inc.*, Exchange Act. Release No. 80340, 2017 SEC LEXIS 986, at *34-35 (Mar. 29, 2017). When a supervisor discovers red flags, the supervisor cannot "discharge his or her supervisory obligations simply by relying on the unverified representations of employees." *Michael H. Hume*, 52 S.E.C. 243, 248 (1995).

1. Silver Leaf Failed to Supervise Its Corporate Advisory Business

Silver Leaf failed to supervise its corporate advisory business and failed to take corrective action even after encountering red flags portending the disastrous GAMA trade.

When Chapler registered with Silver Leaf, the firm knew his corporate advisory business involved greater risks than its other business lines because Chapler specialized in transactions involving "less liquid" securities and large amounts of money. Moreover, the firm knew Chapler was targeting transactions in Turkey and the Middle East, unfamiliar markets, and that he was working closely with an unregistered "finder," Halim. To account for this additional risk, Khan made the decision to increase the firm's override on Chapler's corporate advisory business from 10 to 25 percent. RP 3626. Despite recognizing the risks involved in Chapler's business, however, the firm implemented no system or procedures to supervise it.

Silver Leaf had no WSPs for its corporate advisory business. Silver Leaf asserted that its WSPs for the corporate advisory business were contained in its "marketing procedures." RP 663-64. Silver Leaf described the marketing procedures as "a mix of contracts, policies, standards, and procedures specifically applicable" to its fund marketing and corporate advisory businesses. *Id.* At the hearing, Silver Leaf introduced several documents from its marketing procedures. *See* RP 3854-3909, 5721-90. These documents are not WSPs; they do not explain how the firm supervises the corporate advisory business or describe mechanisms for ensuring compliance and detecting violations. *See id.*

The absence of WSPs for the corporate advisory business is consistent with the firm's lax approach towards supervision. Khan admitted that he did not supervise the firm's personnel closely because he trusted them. "[T]hese are very, very smart and sophisticated people," Khan said, "They are not a compliance risk, if you ask me what my due diligence protection is, selecting the right people." RP 4066. Khan said he trusted Chapler and Meehan, in particular, and that they were "the most trusted people at the firm." RP 3660. Khan testified his primary concern in supervising the corporate advisory business was making sure the firm was contacting "the right parties." providing "correct and appropriate information to those parties," and "looking for an exit as quickly as possible." RP 4096.

Despite knowing Chapler's business was particularly risky, Khan gave Chapler considerable latitude. Chapler said that he "went after deals without any day to day oversight . . ., when it got to an execution part, Mr. Khan would come in and . . . do his due diligence and also make sure the deal was appropriate for the firm." RP 2978.

Khan's review of the firm's email communications also was inadequate. Silver Leaf's WSPs required Khan to review the firm's emails monthly, and "create a report of said review."

RP 4240-41, 5539. Silver Leaf's review system did not automatically flag emails containing key words or phrases. RP 3620. Instead, Khan could enter his own search terms each time he reviewed emails. RP 3619. Khan testified, however, that he did not use search terms; instead, he "look[ed] at the subject lines and . . . select[ed] different emails to review based on the status of different transactions and where they were and different people and where they were. What [Khan] thought were things or people that [he] should be focusing on more than others." RP 3619-20. Khan also admittedly failed to create required reports of his email reviews. RP 3622. Khan's inadequate email review caused him to miss emails showing the firm's payments to Halim and discussing problems with the BHP transactions.

Khan's review of Meehan's and Chapler's emails, in particular, was deficient. Khan admitted he did not review *any* emails sent to or from Meehan, and his review of Chapler's emails was a low priority, despite the known risks associated with Chapler's business. RP 3716. Khan testified that, at the time, the firm had about 65 associated persons, and if he "ranked the order of risk, on the bottom of that list were emails from Kevin Meehan and just above him on the second bottom [sic] was Mr. Jay Chapler." RP 3628-29. "If I saw Mr. Meehan's name in the to line or the from line," Khan said, "I skipped past it." RP 3689.

Silver Leaf did not correct these supervisory deficiencies even after encountering red flags in its first transaction with BHP. The LTHOL loan was plagued with allegations of unethical and potentially illegal conduct by BHP. *See* RP 5405, 5409-10. It ended with Latek threatening legal action, and explicitly warning Silver Leaf not to trust BHP. *Id.* Still, Silver Leaf did not step up its supervision of the corporate advisory business.

By the time Halim referred the next transaction to Silver Leaf, the UCAK stock loan, Silver Leaf knew that Halim and his contacts in Turkey had misgivings about BHP and Carlton.

Khan testified they "were getting uncomfortable with these kinds of transactions because of the liquidity issues, the parties involved. . . . Both parties could equally harm one another and in this transaction, they wanted us to help make sure that was not the case." RP 3738-39. To assuage these concerns, Silver Leaf agreed to act as the escrow agent. Yet Carlton still managed to violate the terms of its agreement with Isiklar. Shortly after the first tranche closed, Isiklar notified Silver Leaf that Carlton had not fully funded the loan and also had failed to pay for all of the shares it received. RP 5423. As a result of Carlton's failure to perform, securities regulators in Turkey were investigating Isiklar's chief executive officer. *Id.*, 5427.

Silver Leaf's response was solely to protect itself by asking Carlton and BHP to indemnify the firm from any liability arising from their misconduct. RP 4681.

Despite all of these warning signs, Silver Leaf continued "business as usual" with BHP, ultimately immersing itself in the GAMA block trade—a transaction whose "free delivery" component raised even more red flags. When the GAMA trade began falling apart, BTIG asked for Silver Leaf's help. Khan told BTIG that BHP and Floyd "were not yet well known to Silver Leaf," and did not disclose the problems Silver Leaf had encountered with BHP in previous transactions because, according to Khan, they were not relevant. RP 3787-88, 4317.

Silver Leaf contends its supervision of the corporate advisory business was sufficient because the firm did nothing more than introduce prospective counterparties. Brief at 31. The record belies this assertion; it shows that Silver Leaf was deeply involved in these transactions from beginning to end. Silver Leaf helped the parties come to terms and then shepherded the transactions through to completion. *See, e.g.*, RP 2155-56, 2660-61. As Chapler described it, Silver Leaf's "job [wa]s to try to make [the transaction] work, even though there are problems. That is why we get paid, otherwise we would not get paid." RP 2335-36. Indeed, when Chapler

was asked directly, "[S]o you didn't just introduce Latek to BHP and walk away, you stayed involved; is that correct?", Chapler responded, "Yes, yes." RP 2336.

Silver Leaf argues that its supervision of its corporate advisory business was sufficient because, it claims, no complaints were filed against the firm relating to the LTHOL or the UCAK stock loans, and "no one filed a complaint against Silver Leaf outside of the BTIG Arbitration whose events were never tested in order to establish that Silver Leaf did anything wrong." Brief at 31. Silver Leaf's argument fails because Enforcement is not required to prove underlying wrongdoing to establish a member's violation of FINRA's supervisory rules. *See Robert J. Prager*, 58 S.E.C. 634, 662 (2005) ("A determination that a respondent has violated [FINRA's] supervisory rule is not dependent on a finding of a violation by those subject to the respondent's supervision."). Enforcement need only show that Silver Leaf's supervision of its business was not reasonable. Enforcement did so here.

2. Silver Leaf Failed to Supervise Its Payment of Transaction-Based Compensation

Silver Leaf failed to tailor its WSPs for its compensation practices to its business. Silver Leaf's "Broker-Dealer Compliance Manual and Written Supervisory Procedures" addressed the sharing of commissions by registered persons with non-registered persons in the context of retail securities transactions, but did not address the firm's payment of transaction-based compensation to unregistered "finders" or entities affiliated with the firm's registered persons. *See* RP 4223, 5521. Nor did the WSPs explain how the firm would ensure compliance with, or detect violations of, the firm's WSPs or NASD Rule 2420. *Id.*

Silver Leaf failed to implement any system to prevent payment of transaction-based compensation to nonmembers. Indeed, Khan knew the firm was paying Halim and took no action to stop it. Chapler testified that he had conversations with Khan and others at the firm

about paying Halim. RP 2133-37, RP 2828-29, 2834. Based on Chapler's credible testimony, the Hearing Panel found that, from the beginning, Khan was "at least generally aware" that Halim would be paid on transactions he referred to the firm. RP 6099.[16] Certainly, by July 8, 2013, Khan had indisputable evidence that Silver Leaf was paying Halim through Chapler.[17] By that time, Khan had received two emails showing Chapler's plan to split the fee from the LTHOL stock loan with Halim. RP 4179, 4193-94. Yet Khan failed to prevent the payment to Halim on July 10.[18]

Just a few weeks later, in August 2013, Khan and Chapler exchanged emails further discussing the sharing of Silver Leaf's fees with Halim for the UCAK stock loan. RP 4763-65. In the emails, Khan specifically addresses how the firm's fees will be shared with Halim. *Id.* Silver Leaf contends these emails relate solely to its sharing of the escrow fee from this transaction only, which it maintains was permissible. Brief at 17. Khan's testimony does not support that contention. When Khan was asked about the emails at the hearing, he testified that he was referring to the firm's sharing of its fees with Halim "on a going forward basis," after Halim registered with the firm. RP 3682-84. Khan did not assert, as Silver Leaf does now, that he was referring only to escrow fees for this transaction. *See* RP 3682-86.

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[16] The Commission should defer to the Hearing Panel's credibility determination because it is well supported by the record. *Lek Sec. Corp.*, Exchange Act Release No. 82981, 2018 SEC LEXIS 830 at *27, n.22 (Apr. 2, 2018) (deferring to a hearing panel's credibility determinations "absent substantial evidence to the contrary").

[17] Notably, Silver Leaf admitted in its answer that, after receiving two emails in early July, Khan knew the firm was paying Halim through Chapler. RP 680.

[18] At the hearing, Khan claimed that after receiving these emails, he met with Chapler and Meehan and told Chapler he could not pay Halim. The Hearing Panel found Khan's story "questionable" because "neither Khan nor Meehan mentioned [the meeting] during the investigation that led to these proceedings," and Chapler had no memory of it. RP 6099-6100. Silver Leaf makes no mention of the purported meeting in its brief.

As for the payments to the nonmember entities, Khan knew they were happening because he approved them. Khan said the decision to pay the entities was "not something [he] really thought about," and "[t]here was no deep thought put into it." RP 3553-54.

Silver Leaf failed to reasonably supervise its corporate advisory business and its payment of transaction-based commission. The Commission therefore should affirm the NAC's findings of violation.

D. The Alleged "Process Deficiencies" Have No Merit

Silver Leaf identifies several purported "process deficiencies" with FINRA's investigation and hearing. FINRA's process was not deficient. Moreover, had there been any such deficiencies, they would have been cured by the NAC's de novo review. *Conrad C. Lysiak*, 51 S.E.C. 841, 847 (1993).

1. Silver Leaf Had Notice of the Charges Against It and an Opportunity to Defend Itself

Silver Leaf suggests that Enforcement's investigation was not fair because Enforcement's investigator, Patrick Barritt, "never ran an investigation before, did not have supervisory licenses, and did not notify Silver Leaf about the expanded scope of his investigation." Brief at 32. Silver Leaf contends that, as a result, it was prejudiced because it had "no opportunity to review and respond to important matters related" to Enforcement's investigation. Brief at 5. This argument has no merit.

Exchange Act Section 15A(b)(8) provides that FINRA disciplinary proceedings must be conducted in accordance with fair procedures. *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010). Section 15A(h)(1) of the Exchange Act requires FINRA to "bring specific charges, notify such member or person of and give him an opportunity to defend against, such charges, and keep a

record." This proceeding was fair to Silver Leaf in accordance with the Exchange Act. The complaint provided Silver Leaf with sufficient notice of the allegations against it. *See* RP 1-46. At the hearing, Silver Leaf was given a full and fair opportunity to present relevant evidence and make arguments in its defense. *See* RP 1667-4152. Silver Leaf's assertions that it was unfairly prejudiced because Barritt was not qualified to investigate its misconduct is wholly unproven. And the alleged failure to disclose the scope of the investigation has no basis in FINRA or SEC rules. *See Thomas E. Warren, III*, 51 S.E.C. 1015, 1020 (1994) (rejecting arguments that a hearing was unfair because FINRA conducted an inadequate investigation or did not conduct interviews that the respondent asserted could assist him in his defense), *aff'd*, 1995 U.S. App. LEXIS 30824 (10th Cir. Oct. 23, 1995); *William C. Piontek*, 57 S.E.C. 79, 90-91 (2003) (finding that a respondent who "'understood the issue[s]' and 'was afforded full opportunity' to litigate . . . had sufficient notice of the charges against him and opportunity to prepare and present his defense").

2. There Is No Evidence the Hearing Panelists Were Unable to Discharge Their Duties

Silver Leaf argues that the industry panelists were "unable and incapable of understanding Silver Leaf's business model and accordingly incapable of discharging their duties[.]" Brief at 5. This argument too has no merit. The panelists were appointed in accordance with FINRA Rule 9231; both were associated with FINRA members and previously served on a regional committee. *See* RP 695. Silver Leaf was notified when the panelists were appointed. *Id.* Silver Leaf did not move to disqualify them under FINRA Rule 9234. RP 695. Silver Leaf does not point to any evidence that the panelists did not understand its business. To the contrary, the record shows the panelists were engaged throughout the hearing, asked

probative questions, and demonstrated an understanding of the issues involved. *See, e.g.*, RP 2965-76, 3795-3800.

3. There Is No Evidence of Hearing Officer Bias

Silver Leaf contends that Enforcement "was the beneficiary of excessive indulgences" by the Hearing Officer. Silver Leaf cites six examples. Brief at 5-6.[19] None supports Silver Leaf's argument.

First, Silver Leaf asserts the Hearing Officer provided Enforcement with "[e]xcessive time to prosecute its case[.]" Silver Leaf does not explain why it believes Enforcement was given too much time or how it was prejudiced. In total, however, the hearing lasted six days—just one day longer than the parties requested in their Joint Proposed Pre-Hearing Schedule. RP 587-90. The length of the hearing is not evidence of Hearing Officer bias.

Second, Silver Leaf asserts the Hearing Officer allowed Enforcement to "introduce additional information [at the hearing] detrimental to Silver Leaf[.]" Brief at 5. Silver Leaf does not identify this "additional information," or how the firm was prejudiced by it. Merely allowing one party to introduce information that is "detrimental" to the other party is not evidence of bias. *See Epstein*, 2009 SEC LEXIS 217, at *62 ("Adverse rulings, by themselves, generally do not establish improper bias.").

Third, Silver Leaf asserts the Hearing Officer allowed Enforcement to "introduce prejudicial matters into the record" at the hearing. Brief at 5. In support of this allegation, Silver Leaf identifies nine Enforcement exhibits admitted at the hearing. *Id.* At the time, Silver Leaf did not object to the admission of five of these exhibits: CX-17, *see* RP 1619; CX-18, *see* RP 1628; CX-19, *see* RP 1635; CX-20, *see* RP 1636; CX-22, *see* RP 1432.

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[19] Silver Leaf's jurisdiction argument is addressed in Section III.A, above.

All nine exhibits were properly admitted. Each exhibit is a summary created by Barritt. The underlying materials on which each exhibit is based were admitted at the hearing, and Silver Leaf had an opportunity to cross-examine Barritt about them.[20] Silver Leaf does not explain how the exhibits were unfairly prejudicial. The Hearing Officer's admission of the exhibits is not evidence of bias. *See Pagel, Inc.*, 48 S.E.C. 223, 230-31 (1985), *aff'd*, 803 F.2d 942 (8th Cir. 1986) (rejecting challenge to admission of summary exhibits prepared by SEC staff accountant).

Fourth, Silver Leaf asserts that the Hearing Officer allowed Enforcement's attorneys "to testify from the table in support of the Investigator's poor grasp of the facts and allegations lodged by Enforcement[.]" Brief at 5. There is no evidence that Enforcement's attorneys "testif[ied] from the table" during the hearing. Indeed, Silver Leaf does cite any evidence to support its bald assertion.

Fifth, Silver Leaf asserts that the Hearing Officer "allowed Enforcement's attorneys to repeatedly and prejudicially ask [the] Investigator leading questions[.]" *Id.* Silver Leaf does not cite the record for this assertion nor does it identify any prejudice.

And sixth, Silver Leaf asserts that the Hearing Officer "adjourn[ed] the [hearing] at a critical stage to 'discuss an issue' with the other Panelists," and this assisted Enforcement because Enforcement "was completely unprepared for challenges to its investigatory conduct and case prosecution[.]" Brief at 5-6. There is no evidence to support Silver Leaf's assertion. The record shows that, during Silver Leaf's cross-examination of Barritt, Silver Leaf's attorney asked, "whose job is it to know there was a holding by a United States District Court directly on

[20] *See* CX-17, RP 3280-86; CX-18, RP 3287-95; CX-19, RP 3296-3302; CX-20, RP 3302-03; CX-21, RP 3052-3100; CX-22, RP 3069-99; CX-23, RP 3118-41; CX-24, RP 3142-60; CX-25, RP 3161-3252.

point to the allegations FINRA has made in this complaint?" RP 3394. Enforcement's attorney objected to the question. *Id.* The Hearing Officer stated he would rule on the objection "in a moment," but first wanted "to meet with Panelists to discuss an issue." *Id.* A recess then was taken. *Id.* Seven minutes later, the Hearing Officer reconvened the hearing and overruled Enforcement's objection. RP 3395. After a discussion about whether Silver Leaf planned to make a motion for summary disposition, the hearing resumed where it had left off. RP 3395-3426. This is not evidence of bias.

4. The Hearing Officer Properly Denied Admission of Irrelevant Evidence

Silver Leaf complains that the Hearing Officer did not admit nine of its exhibits. Brief at 6. Silver Leaf misstates the facts. One of the exhibits, RX-41, was, in fact, admitted at the hearing. RP 3948. Silver Leaf offered another exhibit, RX-46, but then withdrew it. RP 3953. Silver Leaf did not offer four of the exhibits into evidence: RX-45, RX-47, RX-48, and RX-62. The three exhibits that were offered but not admitted are (1) RX-29, a whitepaper on reforming FINRA; (2) RX-39, prepared remarks by FINRA's former head of Enforcement; and (3) RX-40, a FINRA Small Firm Governor Update. *See* RP 6305, 6325, 6333. The Hearing Officer properly denied admission of these exhibits.

FINRA Rule 9263 provides the Hearing Officer with discretion to deny admission of evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. These three exhibits are irrelevant because none "makes a fact of consequence more or less likely." *United States v. Latney*, 108 F.3d 1446, 1449 (D.C. Cir. 1997). None relates to any issue in dispute in this case, and Silver Leaf does not explain how it was unfairly prejudiced by the Hearing Officer's rulings on these exhibits. The Hearing Officer properly exercised his discretion by denying their admission. *See Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS

3078, at *79 (Sept. 28, 2017) (finding no abuse of discretion in exclusion of evidence that "did not concern the central inquiry in this case").

5. The Re-Assignment of Hearing Officers Was Proper

Silver Leaf "take[s] exception with the reassignment of the [p]roceedings from Hearing Officer Williams to Hearing Officer Sonnenberg." Brief at 6. FINRA Rule 9231(e) allows FINRA's Chief Hearing Officer to appoint a replacement Hearing Officer in the event a Hearing Officer is unable to continue service. In this case, on March 1, 2018, four months before the hearing, the Chief Hearing Officer appointed Sonnenberg to replace Williams due to scheduling considerations. RP 693. Silver Leaf did not object. The assignment of Hearing Officer Sonnenberg was in accordance with FINRA rules and did not unfairly prejudice Silver Leaf.

E. FINRA's Sanctions Are Appropriately Remedial

The NAC fined Silver Leaf a total of $100,000; ordered it to retain an independent consultant to conduct a review of its policies, systems, and procedures; and suspended it from engaging in its corporate advisory business until it certifies its implementation of the independent consultant's recommendations. These sanctions are appropriately remedial and fall within the recommended FINRA Sanction Guidelines (the "Guidelines"). The Commission should affirm them in all respects.

1. Several Aggravating Factors Apply to All Violations

The NAC found three aggravating factors applied to all of Silver Leaf's violations. First, the NAC found aggravating Silver Leaf's refusal to accept responsibility for its misconduct. *See Robert Conway*, Exchange Act Release No. 70833, 2013 SEC LEXIS 3527, at *41-42 (Nov. 7, 2013) (finding that applicants' "continued refusal to acknowledge any wrongdoing is a troubling indication that they either misunderstand their regulatory obligations or hold those obligations in

contempt"). Rather than acknowledging its misconduct, Silver Leaf blames everyone else for its predicament—Enforcement's investigator, the Hearing Officer, and the industry panelists—and insists it should not be sanctioned. Second, the NAC found aggravating that Silver Leaf's misconduct occurred over an extended period of time.[21] Silver Leaf continued paying the nonmember entities for two years, and had no WSPs for its corporate advisory business for three years. Third, the NAC found aggravating that Silver Leaf's violations were the result of recklessness, at least.[22] The firm, through Khan and Meehan, knew it was paying transaction-based compensation to Halim and the nonmember entities, and must have known that its lax supervision of its business was not reasonable.

Silver Leaf contends it was entitled to mitigation because the "firm was engaged in many more business activities that Enforcement did not and could not complain of. The totality of Silver Leaf's business was never *reasonably* considered." Brief at 33. Silver Leaf does not support this assertion with any citation to the record. In any event, Silver Leaf is not entitled to any credit for this because its violations were in no way limited. The firm paid more than $2.6 million in transaction-based compensation to eight nonmembers, and failed to reasonably supervise its entire corporate advisory business for three years.

2. A $50,000 Fine Is Appropriately Remedial for Silver Leaf's Payments of Transaction-Based Compensation to Nonmembers

The Guidelines do not specifically address violations of NASD Rule 2420 or its successor, FINRA Rule 2040. The NAC therefore looked to the Guidelines for registration violations under FINRA Rule 1122 and NASD Rules 1000 through 1120, which it found were

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[21] *FINRA Sanction Guidelines* 7 (Mar. 2019) (Principal Considerations in Determining Sanctions, No. 9), https://www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf (last visited Oct. 30, 2020) [hereinafter, "Guidelines").

[22] *Id.* at 8 (Principal Considerations in Determining Sanctions, No. 13)

the most analogous violations.[23] For violations of these rules, the Guidelines recommend a fine between $2,500 and $77,000.[24]

The NAC found two aggravating factors specifically applied to this violation. The NAC found highly aggravating Silver Leaf's decision to resume paying the nonmember entities months after assuring the SEC staff it had halted the practice pending receipt of no-action relief.[25] It also found aggravating that Silver Leaf obtained a monetary benefit from its misconduct, as Halim and the individuals affiliated with the nonmember entities generated significant fees for the firm.[26]

Considering these factors, the NAC fined Silver Leaf $50,000. This sanction is within the Guidelines and is appropriately remedial for Silver Leaf's misconduct.

Silver Leaf contends it should have received mitigation credit because, with respect to the payments to the nonmember entities "only the individual brokers [affiliated with the entities] ultimately received the money." Brief at 33. Silver Leaf does not cite any evidence supporting this assertion. Indeed, the evidence shows that at least one of the nonmember entities was partially owned by an unregistered person, and the unregistered person served as its chief financial officer. *See* RP 3904, 5465-66. In any event, this is not a mitigating factor because Khan knew the firm could not pay the nonmember entities, regardless of whether the entities were owned by a registered person. *See* RP 4167, 4404.

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23 *See Guidelines* at 1.

24 *Id.* at 45 (Registration Violations).

25 *Id.* at 8 (Principal Considerations in Determining Sanctions, No. 14).

26 *Id.* (Principal Considerations in Determining Sanctions, No. 16).

3. A $50,000 Fine, an Order to Retain an Independent Consultant, and a Business-Line Suspension Are Appropriately Remedial for Silver Leaf's Supervisory Failures

The NAC considered the Guidelines for systemic supervisory failures because Silver Leaf's failures were significant and occurred over an extended period.[27] Those Guidelines recommend a fine between $10,000 and $310,000.[28] When aggravating circumstances predominate, the Guidelines recommend considering "a suspension of the firm with respect to any or all relevant activities or functions for a period of 10 business days to two years, or consider expulsion of the firm."[29] Additionally, the Guidelines suggest "ordering the firm to engage an independent consultant to recommend changes to the firm's supervisory systems and procedures."[30]

For deficient WSPs, the Guidelines recommend a fine between $1,000 and $39,000.[31] In egregious cases, like this one, the Guidelines recommend "suspending the firm with respect to any or all relevant activities or functions for up to 30 business days and thereafter until the supervisory procedures are amended to conform to rule requirements."[32]

The NAC aggregated for sanctions purposes Silver Leaf's supervisory violations because they stem from a common cause—the firm's lax approach to supervision. *See Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *59 (Sept. 24, 2015).

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27 *See Guidelines*, at 105 (Systemic Supervisory Failures).

28 *Id.*

29 *Id.* at 106.

30 *Id.*

31 *Id.* at 107 (Deficient Written Supervisory Procedures).

32 *Id.*

The NAC found several aggravating factors specifically applied to this violation. The NAC found it aggravating that Silver Leaf failed to respond to numerous red flags indicating its supervisory deficiencies, including the SEC staff's warnings regarding payment to nonmember entities, emails indicating that Silver Leaf was paying transaction-based compensation to Halim, and the problems associated with the BHP transactions.[33] The NAC found it aggravating that Silver Leaf's supervisory deficiencies allowed violative conduct to occur.[34] The NAC found it aggravating that Silver Leaf failed to allocate its resources appropriately to prevent or detect its supervisory failures, despite knowing the potential impact on markets.[35] The NAC found it aggravating that the dollar value of the transactions Silver Leaf did not adequately supervise was substantial.[36] Last, the NAC found it aggravating that Silver Leaf failed to supervise its corporate advisory business even though it was aware of the substantial risks involved.[37]

Considering these aggravating factors, and the absence of any mitigating factors, the NAC concluded that significant sanctions were needed to ensure that Silver Leaf complied with its supervisory obligations. Accordingly, the NAC fined Silver Leaf $50,000 for its supervisory violations. The NAC also ordered the firm to retain an independent consultant to review its policies, systems, and procedures, and suspended the firm from engaging in its corporate advisory business until it certifies its implementation of the independent consultant's

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33 *Guidelines* at 105 (Principal Considerations in Determining Sanctions, No. 2)

34 *Id.* (Principal Considerations in Determining Sanctions No. 1).

35 *Id.* (Principal Considerations in Determining Sanctions No. 3).

36 *Id.* (Principal Considerations in Determining Sanctions No. 5).

37 *Id.* at 106 (Principal Considerations in Determining Sanctions No. 6).

recommendations. These sanctions are within the Guidelines and are appropriately remedial for Silver Leaf's misconduct.

Silver Leaf argues the NAC should not have applied the Guidelines for systemic supervisory failures because its deficient supervision purportedly related to "*one* broker and *one* client and a reasonable change to the firm's payroll practice[.]" Brief at 33. Silver Leaf is incorrect; the Guidelines provide that supervisory failures are systemic if they were significant and occurred over an extended period.[38] Silver Leaf's supervisory failures were exactly that. The firm continued paying the nonmember entities for over two years, and had no WSPs for its corporate advisory business for over three years. And Silver Leaf's decision to resume paying the nonmember entities was in no way a "reasonable change" to its payroll practices. The SEC staff previously told the firm it could not pay the entities. Nontheless, Khan decided to resume the practice, based solely on guidance from the firm's payroll processor, to keep the firm's registered persons happy. The NAC's application of the Guidelines was proper.

4. Silver Leaf Failed to Establish Its Inability to Pay

Silver Leaf argues the NAC erred because it "flip[pped] the script" by requiring the firm to establish its financial inability to pay. Brief at 33. Silver Leaf's argument fails because the NAC properly placed the burden on the firm to show that it could not pay the fine imposed. "It is well settled that a respondent bears the burden of demonstrating an inability to pay, and that [FINRA] is entitled to make a searching inquiry into any such claim." *Castle Securities Corp.*, 58 S.E.C. 826, 837 (2005). To establish an inability to pay, a firm must show that it currently cannot pay the fine. *ACAP Financial, Inc.*, Exchange Act Release No. 70046, 2013 SEC LEXIS 2156, at *77 (July 26, 2013), *aff'd*, 783 F.3d 763 (10th Cir. 2015).

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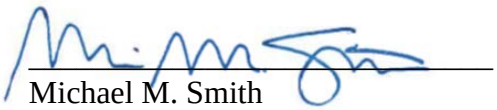
38 *Guidelines* at 105.

There is no evidence of Silver Leaf's financial circumstances evidencing its current inability to pay. Instead, the record contains a FOCUS report as of June 30, 2018, reflecting excess net capital of about $120,000, and other dated financial information regarding the firm and Khan. *See* RP 5873-83, 5905-12. Khan also testified about the firm's finances. RP 3956-64. This evidence does not establish that Silver Leaf cannot currently pay the fine imposed, nor does it demonstrate that the firm cannot obtain financing, employ other sources of funds to discharge the monetary liability, or agree to an appropriate installment payment plan or other alternate payment option with FINRA. *See ACAP Financial*, 2013 SEC LEXIS 2156, at *77. The NAC properly determined that Silver Leaf failed to meet its burden of demonstrating its financial inability to pay the fine.

IV. Conclusion

The NAC's findings of violation are supported by the record and the sanctions imposed are appropriately remedial. The Commission should sustain the NAC's decision.

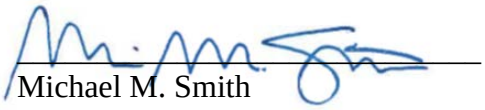
Respectfully submitted,



Michael M. Smith
Associate General Counsel
FINRA – Office of General Counsel
1735 K Street, NW
Washington, D.C. 20006
(202) 728-8177
michael.smith@finra.org

Certificate of Compliance

I, Michael M. Smith, certify that this brief complies with SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 13,969 words.



Michael M. Smith
Associate General Counsel
FINRA – Office of General Counsel
1735 K Street, NW
Washington, D.C. 20006
(202) 728-8177
michael.smith@finra.org

CERTIFICATE OF SERVICE

I, Michael Smith, certify that on this 2nd day of November, 2020, I caused the original and three copies of the brief in opposition to application for review in the matter of Application for Review of Silver Leaf Partners, LLC, Administrative Proceeding No. 3-19896, to be served via email on:

The Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Room 10915
Washington, D.C. 20549
apfilings@sec.gov

Jeffrey E. Sexton, Esq.
325 West Main Street
Suite 150
Louisville, KY 40202
jsexton@jeffsexton.com

/s/Michael M. Smith

Michael M. Smith
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
michael.smith@finra.org