

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 94026 / January 21, 2022

Admin. Proc. File No. 3-19589

In the Matter of the Application of  
  
BRADLEY C. REIFLER  
  
For Review of Disciplinary Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY  
PROCEEDING

Registered securities association found that a person formerly associated with a member firm failed to respond to its requests for information at two on-the-record interviews and barred him for his resulting violations of association rules. *Held*, association's findings of violation are *sustained* and the sanctions imposed are *remanded*.

APPEARANCES:

*Bradley C. Reifler*, pro se.

*Alan Lawhead, Andrew Love, and Jante Turner*, for FINRA.

Appeal filed: October 15, 2019  
Last brief received: February 12, 2020

Bradley C. Reifler, an individual formerly associated with a FINRA member firm, seeks review of FINRA's disciplinary action.<sup>1</sup> FINRA found that Reifler violated FINRA Rules 8210 and 2010 by refusing to answer dozens of questions at two on-the-record interviews. As a result of this misconduct, FINRA barred Reifler from association with any FINRA member firm.

We sustain FINRA's findings of violations. The record supports FINRA's finding, which Reifler does not dispute, that Reifler repeatedly refused to answer questions at the two on-the-record interviews. Reifler consented to be bound by FINRA's rules and By-Laws, including those relevant to providing testimony, when he became associated with a FINRA member firm.<sup>2</sup> And we have long recognized that under FINRA Rule 8210 associated persons of FINRA member firms have an obligation to testify as part of FINRA's investigations.<sup>3</sup>

Nonetheless, we remand FINRA's sanctions determination for additional consideration because FINRA misapplied its Sanction Guidelines. FINRA analyzed Reifler's refusal to respond to certain questions as a complete failure to testify under its Sanction Guidelines and imposed a bar as a result. But because Reifler answered some questions, and had earlier provided some answers to written inquiries, FINRA should have evaluated Reifler's refusal to answer questions as a partial failure to respond when determining whether to impose a bar.

## I. Background

Reifler was the principal owner and CEO of FINRA member firm Forefront Capital Markets LLC ("Forefront"), with which he was associated from October 2010 until August 2015, when it withdrew its registration with FINRA.<sup>4</sup> In September 2015, Reifler became associated with member firm Wilmington Capital Securities, LLC, which at times did business as Forefront Wealth Management, but he withdrew his association with that firm in November 2015.<sup>5</sup> Reifler has not subsequently been associated with a FINRA member.<sup>6</sup>

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<sup>1</sup> *Dep't of Enf't v. Reifler*, Complaint No. 2016050924601 (NAC Sept. 30, 2019), [https://www.finra.org/sites/default/files/2019-10/NAC\\_2016050924601\\_Reifler\\_093019.pdf](https://www.finra.org/sites/default/files/2019-10/NAC_2016050924601_Reifler_093019.pdf).

<sup>2</sup> FINRA By-Laws, Article V, Section 2(a)(1).

<sup>3</sup> *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 WL 611732, at \*3 (Sept. 14, 1998).

<sup>4</sup> See BrokerCheck Report for Bradley Carl Reifler, [https://files.brokercheck.finra.org/individual/individual\\_1589414.pdf](https://files.brokercheck.finra.org/individual/individual_1589414.pdf); BrokerCheck Report for Forefront Capital Markets LLC, [https://files.brokercheck.finra.org/firm/firm\\_151812.pdf](https://files.brokercheck.finra.org/firm/firm_151812.pdf). We take official notice of BrokerCheck reports pursuant to Commission Rule of Practice 323. 17 C.F.R. § 201.323; see also *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at \*1 n.1 (Mar. 17, 2016) (taking official notice of BrokerCheck records).

<sup>5</sup> See *supra* note 4.

<sup>6</sup> *Id.* Wilmington Capital remains a FINRA member. BrokerCheck Report for Wilmington Capital Securities, LLC, [https://files.brokercheck.finra.org/firm/firm\\_133839.pdf](https://files.brokercheck.finra.org/firm/firm_133839.pdf).

**A. FINRA opened an investigation into a fund that Reifler created and controlled.**

In 2014, Reifler created the Forefront Income Trust (“FIT”), a closed-end mutual fund, while he was registered with Forefront. In 2015, Reifler was the Chairman of the Board of Directors, CEO, and chief managing officer of FIT and the chief managing officer of its sole investment adviser. FIT and the investment adviser shared a common address with Forefront.

In 2016, during a routine cycle examination of another member firm, FINRA staff obtained marketing materials for FIT. These materials prompted FINRA staff to open a separate cause examination regarding FIT to seek more information. According to FINRA staff, because FIT “had a very low threshold for initial investment,” the cause examination considered whether sales of FIT securities complied with, among other FINRA rules, FINRA suitability requirements. Those requirements generally provide that a member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer.<sup>7</sup> FINRA staff learned that persons associated with Forefront had sold shares of FIT in the first half of 2015 and received commissions for those sales, which were generally to individual investors.

In May 2015, FIT also sold \$10 million of its stock to Port Royal North Carolina Mutual Reassurance Trust, an entity associated with North Carolina Mutual Life Insurance Company (“NCM”). Due to the size of the transaction, Port Royal was entitled to a 50% reduction in the commission it was charged. However, Port Royal waived that reduction and paid Forefront a \$300,000 commission—\$150,000 more than it was obligated to pay.

FINRA staff also learned that, in September 2016, NCM sued Reifler and others.<sup>8</sup> NCM alleged that Reifler, and several affiliated companies that Reifler controlled, had engaged in a fraudulent scheme to invest NCM’s assets in investments designed to benefit themselves. According to NCM, its indirect investment in FIT, through Port Royal, was unauthorized. NCM also alleged that the defendants had made unauthorized loans of NCM funds to entities Reifler controlled, that NCM had not authorized Port Royal’s waiver of the 50% reduction in the commission on its FIT purchase, and that a large FIT dividend owed to NCM had been diverted to a bank account Reifler controlled. Reifler disputed these claims. FINRA staff expanded its inquiry to consider whether NCM’s allegations gave rise to violations of FINRA rules.

On March 24, 2017, FINRA staff sent Reifler a letter requesting, “as part of FINRA’s ongoing examination,” that Reifler provide information and documents regarding his roles in Forefront and FIT pursuant to FINRA Rule 8210.<sup>9</sup> Among other things, staff sought information

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<sup>7</sup> See FINRA Rule 2111(a) (version applicable at the time).

<sup>8</sup> See generally *Compl., North Carolina Mutual Life Ins. Co. v. Stamford Brook Capital, LLC*, Case No. 1:2016cv01174, ECF No. 1 (M.D.N.C. Sept. 23, 2016).

<sup>9</sup> See FINRA Rule 8210(a) (permitting FINRA staff to require a person associated with a member firm or a person otherwise subject to its jurisdiction to provide information orally, in writing, or electronically; testify under oath; or make available for inspection or copying records with respect to any matter involved in an investigation or examination).

regarding Reifler's role and responsibilities at Forefront with respect to FIT sales, due diligence and supervisory review relating to them, and suitability determinations. The letter stated that Reifler was "obligated to respond to this request fully, promptly, and without qualification."

After obtaining an extension of the deadline for responding, Reifler returned the request to FINRA staff with short, handwritten notations. The bulk of these notations denied knowledge of matters pertaining to Forefront's sales of FIT shares or disclaimed any role or responsibility pertaining to the matters identified in the request. Reifler also asserted that, although he had no role in the sale of FIT stock, investor interest in it had been passed through "word of mouth" and that his "friends wanted to invest." According to Reifler, his friends included some of the FIT investors identified in the FINRA inquiry. Reifler declined to produce any of the documents FINRA staff requested and claimed generally that they did not exist.

**B. Reifler refused to answer questions at two on-the-record interviews.**

On May 5, 2017, FINRA staff sought Reifler's appearance at an on-the-record interview ("OTR") to answer questions under oath. In the letter requesting his appearance, staff asked Reifler to review an attached addendum. The addendum cautioned Reifler that, at the OTR, he was "obligated to provide testimony that is truthful, accurate and complete," and "to answer all questions asked by FINRA staff." The addendum further warned Reifler that, should he fail to do so, he could be subject to "FINRA disciplinary action and the imposition of sanctions, including a bar from the securities industry, suspension, censure, and/or fine."

**1. Reifler refused to answer questions at a May 30, 2017 OTR.**

On May 30, 2017, Reifler appeared as directed for the requested OTR. At the start of the OTR, Reifler testified that he was the founder of FIT and attended its board meetings. But when asked how often FIT's board met, Reifler stated that he was "not going to answer many questions about FIT" because "[a]ll FIT questions really are not under FINRA's jurisdiction." Reifler later asserted that because FIT was regulated by the Commission as a registered investment company, it was not subject to FINRA's jurisdiction. Reifler also refused to answer some questions on the ground that FINRA sought publicly available information about FIT, although he admittedly claimed to have "no idea what's public." Although he refused to answer in many instances, Reifler at times answered questions regarding FIT or asserted that he did not know or remember the answers to the questions posed.

Reifler also refused to answer a number of questions regarding NCM's claims in its litigation against him on the ground that FINRA lacked jurisdiction.<sup>10</sup> These questions included some related to NCM's assertions that Port Royal's \$10 million investment in FIT and associated waiver of a \$150,000 discount on the sales commission otherwise due to Forefront were unauthorized:

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<sup>10</sup> Reifler stated at the OTR that he would object to FINRA's questions on jurisdictional grounds by stating "Jurisdiction" on the record in response to the questions.

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

A. Nothing as it relates to FINRA.

Q. So you were involved?

A. Nothing as it relates to FINRA.

Q. Please describe your involvement, sir.

A. Jurisdiction.

[Q.] Port Royal Trust's investment was 10 million dollars as reflected on page two, correct?

A. Jurisdiction.

...

Q. What did [the Forefront registered representative identified on the application] have to do with the Port Royal Trust's investment in FIT?

A. Jurisdiction.

Q. Was [the representative] compensated for the Port Royal investment?

A. Jurisdiction.

Q. Was [a co-defendant in the NCM litigation] involved—

A. Jurisdiction.

Q. —with the Port Royal investment?

A. Pardon me for interrupting. Jurisdiction.

...

Q. What involvement did you have with th[e] waiver of the [commission discount] for Port Royal Trust?

A. Jurisdiction.

...

Q. Why did Port Royal Trust forgo the [commission discount]?

A. Jurisdiction.

FINRA also questioned Reifler regarding sales practices with respect to FIT, but he refused to answer many of those questions too. Reifler refused to answer whether he had told any friends about FIT who later made an investment in it, stating that he did not “want to discuss the investors in FIT.” Reifler refused to say whether he was involved in the FIT investments of certain investors who had purchased its stock while he was associated with FINRA members. And Reifler refused, again on jurisdictional grounds, to answer questions regarding the commission paid to Forefront on an individual investor’s July 2015 FIT investment:

Q. Did you meet [investor] on or before July 23, 2015?

A. Not in anything related to the Exchange Act.

Q. Is that a yes?

A. No. It’s not—jurisdiction.

...

Q. The [investor’s] investment, who would have endorsed the [commission] checks issued by [the fund administrator]?

A. Jurisdiction.

Q. Commission payments received through a broker-dealer?

A. Jurisdiction. I don’t know what the broker-dealer, what—when and if. I have no idea.

...

Q. [W]hat was the commission on [investor]’s investment in July 2015?

A. Jurisdiction.

Reifler also refused to answer on jurisdictional grounds various questions regarding particular loans FIT made, including whether he had introduced the companies that received the loans to FIT or had any involvement in them. During the OTR, FINRA staff disputed Reifler’s position on jurisdiction and reiterated that his refusal to answer questions could subject him to sanctions.

## **2. Reifler refused to answer questions at a June 29, 2017 OTR.**

On June 29, 2017, at FINRA’s request, Reifler appeared for a second OTR, at which he answered some questions pertaining to FIT. For example, Reifler acknowledged that NCM

invested \$10 million in FIT and answered some questions regarding NCM's allegations. But Reifler refused to answer numerous questions because he contended they pertained to matters "currently in litigation" with NCM. For this reason, Reifler responded that he was "[n]ot answering" when FINRA staff asked him "[w]hat did you do with [NCM]'s funds?" At one point during the second OTR, Reifler stated that he was "not going to answer any questions regarding [NCM], Port Royal, or any related subjects to that . . . ." Although he was not represented by counsel at either OTR, Reifler asserted that his refusal to answer questions regarding current litigation at his second OTR was "based on attorney advice."<sup>11</sup>

**C. FINRA found that Reifler violated FINRA Rules 8210 and 2010 by refusing to answer questions at the OTRs and barred him for this misconduct.**

On September 26, 2017, FINRA commenced a disciplinary proceeding against Reifler. In its complaint, FINRA alleged that Reifler had violated FINRA Rule 8210 by refusing to answer questions during the two OTRs. FINRA alleged further that Reifler violated FINRA Rule 2010 as a result of the Rule 8210 violation.

FINRA held a hearing on June 26, 2018, to determine whether the evidence supported the complaint's allegations. At the hearing, FINRA's Department of Enforcement introduced excerpts from Reifler's OTRs showing the questions he refused to answer. A FINRA staff member testified that FINRA staff had been investigating potential violations of FINRA rules, that the investigation included periods when Reifler was associated with a FINRA member, and that FINRA staff believed that Reifler's OTR testimony would be valuable to understand FIT, as well as NCM's allegations in its litigation against Reifler. According to the staff member's uncontested testimony, Reifler's refusal to answer questions "halted" the investigation because FINRA staff had no alternative sources for the information it was seeking.

FINRA's hearing panel subsequently found that Reifler had violated FINRA Rules 8210 and 2010 by refusing to answer questions at his OTRs. The hearing panel barred Reifler for this misconduct. In doing so, it treated his refusal to answer some but not all questions posed during the OTRs as a complete failure to respond to a Rule 8210 request under its Sanction Guidelines. Reifler appealed to FINRA's National Adjudicatory Council, which affirmed the hearing panel's findings of violations and the sanction it imposed. This appeal followed.<sup>12</sup>

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<sup>11</sup> Reifler did not argue in his brief that a reliance on counsel justified his refusal to answer questions. As a result, he forfeited that argument. *See* Rules of Practice 420(c), 450(b), 17 C.F.R. §§ 201.420(c), 450(b). In any case, "a recipient of a Rule 8210 request cannot avoid compliance based on the advice of counsel." *Li-Lin Hsu*, Exchange Act Release No. 78899, 2016 WL 5219504, at \*3 (Sept. 21, 2016); *see also, e.g., Joseph G. Chiulli*, Exchange Act Release No. 42359, 2000 WL 91733, at \*5 (Jan. 28, 2000) ("Reliance on counsel, however, does not excuse Chiulli from his obligation to supply information to the NASD. When Chiulli registered with the NASD, he agreed to abide by its rules, which are unequivocal with respect to an associated person's duty to cooperate with NASD investigations.").

<sup>12</sup> After Reifler filed his opening brief, FINRA moved to strike documents he attached to it because they either (1) were not contained in the certified record or (2) consisted of altered,

## II. Analysis

We review FINRA disciplinary action to determine (1) whether an applicant engaged in the conduct FINRA found, (2) whether that conduct violated the rules specified in FINRA's determination, and (3) whether those rules are, and were applied in a manner, consistent with the purposes of the Securities Exchange Act of 1934.<sup>13</sup> We base our findings on an independent review of the record and apply a preponderance-of-the-evidence standard.<sup>14</sup> Applying this framework, we sustain FINRA's findings of liability.

### A. Reifler repeatedly refused to answer questions at his OTRs.

The record supports FINRA's finding, which Reifler does not dispute, that Reifler repeatedly refused to answer questions at two OTRs.<sup>15</sup> For example, Reifler refused to answer numerous questions regarding NCM's allegations. And although he was FIT's CEO, Reifler refused to answer several questions regarding his solicitation of customers to buy FIT securities while he was associated with a FINRA member as a registered representative. He further refused to answer multiple questions concerning FIT's largest investor and whether he was involved in various customer purchases of FIT securities. In total, FINRA found (and Reifler does not dispute) that he refused to answer at least 65 questions during his OTRs.

### B. Reifler's refusal to answer questions violated the rules specified in FINRA's decision.

#### 1. Reifler violated FINRA Rules 8210 and 2010.

The record also supports FINRA's conclusion that, by refusing to answer questions at his OTRs, Reifler violated FINRA Rules 8210 and 2010. FINRA Rule 8210(a) provides that

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reordered, or other documents from the certified record that did not include the record page number. Reifler did not oppose this motion or seek leave to supplement the record to include the attached documents pursuant to Commission Rule of Practice 452. *See* 17 C.F.R. § 201.452. We grant FINRA's motion because Reifler has not "show[n] with particularity" that the documents he offers are "material and that there were reasonable grounds for [his] failure to adduce" them previously. *Id.*; *see also CapWest Sec., Inc.*, Exchange Act Release No. 71340, 2014 WL 198188, at \*7 n.43 (Jan. 17, 2014) (excluding additional documents offered by applicant from outside the record when it did not move to supplement the record to include them or address the applicable standard for their admission under Rule 452).

<sup>13</sup> 15 U.S.C. § 78s(e)(1).

<sup>14</sup> *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at \*1, \*9 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

<sup>15</sup> FINRA predicated liability, as we do, on Reifler's refusals to answer certain questions and not on Reifler's answers that claimed a lack of knowledge or recollection. FINRA also did not predicate liability on Reifler's responses to its staff's letter dated March 24, 2017, requesting information. We likewise do not predicate liability on that basis.



FINRA may “require” a member, associated person, or other person subject to its jurisdiction to provide information orally and to testify under oath “with respect to any matter involved” in an investigation or examination.<sup>16</sup> We have long recognized that the language of Rule 8210 is “unequivocal” regarding an associated person’s responsibility to comply with FINRA’s requests for information.<sup>17</sup> FINRA Rule 2010 requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”<sup>18</sup> We have also long recognized that a violation of FINRA Rule 8210 establishes a violation of FINRA Rule 2010.<sup>19</sup> We conclude that Reifler was subject to FINRA’s jurisdiction and that FINRA requested testimony within the scope of Rule 8210, yet Reifler failed to comply with those requests.

First, the record establishes that Reifler was a person subject to FINRA’s jurisdiction. Persons formerly associated with FINRA member firms are obligated to respond to Rule 8210 requests made within two years of the effective date of the termination of their registration with a member firm.<sup>20</sup> Reifler remained subject to FINRA’s jurisdiction at the time of the OTRs because he had terminated his association with a FINRA member, Wilmington Capital, less than two years earlier. Indeed, Reifler concedes in his brief that, as a person formerly associated with FINRA, he fell “within [its] two-year look[-]back” jurisdiction. FINRA also timely filed its complaint against Reifler because it did so during the relevant two-year period.

Second, FINRA’s requests for testimony fell squarely within the scope of Rule 8210 because they were for the purpose of an investigation or examination and were made with respect to matters involved in that investigation or examination. FINRA’s examination and investigation concerned NCM’s allegations against Reifler, including its claims that he had participated in a fraudulent scheme that involved an unauthorized \$10 million purchase of FIT securities and an unauthorized waiver of a 50% discount of the associated \$300,000 commission

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<sup>16</sup> FINRA Rule 8210(a) & (a)(1); *see also Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at \*4 (Apr. 17, 2014) (applying Rule 8210 requirement that requests for testimony must be “with respect to any matter involved in the investigation”) (citation omitted).

<sup>17</sup> *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 WL 5608531, at \*17 (Sept. 24, 2015).

<sup>18</sup> FINRA Rule 2010.

<sup>19</sup> *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at \*3 n.10 (July 27, 2015).

<sup>20</sup> *See* FINRA By-Laws, Article V, Section 4(a) (providing that a “person whose association with a member has been terminated and is no longer associated with any member . . . shall continue to be subject to the filing of a complaint” for two years after the effective date of the termination of registration for a failure to provide information requested by FINRA during that two-year period); *see also Evansen*, 2015 WL 4518588, at \*5 (stating that “FINRA maintains jurisdiction over formerly associated persons for two years after their FINRA registration ends”); *Hannan*, 1998 WL 611732, at \*4 (confirming that a former associated person had “an obligation to make himself available and to provide whatever information he possessed to [FINRA]”).

paid to Forefront. At the time of these transactions, Reifler was the CEO and principal owner of Forefront, a FINRA member, and the CEO and chief managing officer of FIT, which shared Forefront's address. Yet Reifler refused to answer questions regarding NCM's allegations.

FINRA's examination and investigation also generally concerned sales practices with respect to FIT securities and sought to determine whether there had been a violation of its suitability rule.<sup>21</sup> That rule required "a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation [of a particular transaction or investment strategy] is suitable for at least some investors," as well as "a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile."<sup>22</sup> Yet Reifler refused to answer questions regarding FIT's investments and his relationship with purchasers of FIT. Indeed, Reifler does not dispute that the questions he refused to answer concerned FINRA's investigation. Nor does he deny that FINRA staff warned him repeatedly that his refusal to answer would constitute a violation of FINRA rules and subject him to possible disciplinary action including a bar.

Instead, Reifler challenges FINRA's authority to ask questions about FIT under Rule 8210. Reifler asserts (as he did during the OTRs) that he "did not answer many questions" about FIT because it "was specifically under the [Commission's] jurisdiction" and the questions did not relate to the Exchange Act. Although FIT was subject to Commission oversight as a registered investment company, such oversight did not preclude FINRA from exercising its own authority to investigate whether its members' and associated persons' actions with respect to FIT violated its rules.<sup>23</sup> And we have held repeatedly that the discipline FINRA may impose for a violation of FINRA Rule 2010 "may be 'based on any conduct, not simply conduct that violates

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<sup>21</sup> See FINRA Rule 2111 (version applicable at the time).

<sup>22</sup> *Id.* (Supplementary Material, .05 Components of Suitability Obligations). In 2020, after the Commission adopted Regulation Best Interest, FINRA amended Rule 2111 to provide that the rule does not apply to recommendations subject to Regulation Best Interest. See *Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to FINRA's Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest*, Exchange Act Release No. 89091 (June 18, 2020), 85 Fed. Reg. 37,970, 37,972 (June 24, 2020).

<sup>23</sup> See, e.g., *Robert Conway*, Exchange Act Release No. 70833, 2013 WL 5960703, at \*1 (Nov. 7, 2013) (sustaining FINRA finding that registered representatives engaged in conduct inconsistent with just and equitable principles of trade by using deceptive market timing practices and executing late trades in mutual fund shares); cf. *Louis Ottimo*, Exchange Act Release No. 83555, 2018 WL 3155025, at \*14 (June 28, 2018) (rejecting applicant's argument that, because the "regulation of investment advisers rests with the Commission, not FINRA," FINRA lacked jurisdiction to bring an enforcement action "based on his conduct as a principal of a private fund adviser"); *Stephen Grivas*, Exchange Act Release No. 77470, 2016 WL 1238263, at \*5 (Mar. 29, 2016) (holding that FINRA has the authority to discipline associated persons who engage in misconduct in connection with their management of an investment fund where the misconduct is "business-related" "even if that management was not of a FINRA member firm").

the Exchange Act,” because the rule “appropriately encompasses the myriad types of misconduct that may injure public investors and the marketplace.”<sup>24</sup>

Reifler argues further that FINRA’s “only possible connection” with him is its concern about the “integrity” of its members and associated persons, which Reifler contends “will always allow FINRA to ask anything it wants and claim it has jurisdiction for this reason.” But Rule 8210 “has discernible parameters,” and the material requested from Reifler “fell squarely within the Rule’s scope.”<sup>25</sup> FINRA was investigating potential violations of its suitability rule and serious allegations of misconduct by Reifler, including a purportedly unauthorized \$10 million investment in FIT made through Forefront, a former FINRA member he owned and controlled.

## **2. We reject Reifler’s arguments that he should not be found liable.**

Reifler argues that he should not be found to have violated FINRA rules, but we do not agree. First, Reifler argues that FINRA should have delayed its investigation until the NCM litigation concluded, at which time he would have been willing to answer FINRA’s questions. Reifler asserts that he was justified in refusing to answer questions in the meantime because doing so could have had “very serious consequences” for the litigation. According to Reifler, answering FINRA’s questions might have allowed NCM to obtain “non-discoverable information.” Reifler argues that the only way to prevent this was to not answer the questions.

Reifler’s argument fails. A recipient of a Rule 8210 request cannot avoid compliance due to other litigation.<sup>26</sup> Reifler consented to be bound by FINRA’s rules and By-Laws, including those relevant to information requests, when he became associated with a FINRA member firm.<sup>27</sup> It is those rules, not the scope of discovery in a related proceeding, that control here. Otherwise, FINRA would be prevented from obtaining relevant evidence any time a related

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<sup>24</sup> *Scottsdale Cap. Advisors Corp.*, Exchange Act Release No. 93052, 2021 WL 4242630, at \*8 (Sept. 17, 2021) (citations omitted) (rejecting contention that FINRA “lacks the authority to discipline its members and their associated persons for violation of [Securities Act] Section 5”); *see also KCD Fin. Inc.*, Exchange Act Release No. 8034, 2017 WL 1163328, at \*4 (Mar. 29, 2017) (recognizing that a violation of the Securities Act violates FINRA Rule 2010).

<sup>25</sup> *Goldstein*, 2014 WL 1494527, at \*9.

<sup>26</sup> *Hsu*, 2016 WL 5219504, at \*3; *see also Brian Prendergast*, Exchange Act Release No. 44632, 2001 WL 872693, at \*11 (Aug. 1, 2001) (finding that applicant’s “desire to deprive potential litigants of the transcript” of a requested OTR did not “justify his refusal” to testify based on “anticipated litigation”); *Darrell Jay Williams*, Exchange Act Release No. 30886, 1992 WL 165331, at \*2 (July 6, 1992) (finding that “the possibility of litigation . . . provided no excuse” for failure to comply with Rule 8210). Reifler attempts to distinguish *Williams* because it involved only possible litigation. But neither pending nor anticipated litigation obviates an associated person’s obligation to respond to a Rule 8210 request or FINRA’s interest in obtaining relevant facts in connection with an investigation.

<sup>27</sup> FINRA By-Laws, Article V, Section 2(a)(1).

proceeding commenced. In any case, Reifler does not explain why any information he was asked to provide would have been unavailable to NCM via discovery in its litigation against him.

Reifler's claimed intention to respond to FINRA's inquiries after the NCM litigation concluded is also not a defense to his violation of Rule 8210.<sup>28</sup> Rather, Reifler "had an unequivocal obligation to cooperate fully and promptly with FINRA's information and OTR requests."<sup>29</sup> Indeed, we have recognized that "timely cooperation" with Rule 8210 requests is "essential to the prompt discovery and remediation of industry misconduct."<sup>30</sup>

Second, Reifler argues that he appropriately refused to answer some questions at his first OTR because FINRA could have found the answers by reading public documents filed with the Commission or by conducting independent research. He also contends that he appropriately refused to answer questions at both OTRs because, in his view, FINRA's investigation had no merit. But as we have repeatedly held, individuals may not second-guess a Rule 8210 request or set conditions for their compliance.<sup>31</sup> Nor can they unilaterally decide when to respond to requests for information depending on their personal view of the merits of FINRA's investigation.<sup>32</sup> A belief that FINRA does not need the requested information provides no excuse for the failure to provide it.<sup>33</sup> Nor does a belief that the information might be available "from other sources."<sup>34</sup> In any case, a FINRA staff member testified that FINRA was not able to obtain all the information it sought through publicly available materials, and Reifler—who testified that he did not know what information was publicly available—has not established the contrary.

Third, we reject as unsupported speculation Reifler's assertion that FINRA must have found him liable for Rule 8210 violations because it believed that he committed underlying misconduct. FINRA nowhere found in its decision that Reifler committed any underlying

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<sup>28</sup> Cf. *Michael J. Markowski*, Exchange Act Release No. 43259, 2000 WL 1264292, at \*5 (Sept. 7, 2000) (holding that applicant's "refusal to testify was in direct conflict with his obligation to do so," and that his "later change of mind does not excuse his action").

<sup>29</sup> *Evansen*, 2015 WL 4518588, at \*4.

<sup>30</sup> *Mielke*, 2015 WL 5608531, at \*21; see also *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at \*4 (Apr. 11, 2008) (finding that delay and neglect in responding to a Rule 8210 request "undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest"), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

<sup>31</sup> *Mielke*, 2015 WL 5608531, at \*21.

<sup>32</sup> *Asensio & Co.*, Exchange Act Release No. 68505, 2012 WL 6642666, at \*6 (Dec. 20, 2012).

<sup>33</sup> *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 WL 3306103, at \*4 (Nov. 8, 2007) (citations omitted), *aff'd*, 316 F. App'x 865 (11th Cir. 2008).

<sup>34</sup> *Perpetual Sec., Inc.*, Exchange Act Release No. 56613, 2007 WL 2892696, at \*9 (Oct. 4, 2007).

misconduct. Rather, the record fully supports FINRA’s determination that Reifler violated Rule 8210 because he did not answer questions posed at the OTRs, and it provides no basis to conclude that FINRA acted based on other, uncharged allegations.

Similarly, Reifler claims to have been concerned that FINRA would determine he violated its rules based solely on the content of the OTR transcripts. But FINRA may impose discipline only after providing respondents notice and an opportunity to defend themselves.<sup>35</sup> And any such discipline may be appealed to the Commission and, if sustained, to the courts.<sup>36</sup>

**C. FINRA Rules 8210 and 2010 are, and were applied in a manner, consistent with the purposes of the Exchange Act.**

“Rule 8210 is consistent with the purposes of the Exchange Act because it ‘is essential to FINRA’s ability to investigate possible misconduct by its members and associated persons.’”<sup>37</sup> Rule 2010 is also consistent with the purposes of the Exchange Act because it reflects the Act’s “mandate that FINRA have rules to ‘promote just and equitable principles of trade’ and ‘protect investors and the public interest.’”<sup>38</sup> We find, and Reifler does not dispute, that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.

### III. Sanctions

Although we sustain FINRA’s findings of violations, we remand its decision to bar Reifler for additional consideration consistent with its Sanction Guidelines.<sup>39</sup> Those guidelines, which serve as a nonbinding benchmark for our review,<sup>40</sup> specify different considerations applicable to complete and partial failures to respond to Rule 8210 requests.<sup>41</sup> FINRA analyzed Reifler’s refusal to respond to certain questions at his OTRs as a complete failure to respond.

<sup>35</sup> See, e.g., Exchange Act Section 15A(b)(8), (h), 15 U.S.C. § 78o-3(b)(8), (h).

<sup>36</sup> Exchange Act Sections 19(d), (e) and 25(a), 15 U.S.C. § 78s(d), (e), and § 78y(a).

<sup>37</sup> *Merrimac Corp. Sec.*, Exchange Act Release No. 10662, 2019 WL 3216542, at \*5 (July 17, 2019).

<sup>38</sup> *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 WL 1659292, at \*3 n.8 (Apr. 3, 2020) (quoting Exchange Act Section 15A(b)(6), 15 U.S.C. § 78o-3(b)(6)).

<sup>39</sup> FINRA applied the version of the Sanctions Guidelines applicable at the time of the hearing. See FINRA Sanction Guidelines (March 2019) (“Sanction Guidelines” or “Guidelines”), [https://www.finra.org/sites/default/files/2020-10/2019\\_Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf).

<sup>40</sup> *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at \*11 & n.68 (June 14, 2013).

<sup>41</sup> Sanction Guidelines at 33 (distinguishing between a situation in which an individual “did not respond in any manner” to a request under FINRA Rule 8210 and one in which the individual provided a “partial but incomplete response” to a request under FINRA Rule 8210, setting forth different principal considerations in determining sanctions applicable to each, and providing for different analysis in considering advisability of a bar for each category).

But because Reifler answered some questions, including multiple questions that related to FIT and the NCM litigation, and earlier provided some answers to written Rule 8210 requests, FINRA should have evaluated Reifler's refusal to answer as a partial failure to respond.<sup>42</sup>

FINRA's contrary conclusion lacks support in our precedent. FINRA relied on its 2006 decision in *Asensio Brokerage Services, Inc.*, in which it treated a respondent's selective refusal to answer questions at an OTR as a complete failure to respond.<sup>43</sup> That decision, which we did not review,<sup>44</sup> relied on a Commission opinion that did not mention the Sanction Guidelines,<sup>45</sup> and reasoning from a FINRA decision that we later rejected.<sup>46</sup> FINRA's decision in *Asensio Brokerage Services* also predated our decision in *Goldstein* treating a failure to respond to requests for information similar to that at issue here as a partial failure to respond to a Rule 8210 request,<sup>47</sup> and other cases in which we remanded sanctions determinations where FINRA had incorrectly treated partial failures to respond as complete failures.<sup>48</sup> We have sustained bars based on a partial failure to respond to requests for information, but we have done so only where FINRA justified the bar under the applicable sanction guideline.<sup>49</sup>

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<sup>42</sup> See *Goldstein*, 2014 WL 1494527, at \*2, \*10-11 (treating applicant's refusal to answer "certain questions" at an OTR that he contended related to a topic that was "beyond FINRA's authority" as a partial failure to respond where applicant answered other questions).

<sup>43</sup> Complaint No. CAF030067, 2006 WL 2236716, at \*15 (NAC July 28, 2006).

<sup>44</sup> See *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 WL 2468111, at \*4, \*5, \*13 (June 17, 2010) (dismissing Asensio's appeal of FINRA's decision as untimely because he filed it more than three years after the decision and explaining that the Commission had dismissed an earlier appeal at his request), *aff'd*, 447 F. App'x 984 (11th Cir. 2011).

<sup>45</sup> *Charles R. Stedman*, Exchange Act Release No. 34510, 1994 WL 440933, at \*4 (Aug. 10, 1994).

<sup>46</sup> See *Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 WL 34830, at \*5 (Jan. 5, 2007) (modifying sanctions imposed by FINRA because applicant "did comply with five of the seven requests [under Rule 8210] to some extent," and thus "we cannot say [as FINRA did] that Sahai did not respond 'in any manner'" (quoting relevant version of Sanction Guidelines)).

<sup>47</sup> See *supra* note 42.

<sup>48</sup> See *Plunkett*, 2013 WL 2898033, at \*14 (remanding to allow FINRA to analyze "in the first instance" applicant's violation of Rule 8210 under Sanction Guidelines applicable to partial responses where FINRA failed to take into account applicant's compliance with several earlier Rule 8210 requests); *Kent A. Houston*, Exchange Act Release No. 66014, 2011 WL 6392264, at \*8 (Dec. 20, 2011) (remanding a bar based on a complete failure to respond where, among other things, applicant responded to some Rule 8210 requests before the complaint was filed).

<sup>49</sup> *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at \*10-13 (Apr. 1, 2016) (sustaining bar for incomplete Rule 8210 response under applicable Sanction Guidelines); *Mielke*, 2015 WL 5608531, at \*21-23 (same); *North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 WL 2151765, at \*11-14 (May 8, 2015) (same); *cf. PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007) (stating that "the Commission must be particularly

On remand, FINRA should evaluate Reifler’s refusal to answer questions at his OTRs as a partial failure to respond. Where, as here, an individual provides a partial but incomplete response to a Rule 8210 request, the Sanction Guidelines identify the following principal considerations in determining sanctions: (1) “Importance of the information requested that was not provided as viewed from FINRA’s perspective, and whether the information provided was relevant and responsive to the request”; (2) “Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response”; and (3) “Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.”<sup>50</sup> The Sanction Guidelines also provide that where an individual provides a partial but incomplete response, “a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.”<sup>51</sup> The Sanction Guidelines further provide that, where mitigation exists, adjudicators should consider suspending the individual in any or all capacities for up to two years.<sup>52</sup>

In applying the Sanctions Guidelines on remand, FINRA should review and include in the record the entirety of the transcripts of both OTRs. The existing record contains 70 of the 123 pages of the transcript of the first OTR (approximately 57% of the total) and 34 of the 179 pages of the transcript of the second OTR (approximately 19%). Consideration of the complete transcripts is necessary to apply the Sanction Guidelines because doing so will permit FINRA to determine what questions Reifler answered and not just those questions he refused to answer. Such an inquiry is relevant to, among other things, a determination of whether Reifler thoroughly provided valid reasons for not answering questions and whether the information he did provide substantially complied with all aspects of the request.

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careful to address potentially mitigating factors before it affirms an order expelling a member from [FINRA] or barring an individual from associating with [a FINRA] member firm”).

<sup>50</sup> Sanctions Guidelines at 33. In contrast, where an individual did not respond in any manner, the Sanction Guidelines identify as a principal consideration only the “[i]mportance of the information requested as viewed from FINRA’s perspective.” *Id.*

<sup>51</sup> *Id.* In contrast, where an individual did not respond in any manner, the Sanctions Guidelines simply provide that a bar is standard. *Id.*

<sup>52</sup> *Id.*

Accordingly, we sustain FINRA’s findings of violation but remand the sanction imposed on Reifler for further proceedings consistent with this opinion.<sup>53</sup>

An appropriate order will issue.<sup>54</sup>

By the Commission (Chair GENSLER and Commissioners PEIRCE, ROISMAN, LEE, and CRENSHAW).

Vanessa A. Countryman  
Secretary

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<sup>53</sup> See *Houston*, 2011 WL 6392264, at \*9 (“NASD is the proper authority to determine the sanction for the Rule 8210 violation in the first instance, based on the correct application of its Sanction Guidelines to the full record.”).

<sup>54</sup> We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.



UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 94026 / January 21, 2022

Admin. Proc. File No. 3-19589

In the Matter of the Application of  
  
BRADLEY C. REIFLER  
  
For Review of Disciplinary Action Taken by  
  
FINRA

ORDER SUSTAINING IN PART AND REMANDING IN PART DISCIPLINARY ACTION  
TAKEN BY FINRA

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

ORDERED that FINRA's findings of violations by Bradley C. Reifler are sustained; and  
it is further

ORDERED that FINRA's sanctions determination is remanded for additional  
consideration consistent with our opinion.

By the Commission.

Vanessa A. Countryman  
Secretary