BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Stephen Grivas Jericho, NY, Respondent.	DECISION Complaint No. 2012032997201 Dated: July 16, 2015

Registered representative converted monies of an investment fund. Held, findings and sanction affirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Vaishali Shetty, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Martin P. Unger, Esq., Wexler Burkhart Hirschberg & Unger, LLP

Decision

Stephen Grivas ("Grivas") appeals a Hearing Panel decision. The Hearing Panel found that Grivas converted monies of an investment fund, in violation of FINRA Rule 2010, and it barred him from associating with any FINRA member in any capacity for this misconduct. We affirm the Hearing Panel's findings and the sanction it imposed.

I. Background

Grivas entered the securities industry in 1992. From April 14, 2008, to October 16, 2013, Grivas associated with FINRA member Obsidian Financial Group, LLC ("Obsidian Financial"), and he registered through the firm as a general securities representative and corporate securities representative. Grivas indirectly owns Obsidian Financial as a 25 percent shareholder and

managing member of its parent, Obsidian Capital Holdings, LLC ("Obsidian Holdings").[1] Grivas is not currently associated with a FINRA member firm.

II. Procedural Background

FINRA's Department of Enforcement ("Enforcement") filed a single-cause complaint in this matter on April 30, 2013. Enforcement alleged that Grivas converted $280,000 from investors of the Obsidian Social Networking Fund I, LLC (the "Fund"), to meet the regulatory capital requirements of Obsidian Financial, in violation of FINRA Rule 2010.[2]

On May 29, 2013, Grivas filed an answer in which he denied the alleged misconduct and requested a hearing. In November 2013, the Hearing Panel conducted a two-day hearing at which Grivas admitted, or stipulated to, many of the facts on which Enforcement based its complaint.

The Hearing Panel issued its decision on February 14, 2014, and it barred Grivas from the securities industry after finding that he converted monies of the Fund, in violation of FINRA Rule 2010.[3] This timely appeal followed.

III. Facts

A. The Fund and Its Manager

Grivas formed the Fund in May 2011 to pool investor funds for the purpose of purchasing, through private securities transactions, restricted shares of Facebook, Inc. ("Facebook") stock prior to Facebook's anticipated initial public offering. Also in May 2011, Grivas formed Obsidian Social Networking Management, LLC ("Obsidian Management"), to act as the Fund's manager. Under the terms of the Fund's operating agreement, Obsidian

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[1] Grivas disclosed to Obsidian Financial that Obsidian Holdings was an outside business activity.

[2] Enforcement alleged in the alternative that Grivas misused the funds, also in violation of FINRA Rule 2010.

[3] In his appeal, Grivas objects that the Hearing Panel erred when it found him liable for converting monies of the Fund, when the complaint alleged instead that he converted monies of the Fund's investors. The distinction drawn by Grivas is one without a difference for purposes of these proceedings. The gravamen of Enforcement's complaint is that Grivas took monies invested in the Fund and used those monies for an unauthorized purpose. Grivas received the notice required for us to sustain the Hearing Panel's findings in this case. *See Dist. Bus. Conduct Comm. v. Euripides*, Complaint No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NASD NBCC July 28, 1997) (holding that a complaint is alleged in reasonable detail when it provides a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense).

Management, an acknowledged Fund fiduciary, was given "full and complete authority, power and discretion to make any and all decisions and to do any and all things which [it] shall deem to be reasonably required in light of the [Fund's] business and objectives." As the sole owner and manager of Obsidian Management, Grivas controlled all of the operations and activities of the Fund.[4]

The Fund was organized with both Class A and Class B membership interests. The Fund's Class A interests were offered to investors as securities exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder. Grivas indirectly owned 99 percent of the Fund's Class B interests as the sole member of Obsidian Social Networking Capital, LLC. Stacy Marcus ("Marcus"), a consultant that Grivas hired to find Facebook stock available for purchase and to assist with the Fund's operations, indirectly owned the remaining one percent of the Fund's Class B interests as the sole member of Social Strategy, LLC ("Social Strategy").

B. Sales of the Fund's Class A Interests

The Fund's Class A interests were initially offered and sold to investors through Obsidian Financial.[5] Class A interests were first sold on September 30, 2011, and sales continued until the Fund closed the offering to additional investors in March 2012. In total, the Fund raised $11,202,305 from the sale of Class A interests to 54 investors.[6]

C. The Fund Buys Facebook Stock and Pays Fees and Expenses

The Fund maintained two bank accounts—an escrow account and an operating account for which Grivas possessed sole signing authority. Investments by the Fund's Class A members were received first in the Fund's escrow account and later transferred to the Fund's operating account to purchase Facebook stock and pay the Fund's fees and expenses.

In two transactions, on April 4, 2012, and April 17, 2012, the Fund purchased 260,000 Facebook shares for $9,976,750. After completing the purchases, the Fund's operating account contained un-invested funds totaling $1,225,500.[7]

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[4] Grivas also disclosed to Obsidian Financial that the Fund and Obsidian Management were outside business activities.

[5] Two additional broker-dealers—Craig Scott Capital, LLC, and Brookstone Securities, Inc.—later offered and sold the Fund's Class A interests.

[6] Twenty four of the investors were also customers of Obsidian Financial.

[7] Due to a limited availability of Facebook shares in the private market, the Fund was unable to invest all of the monies it raised from the sale of Class A interests.

The Fund's private placement memorandum and operating agreement stated that the Fund would pay Obsidian Management a management fee equal to the greater of $50,000 or two percent of the gross proceeds raised from the sale of the Fund's Class A interests.[8] The first-year management fee was due to Obsidian Management after the Fund's first purchase of Facebook securities.

On May 9, 2012, Grivas paid Obsidian Management a $224,046 first-year management fee and wired this sum from the Fund's operating account to Obsidian Management's bank account. Grivas also paid other fees and expenses incurred by the Fund, including $560,115 paid to the Fund's placement agents. After paying these fees and expenses, the Fund's operating account was left with a balance of $297,094.

The initial public offering of Facebook shares occurred on May 18, 2012. This event marked the beginning of the end of the Fund's necessary existence. The Fund's private placement memorandum and operating agreement stated that the Fund intended to make in-kind distributions of purchased Facebook securities to the Fund's Class A members. After the conclusion of a six-month lockup period that ended in November 2012, all that remained for the Fund to do was to pay any additional, accrued expenses, distribute purchased Facebook shares to the Fund's Class A members, refund any remaining monies to those investors, and dissolve the Fund.[9] Marcus estimated that these tasks could be accomplished in two to three weeks.

D. Grivas Resolves Obsidian Financial's Net Capital Problems with Fund Monies

Obsidian Financial began experiencing regulatory capital problems in February 2012. In early June 2012, Grivas learned that Obsidian Financial had a net capital deficiency and was in need of additional capital to continue operating. Grivas therefore decided to withdraw money from the Fund's operating account to resolve Obsidian Financial's net capital problems.

In a series of transactions that Grivas effected personally on June 14, 2012, and June 15, 2012, Grivas withdrew $280,000 from the Fund's operating account and transferred this sum to Obsidian Financial.[10] Specifically, on June 14, 2012, Grivas transferred $280,000 from the

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[8] Obsidian Management agreed to compensate Social Strategy from the management fee it earned managing the Fund.

[9] The private placement memorandum and operating agreement provided for the distribution of the Fund's un-invested capital, after payment of the Fund's fees and expenses, to the Fund's investors. Although the terms of those documents provided that such distributions would be made at the discretion of Obsidian Management, the evidence in this case was consistent in establishing that Grivas, Marcus, and the Fund's Class A members understood that any monies not used by the Fund to purchase Facebook stock, and cover the Fund's fees and expenses, would be returned to investors in proportion to their investments in the Fund.

[10] In his hearing testimony, Grivas attempted to justify his use of Fund monies to address Obsidian Financial's net capital problems. Among other things, he claimed that it was necessary, and a reasonable exercise of the general powers vested in him as the Fund's de facto

[Footnote continued on next page]

Fund's operating account to Obsidian Management's bank account. On the same day, Grivas transferred $280,000 from Obsidian Management's bank account to the account of Olympus Capital Holdings, LLC ("Olympus"), an entity that Grivas solely owned and used for his personal investment purposes.[11] Again on June 14, 2012, Grivas transferred $280,000 from the Olympus bank account to the bank account of Obsidian Holdings. Finally, on June 15, 2012, Grivas transferred $280,000 from Obsidian Holding's bank account to the bank account of Obsidian Financial.[12]

E. Grivas Fails to Disclose or Document the Withdrawal

Grivas did not consult with anyone to determine if it was permissible for him to withdraw $280,000 from the Fund's operating account and transfer this sum to Obsidian Financial.[13] He did not document the withdrawal in any fashion or inform anyone of his actions.

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manager, to ensure the broker-dealer's continued viability so that the Fund would, at the end of the lockup period, have a brokerage account to take delivery of the Facebook shares it purchased for its investors. The Hearing Panel did not find Grivas's testimony credible. Absent substantial evidence to the contrary, the Hearing Panel's credibility determinations are entitled to our deference. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) ("Credibility determinations by a fact-finder deserve special weight." (internal quotation omitted)). As the evidence shows, the Fund had not opened a brokerage account with Obsidian Financial when Grivas caused the $280,000 withdrawal that is at issue in this case, and it did not do so until December 2012. Moreover, while the Fund's private placement memorandum stated that the Fund contemplated retaining Obsidian Financial to act as a broker for the Fund to hold Facebook securities, it made clear, and Grivas concedes, that the Fund could have retained another broker-dealer for this function.

[11] Before Grivas transferred $280,000 to the Olympus bank account, the account held a balance of approximately $34,936. Grivas disclosed Olympus as an outside business activity to Obsidian Financial.

[12] On June 15, 2012, Obsidian Financial submitted an Exchange Act Rule 17a-11(b) notification that indicated the firm had a net capital deficiency of $110,000 during the period of May 15, 2012, through June 15, 2012. The notification also stated that Obsidian Financial received a capital infusion on June 15, 2012, to correct this capital deficiency. Notwithstanding this infusion of capital, Obsidian Financial ceased operations on February 22, 2013, and FINRA expelled the firm from membership on October 16, 2013, for failing to file a quarterly financial report.

[13] In his hearing testimony, Grivas admitted that he had not yet read the private placement memorandum and operating agreement at the time of the withdrawal and transfer at issue in this case.

As the Fund's consultant, Marcus prepared and maintained spreadsheets that tracked the investments of the Fund's Class A members, the purchase and allocation of Facebook shares, expenditures and reserves for the Fund's fees and expenses, and the amounts of any refunds due from the Fund's operating account to its investors. On June 6, 2012, just days before the $280,000 withdrawal, Marcus calculated and confirmed that the Fund's operating account had a balance of $297,094.[14]

In the months following the $280,000 withdrawal, Marcus prepared additional spreadsheets reflecting the balance that she understood to remain in the Fund's operating account and the refunds she estimated were due the Fund's investors. Grivas knew that Marcus maintained these spreadsheets and used that information to communicate with the Fund's Class A members concerning the refund amounts that they could expect when the Fund was dissolved. Although Grivas reviewed these spreadsheets, and knew that they contained incorrect information, he did not inform Marcus that her figures were wrong and that the balance in the Fund's operating account was in fact $280,000 less than the amount that she calculated.[15]

F. Grivas Repays the Fund After FINRA Initiates an Investigation

FINRA began investigating Grivas's involvement with the Fund in June 2012. Over the ensuing months, in a series of letters issued under FINRA Rule 8210, FINRA staff requested that Grivas produce documents and information related to the Fund, including copies of statements for the Fund's bank accounts. Grivas produced the bank statements, albeit late, in February 2013. After receiving the statements, FINRA staff questioned Grivas, and he admitted that he withdrew $280,000 from the Fund's operating account, but he characterized the withdrawal as an "advance." Over time, Grivas refined his story to portray the withdrawal as consisting, in part, of a "loan" and, in part, an advance. On May 8, 2013, two months after he provided on-the-record testimony to FINRA staff, and a week after FINRA staff filed the complaint in this matter, Grivas repaid the Fund by depositing $280,000 into the Fund's operating account.[16]

Virtually all of the Facebook shares purchased by the Fund were distributed to the Class A members in July 2013.[17] In September 2013, Grivas distributed the monies remaining in the

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[14] Marcus did not have access or any authority related to the Fund's operating account, and she relied on Grivas to confirm the account's balance.

[15] Grivas did not disclose to Marcus the withdrawal from the Fund's operating account until February 2013, when Marcus was scheduled to provide on-the-record testimony to FINRA staff. At the time of his hearing, Grivas had not yet informed the Fund's investors that he withdrew $280,000 from the Fund's accounts. He testified that he determined it was not "prudent" for him to do so.

[16] In his hearing testimony, Grivas stated that the funds for the repayment came from the proceeds of a personal, real estate transaction.

[17] The Fund sold three Facebook shares and the proceeds were included in the Fund's operating account.

Fund's operating account to the Fund's investors. The Fund existed when the hearing was held in this matter for the limited purpose of distributing Schedule K-1 tax forms to the Fund's Class A members.

IV. Discussion

The Hearing Panel found that Grivas converted $280,000 that belonged to the Fund, in violation of FINRA Rule 2010. After carefully considering the record, we affirm the Hearing Panel's findings. In doing so, we reject the arguments and defenses raised by Grivas in this appeal.

A. Grivas Violated FINRA Rule 2010

1. Grivas Converted Fund Monies

FINRA Rule 2010 states that a broker-dealer, "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[18] "[C]onduct that reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade." *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 3134, at *22 (Aug. 22, 2008). Conversion, which is broadly defined as "'an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it,'" is conduct that violates FINRA Rule 2010.[19] *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012) (quoting *FINRA Sanction Guidelines* 38 (2007)).

There is no dispute that Grivas deliberately withdrew $280,000 from the Fund's operating account and transferred the funds to Obsidian Financial for the express purpose of correcting the firm's net capital deficiencies. We discern from the record no evidence that establishes Grivas was authorized to use the Fund's monies to save a struggling broker-dealer that he indirectly owned. *Cf. DWS Sec. Corp.*, 51 S.E.C. 814, 818 (1993) (finding respondents committed fraud and violated just and equitable principles of trade when they used the proceeds

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[18] FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

[19] In his appeal, Grivas asserts that, because the Fund and Obsidian Management are New York limited liability companies with offices in New York, we should apply the law for conversion under New York state law. We have previously held, however, that the standards for conversion under a state's laws are not applicable in cases, such as this one, where a respondent has been charged with violating the high standards of commercial honor prescribed by FINRA Rule 2010. *See Dep't of Enforcement v. Mullins*, Complaint Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *28-29 (FINRA NAC Feb. 24, 2011) (collecting cases), *aff'd*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

of a securities offering for, among other things, payments to respondents' affiliated entities that were not disclosed in the private placement memorandum). The manner in which he concealed his actions from others involved with the Fund, as well as the surreptitious way by which he funneled the monies through multiple entities that he controlled, leads us to conclude that Grivas engaged in an intentional taking of the Fund's assets for an unauthorized use. *See Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *23 (Jan. 9, 2015) ("West's concealment of his actions from his customer and his deceit further demonstrate deliberate intent and bad faith."); *id*. at *29 ("This concealment is inconsistent with West's claims that Mouton authorized him to use the funds."); *Dep't of Enforcement v. Smith*, Complaint No. 2011029152401, 2014 FINRA Discip. LEXIS 2, at *14 (FINRA NAC Feb. 21, 2014) ("Smith's taking of SH's money was also intentional, as evinced by the multiple steps he took to surreptitiously secure the proceeds.").

Grivas's conduct defied the high standards of commercial honor and just and equitable principles of trade by which all professional, securities industry participants must abide and constituted a conversion of funds that violated FINRA Rule 2010. *See, e.g.*, *Mullins*, 2012 SEC LEXIS 464, at *42 (finding that the respondent's personal use of gift certificates and wine, purchased with the funds of a charitable foundation, constituted conversion and violated just and equitable principles of trade); *Smith*, 2014 FINRA Discip. LEXIS 2, at *14-15 (finding that the respondent converted life insurance proceeds belonging to a customer, in violation of just and equitable principles of trade, when he used the funds to support his financially distressed business). We therefore affirm the Hearing Panel's findings of liability.

2. There Is No Evidence the Monies Were a Loan or an Advance

As he did in his hearing testimony, Grivas contends on appeal that the $280,000 he caused to be transferred from the Fund to Obsidian Financial comprised, in part, a loan and, in part, an advance of monies to Obsidian Management. Specifically, Grivas characterized the $280,000 he took from the Fund's operating account as an indeterminate, interest-free loan of approximately $54,000 and an advance of a second-year management fee of roughly $224,000. The Hearing Panel did not accept this claim, and neither do we.

First, the Hearing Panel thoroughly considered Grivas's testimony, including his claim that the $280,000 he withdrew from the Fund's operating account was a loan and an advance of fees to the Fund's manager.[20] The Hearing Panel did not find this testimony credible. We defer to its finding. *See Manoff*, 55 S.E.C. at 1162.

[20] In his hearing testimony, Grivas stated that he believed that there were no limits on his ability, as the Fund's de facto manager, to withdraw monies from the Fund's operating account and to loan or advance those funds to Obsidian Management, as long as he repaid any sums due the Fund, and "everything matche[d] out" or "even[ed] out," by the time the Fund dissolved. He further testified that, once he transferred monies from the Fund's operating account to the bank account of Obsidian Management, he understood that he was largely free to spend the monies as he wished.

Second, there is no evidence in the record to corroborate Grivas's claim that, on behalf of the Fund, he loaned money or advanced fees to Obsidian Management. Grivas clearly did not, prior to FINRA's investigation, inform anyone—the Fund's investors, consultant, placement agents, or attorneys—that he withdrew $280,000 from the Fund's operating account. Nor did he notify those involved with the Fund that this amount comprised a loan and an advance of fees to the Fund's manager. Grivas admits that he did not record the $280,000 withdrawal, or account for this sum as a loan or an advance, in the Fund's books and records. Furthermore, Grivas concedes that he did not prepare any loan documents or other records to memorialize the existence or terms of the purported loan and advance.[21] Simply put, the record is bereft of any credible evidence that the $280,000 Grivas withdrew from the Fund's operating account constituted an interest-free loan of money or an advance of fees to Obsidian Management. *See Manoff*, 55 S.E.C. at 1164 ("Aside from Manoff's disputed testimony . . . the record is devoid of evidence that the notes were part of the loan . . . ."); *Smith*, 2014 FINRA Discip. LEXIS 2, at *13 ("His exercise of ownership over, as opposed to the borrowing of, SH's funds is . . . established by his failure to pay interest or other distributions, repay principal, or take any other action to account for the purported loan or investment of her funds until challenged by SH . . . ."); *see also Mullins*, 2012 SEC LEXIS 464, at *34 ("Mullins has not produced any evidence, other than his own testimony, to support his statement that Mrs. Weil gave him permission to use the gift certificates, and it is his burden to do so.").

Finally, there is no provision in the Fund's private placement memorandum or operating agreement, and Grivas admits none exists, that permits the Fund's manager to, in effect, loan or advance itself monies from the Fund. *Cf. DWS Sec. Corp.*, 51 S.E.C. at 818. Although those documents contemplated payment of a second-year management fee, they expressly provided that the fee would be earned and payable to Obsidian Management only in the event the Fund reached the anniversary date of its "initial closing," which could occur no sooner than April 2013.[22] They therefore do not support Grivas's claim that the $280,000 he withdrew from the Fund's operating account in June 2012 represented, in part, an advance of fees due to Obsidian Management.[23] *See West*, 2015 SEC LEXIS 102, at *22-23 (finding that respondent misused

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[21] In his hearing testimony, Grivas stated that he did not believe it was necessary to document a loan or an advance from the Fund to Obsidian Management because, as he put it, "[he] was on both sides of the transaction."

[22] Grivas testified the initial closing occurred in April 2012.

[23] As Grivas's hearing testimony and other evidence established, Grivas had no reasonable expectation, when he withdrew the $280,000 at issue in this case, that the Fund would exist for any significant period of time past the November 2012 end to the lockup period for Facebook shares, at which point all that remained for the Fund to do was to pay any accrued fees and expenses, distribute Facebook securities and refund any remaining monies to the Fund's investors, and dissolve the Fund. This is consistent with Grivas's failure to request that Marcus reserve for a second-year management fee. It is also consistent with the Fund's estimate, contained in a Form D filed on behalf of the Fund with the SEC on May 21, 2012, that it would pay total management fees of only $224,000.

customer funds when he paid himself fees from an escrow account that he had not yet earned under the terms of the parties' advisory agreement).

In sum, we conclude that the $280,000 withdrawn from the Fund's operating account did not comprise a loan or an advance to Obsidian Management, and Grivas could not reasonably have believed otherwise. We agree with the Hearing Panel that his characterization of the withdrawn funds as a loan and an advance, which Grivas first raised only after months of FINRA's regulatory scrutiny, constituted a self-serving, after-the-fact justification for his obvious self-dealing.

B. FINRA Possessed Jurisdiction to Discipline Grivas

Throughout this matter, Grivas has objected that FINRA did not possess jurisdiction to discipline him. In this respect, Grivas asserts that his alleged conversion of Fund monies did not implicate the securities business of Grivas as an associated person of Obsidian Financial and concerned solely a remote outside business activity. We disagree with Grivas's circumscribed view of FINRA's ability to discipline its members and their associated persons for violating the high standards of conduct and just and equitable principles of trade imposed under FINRA Rule 2010. We agree with the Hearing Panel that FINRA possessed jurisdiction to discipline Grivas for his misconduct in this case.

FINRA Rule 2010 is a broad and generalized ethical provision.[24] FINRA's authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently wide to encompass any unethical, business-related conduct, regardless of whether it involves a security. *See, e.g.*, *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (holding that a registered representative violated just and equitable principles of trade by misappropriating funds belonging to a political club for which he served as treasurer); *Leonard John Ialeggio*, 52 S.E.C. 1085, 1089 (1996) ("We consistently have held that misconduct not related directly to the securities industry nonetheless may violate [just and equitable principles of trade]."), *aff'd*, No. 98-70854, 1999 U.S. App. LEXIS 10362, at *4-5 (9th Cir. May 20, 1999). The rule therefore applies "when the misconduct reflects on [an] associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money." *Manoff*, 55 S.E.C. at 1162.

Grivas's misconduct is clearly business-related. This case arises out of a Regulation D offering of the Fund's securities, an offering in which Obsidian Financial, the FINRA member broker-dealer that Grivas indirectly owned and with which he was associated and registered, participated and sold to its customers. Grivas, the sole manager of Obsidian Management, a Fund fiduciary, withdrew monies from the Fund's operating account, and he admittedly used these funds, after funneling them through entities he disclosed as outside business activities, to

[24] Disciplinary proceedings under FINRA Rule 2010 are "ethical proceedings" and may arise "where no legally cognizable wrong occurred." *Timothy L. Burkes*, 51 S.E.C. 356, 359 (1993), *aff'd*, 29 F.3d 630 (9th Cir. 1994).

meet the regulatory, net capital requirements of Obsidian Financial. These facts establish that Grivas's conduct, which we conclude was unethical and demonstrates his unfitness to handle other people's money, falls squarely within FINRA's jurisdiction and subjected him to discipline under FINRA Rule 2010. *See, e.g.*, *Vail*, 101 F.3d at 39 ("We find that Vail's position as a fiduciary of the club managing the club's funds constituted business-related conduct . . . ."); *West*, 2015 SEC LEXIS 102, at *26 ("Although his deliberate misuse of this customer's funds did not involve securities, we find that such wrongdoing reflects negatively on his ability to comply with regulatory requirements and ability to fulfill his responsibilities in handling customer funds."); *Manoff*, 55 S.E.C. at 1163 ("We conclude that Manoff's unauthorized use of Fisher's credit card numbers constituted unethical business-related conduct, and calls into question his ability to fulfill his fiduciary duties handling other people's money."); *DWS Sec. Corp*., 51 S.E.C. at 822 ("Applicants suggest that their conduct lies outside the NASD's jurisdiction, arguing that the NASD has no authority to oversee their activities as entrepreneurs, which they view as separate from their actions as broker-dealer professionals. This argument is without merit."); *John C. Gebura*, 46 S.E.C. 1121, 1123-24 (1977) ("We and the NASD not infrequently encounter situations where a securities salesman is selling securities in transactions which involve some venture of his own . . . . To exclude such transactions from the regulatory jurisdiction of . . . the NASD would create a serious gap in investor protection."); *Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) ("Although Jackson's wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion it might.").

V. Sanctions

The Hearing Panel barred Grivas from associating with any FINRA member in any capacity as a sanction for his misconduct. We affirm the sanction imposed by the Hearing Panel and conclude it serves an appropriately remedial purpose in this case.

First, in deciding upon the fitting sanction to impose for Grivas's misconduct, we have considered the FINRA Sanction Guidelines ("Guidelines").[25] The Guidelines for conversion are expressed in decidedly stark terms; a bar is the standard sanction regardless of the amount converted.[26] This "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry." *Ortiz*, 2008 SEC LEXIS 3134, at *3. By taking monies of the Fund to which he was not entitled, Grivas exhibited flagrant dishonesty that, without mitigation, renders him ostensibly unfit for employment in the securities industry. *See Dep't of Enforcement v. Olson*, Complaint No. 201002349601, 2014 FINRA Discip. LEXIS 7, at *11-12 (FINRA Bd. Of Governors May 9, 2014), *appeal docketed*, SEC Admin. Proceeding No. 3-15916 (June 9, 2014).

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[25] *FINRA Sanction Guidelines* (2013), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*].

[26] *Id*. at 36. Because a bar is standard, the Guidelines for conversion do not recommend a fine. *Id*.

Second, there exists in this matter a number of troubling, aggravating factors that further justify barring Grivas for his wrongdoing. Grivas's misconduct was accompanied by unmistakable efforts to conceal his actions from anyone involved with the Fund.[27] Grivas has not acknowledged his misconduct, and his testimony provides us with no assurances that he will not engage in a recurrence of similar misconduct in the future.[28] *See also Manoff*, 55 S.E.C. at 1165 ("Manoff has not shown any remorse or admitted wrongdoing . . . ."). Moreover, Grivas's self-dealing put the Fund's monies at obvious risk when he placed them in a struggling broker-dealer, while providing an obvious benefit to him by enabling, at least momentarily, Obsidian Financial's continued operations.[29] *See also West*, 2015 SEC LEXIS 102, at *36 ("[H]e benefitted from his misconduct.").

Finally, we do not find any evidence of mitigation that warrants deviating from the standard sanction of a bar in this case.[30] Although Grivas ultimately returned the monies he converted from the Fund, the fact that this reimbursement was delayed by nearly a year, and prompted by FINRA's regulatory interest and disciplinary charges, eliminates any potential mitigative affect his reimbursement has on his sanction. *See Mullins*, 2012 SEC LEXIS 464, at *77 (declining to provide mitigation for a respondent's late return of converted sums when it came only after a FINRA investigation). The evidence shows that Grivas likely would never have spoken of his deceit, and his repayment of the converted funds would probably not have occurred, absent FINRA's inquiry into his transfer of monies from the Fund to Obsidian Financial. *See, e.g.*, *Joel Eugene Shaw*, 51 S.E.C. 1224, 1227 (1994) ("It appears that Shaw would have retained Luhti's money if she had not discovered his conversion."); *Richard Dale Grafman*, 48 S.E.C. 83, 84 (1985) ("Grafman's admitted misconduct was very serious . . . . and, presumably, would have continued even longer had it not been detected by [his] employer.").

Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at *73. "The public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable." *Ortiz*, 2008 SEC LEXIS 3134, at *29; *accord Gary M. Korman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *23 (Feb. 13, 2009) ("[T]he importance of honesty for a securities professional is so paramount . . . ."), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010). The facts and circumstances of this case lead us to conclude that barring Grivas serves a remedial interest and protects the investing public.[31] *See, e.g.*, *Mullins*, 2012 SEC LEXIS 464, at *80 (affirming a bar and holding that "[w]e support the NAC's conclusion that J. Mullins's

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[27] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 10).

[28] *See id.* (Principal Considerations in Determining Sanctions, No. 2).

[29] *See Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 11, 17).

[30] Grivas offered no arguments in favor of mitigating the sanction imposed by the Hearing Panel in his appeal.

[31] "[T]he purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers." *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005).

misconduct 'reveals a troubling disregard for fundamental principles of the securities industry"'); *Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *53-54 (Dec. 7, 2010) ("A bar and expulsion are severe sanctions. Applicants' demonstrated lack of fitness to be in the securities industry . . . supports the remedial purpose to be served by such sanctions."); *Manoff*, 55 S.E.C. at 1166 ("We agree with the NASD that Manoff's continued presence in the securities industry threatens the public interest."). It will also serve to deter others who may be inclined to steal from their firms or customers. *See Mullins*, 2012 SEC LEXIS 464, at *80 ("We support the NAC's conclusion . . . that a bar is 'necessary to deter him and others similarly situated from engaging in similar misconduct.'"); *see also McCarthy*, 406 F.3d at 189 ("Although general deterrence is not, by itself, sufficient justification for expulsion or suspension, we recognize that it may be considered as part of the overall remedial inquiry."). We therefore affirm the bar prescribed by the Hearing Panel for Grivas's misconduct.

VI. Conclusion

The Hearing Panel found that Grivas converted funds belonging to an investment fund that he formed and managed, and it barred him for this conduct. We affirm the Hearing Panel's findings and the sanction it imposed. Accordingly, Grivas is barred from associating with any FINRA member in any capacity. Finally, we affirm the Hearing Panel's order that Grivas pay hearing costs in the amount of $5,649.95, and we impose appeal costs of $1,657.48. The bar imposed herein shall be effective upon service of this decision.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith,
Senior Vice President and Corporate Secretary