

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

James Brett Stuart
CRD No. 3022149,

Respondent.

Disciplinary Proceeding
No. 2019062948102

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between September 2018 and August 2021 (the relevant period), Respondent James Brett Stuart—the Chief Executive Officer (CEO), Chief Compliance Officer (CCO), and majority owner of Richfield Orion International, Inc. (CRD No. 24433)—failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with FINRA Rule 2111, and as of June 30, 2020, the Care Obligation of Rule 15c-1 of the Securities Exchange Act of 1934 (Reg BI), as they pertain to excessive trading. Richfield Orion’s WSPs, which Stuart was responsible for establishing and maintaining, did not describe how the firm should identify or respond to red flags of possible excessive trading and they did not address Reg BI at all following its June 30, 2020 effective date.

2. Stuart also failed to reasonably supervise trading in Customer A’s and Customer B’s accounts. Stuart did not review alerts received by Richfield Orion showing that these two

accounts had been charged commissions equaling at least 30% of their value, and he did not otherwise take any other steps to determine whether frequent and high-cost trades in the accounts were consistent with the customers' investment profiles. Stuart also failed to identify or respond reasonably to red flags of possible excessive trading in these two customers' accounts. In fact, the trading recommended in these two accounts resulted in cost-to-equity ratios of approximately 30% and total costs of approximately \$236,500 and \$22,000 for each account, respectively. As a result of the foregoing, Stuart violated FINRA Rules 3110(a) and (b), and 2010.

3. Stuart also failed to appear for on-the-record testimony that FINRA requested pursuant to FINRA Rule 8210 as part of its investigation. On May 18, 2022, Stuart appeared for on-the-record testimony, but, during the course of that testimony and before the testimony was complete, he requested that the testimony be adjourned. FINRA agreed to adjourn the remainder of the testimony to a later date, and issued subsequent requests, pursuant to FINRA Rule 8210, for Stuart to appear again to complete his testimony. However, Stuart failed to appear to complete his testimony. As a result, he violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Stuart first registered with FINRA in 1998. From December 2007 to November 3, 2022, he was registered with FINRA through an association with Richfield Orion in several capacities, including as a General Securities Principal. On November 3, 2022, Richfield Orion filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Stuart had voluntarily terminated his association with the firm.

5. Although Stuart is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after

November 3, 2022, which was the effective date of termination of his registration with Richfield Orion, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

A. Stuart failed to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with FINRA Rule 2111 and Reg BI.

6. During the relevant period, Stuart served as Richfield Orion's CEO and CCO, and he was the majority owner of the firm.

7. As Richfield Orion's CCO, Stuart was responsible for establishing and maintaining the firm's WSPs, other than its financial and operations procedures. He was also responsible for reviewing and testing the WSPs "on at least an annual basis ... to be sure that all rules are addressed."

8. Richfield Orion's WSPs recognized that factors such as the turnover rate and cost-to-equity ratio "may provide a basis for finding that ... activity [in a customer's account] was excessive." However, the WSPs did not provide any guidance about how to calculate those ratios or identify what ratios were suggestive of excessive trading.

9. The WSPs required Richfield Orion's compliance department to review "active accounts" on a quarterly basis, but they did not specify what steps the firm should take to supervise trades recommended in such accounts. For example, the WSPs did not specify when, or in what circumstances, principals of the firm should contact customers with actively traded accounts or restrict the commissions that could be charged in actively traded accounts.

10. The WSPs also did not identify alerts that Richfield Orion received from its clearing firm that were relevant to identifying potential excessive trading, including a "Turnover" alert (which identified accounts in which the account turnover exceeded certain

percentage thresholds) and a “Commission Velocity” alert (which identified accounts in which commissions charged over the preceding 90 days exceeded certain percentage thresholds). The WSPs likewise did not provide guidance as to how principals at the firm should review those alerts or the steps the firm should take after identifying red flags that an account was being excessively traded.

11. Stuart did not update the WSPs to address Reg BI following its June 30, 2020 effective date.

12. As a result, the WSPs in effect between June 30, 2020, and August 2021 did not provide any guidance as to how Richfield Orion or its representatives should determine whether recommended trades might place the broker-dealer’s interest ahead of the retail customer’s interest, such as identifying what cost-to-equity ratio or turnover rate would be suggestive of excessive trading. The WSPs also did not provide guidance about how the firm or its representatives should consider reasonably available alternatives in determining whether to recommend a transaction or series of transactions.

B. Stuart failed to identify or respond reasonably to red flags of potential excessive trading in two Richfield Orion customer accounts.

13. During the relevant period, Stuart was CCO and the sole member of Richfield Orion’s compliance department.

14. During the relevant period, Stuart was solely responsible for supervising Richfield Orion’s registered representatives.

15. As CCO, Stuart was required to monitor trade blotters and customer account records for potential excessive trading and review commission reports for each of the firm’s registered representatives in an effort to detect possible churning.

16. Richfield Orion's WSPs also required that the firm's compliance department, of which Stuart was the sole member, review "active accounts" on at least a quarterly basis, including by reviewing the type, size and frequency of trades in those accounts.

17. The WSPs further required that the compliance department review "at least quarterly" the exception reports provided by Richfield Orion's clearing firm.

18. Richfield Orion received from its clearing firm "Commission Velocity" alerts, which identified accounts in which the commissions charged over the preceding 90 days exceeded percentage thresholds based on a customer's investment objective (*e.g.*, 4% for accounts with an investment objective or growth, or 6% for accounts with an investment objective of speculation).

19. Richfield Orion also received "Turnover" alerts, which identified accounts in which the turnover in the account exceeded percentage thresholds based on a customer's investment objective (*e.g.*, 200% for accounts with an investment objective or growth, or 300% for accounts with an investment objective of speculation).

20. During the relevant period, Stuart was the only principal at Richfield Orion who accessed the portal through which Richfield Orion's clearing firm made the Commission Velocity and Turnover alerts available to the firm.

21. Stuart did not review the Commission Velocity or Turnover alerts.

22. Stuart manually reviewed Richfield Orion's daily transactions, but his review focused on determining whether the individual commissions for particular trades on each day were excessive, rather than reviewing trading activity over a period of time to determine whether the account was being excessively traded.

23. During the relevant period, Stuart failed to identify or investigate red flags of possible excessive trading activity in two customer accounts, as alleged below.

Customer A

24. Customer A was 62 years old when she opened an account at Richfield Orion in 2016.

25. In or around August 2018, Registered Representative 1 became the representative of record on Customer A's account.

26. Stuart supervised Registered Representative 1.

27. Although Customer A's new account form stated that Customer A's primary investment objective was speculation and that she had a high risk tolerance, Customer A's actual goal for opening an account at Richfield Orion was to grow her investments, and she did not discuss her investment objective or risk tolerance with Registered Representative 1.

28. Between September 2018 and January 2021, Richfield Orion received more than 540 Commission Velocity and Turnover alerts from its clearing firm showing that Customer A's account had commission velocity and turnover rates that exceeded the thresholds set by Richfield Orion's clearing firm.

29. For example, in August 2019, Richfield Orion received alerts showing that Customer A's account had a commission velocity of 34% over the prior 90 days and a turnover rate of 8. At that time, Registered Representative 1 had executed 389 trades in Customer A's account during the preceding 12 months, which had caused her to pay commissions of \$102,173.41 (and total trade-related costs of \$109,734.05 when including postage fees).

30. Stuart did not review any Commission Velocity or Turnover report relating to trading in Customer A's account.

31. During the relevant period, Stuart did not take any actions to confirm that the trading in Customer A's account was consistent with her investment profile.

32. Stuart also did not speak with Customer A about the trading activity in her account.

33. Stuart also did not speak with Registered Representative 1 about his trading in Customer A's account, nor did Stuart restrict the commissions that Registered Representative 1 could charge Customer A.

34. Following Richfield Orion's receipt of the August 2019 Commission Velocity and Turnover alerts concerning Customer A's account (which showed that she had been charged commissions equal to 34% of her account value), Registered Representative 1 executed an additional 535 trades in Customer A's account, which required her to pay an additional \$118,600 in commissions and trade costs.

35. Between September 2018 and January 2021, Registered Representative 1 recommended and executed about 900 trades in Customer's A account, which caused her to pay approximately \$236,500 in total costs, including approximately \$220,000 in commissions, and resulted in losses of \$368,159.

36. The trades recommended in Customer A's account resulted in an annualized cost-to-equity ratio of 31% and turnover rate of 7.

Customer B

37. Customer B was a 77-year-old retiree when she opened her account at Richfield Orion in 2018.

38. Customer B had a moderate risk tolerance and did not wish to have an actively traded account.

39. Registered Representative 1 was the representative of record on Customer B's account.

40. Between July 2020 and August 2021, Richfield Orion received more than 290 alerts from its clearing firm showing that Customer B's account had commission velocity and turnover rates that exceeded the thresholds set by Richfield Orion's clearing firm.

41. For example, on October 8, 2020, Richfield Orion received an alert showing that Brown's account had a commission velocity of 20.59%. Subsequent alerts showed that the commission velocity thereafter never dipped below 20%, but in fact steadily increased.

42. By December 2020, Richfield Orion began to regularly receive alerts that Brown's account had turnover rates above 6.

43. By the time the firm received the December 17, 2020 alert that showed commission velocity and turnover rates well in excess of the clearing firm's thresholds, Registered Representative 1 had already executed 41 trades in Customer B's account, which caused Customer B to pay commissions of \$5,553.83.

44. Stuart did not review any Commission Velocity or Turnover alert related to trading in Customer B's account.

45. Stuart did not take any actions to confirm that the trading in Customer B's account was consistent with her investment profile.

46. Stuart did not speak with Customer B to confirm that the trading in her account was consistent with her investment profile.

47. Stuart also did not restrict the commissions that Registered Representative 1 could charge in Customer B's account.

48. Following Richfield Orion's receipt of the December 17, 2020 alert, Registered Representative 1 recommended and executed an additional 102 trades in Customer B's account, which required her to pay an additional \$14,647.06 in commissions.

49. Between July 1, 2020 and August 16, 2021, the trades recommended in Customer B's account resulted in an annualized cost-to-equity ratio of 31% and a turnover rate of 7. Customer B incurred total costs of approximately \$22,350 and losses of \$1,766 during this period.

C. Stuart refused to appear for testimony requested pursuant to FINRA Rule 8210.

50. On April 29, 2022, in connection with its investigation into Stuart's supervision of Registered Representative 1, FINRA requested pursuant to FINRA Rule 8210 that Stuart appear for on-the-record testimony on May 18, 2022.

51. FINRA sent the April 29 testimony request to Stuart's last known residential address listed in FINRA's Central Registration Depository (CRD) (the CRD Address) by first-class U.S. mail and first-class certified mail, return receipt requested, and a copy to Stuart's Richfield Orion email address.

52. Stuart appeared for on-the-record testimony on May 18, 2022, but requested that the testimony be adjourned before the testimony was complete. Notably, FINRA had not yet had an opportunity to question Stuart about his supervision of the trading in the accounts of Customers A and B, among other topics.

53. FINRA agreed to adjourn the remainder of Stuart's testimony to a future time.

54. On May 23, 2022, Stuart agreed to resume his on-the-record testimony on June 10, 2022.

55. On June 10, shortly before his testimony was to resume, Stuart notified FINRA that he was unable to appear for testimony because of a family emergency.

56. At Stuart's request, FINRA agreed to postpone Stuart's testimony until June 23, 2022.

57. On June 22, 2022, Stuart informed FINRA that he was not able to appear for testimony on June 23.

58. On June 22, 2022, FINRA sent an email to Stuart offering the choice of testifying on June 23 or rescheduling his testimony for June 29 or July 1, 2022.

59. Stuart did not respond to FINRA's June 22 email.

60. Stuart did not appear for testimony on June 23, 2022.

61. On June 23, 2022, in connection with its investigation, FINRA sent Stuart a letter pursuant to FINRA Rule 8210, requesting that he appear for on-the-record testimony on July 1, 2022.

62. FINRA sent Stuart the June 23 testimony request by first-class U.S. mail and first-class certified mail, return receipt requested, to Stuart's CRD Address and a copy to Stuart's Richfield Orion email address, from which Stuart had previously communicated with FINRA Staff.

63. On June 23, 2022, Stuart replied to FINRA's email (which had attached a copy of the June 23 testimony request), stating that he would not appear for testimony, because of a medical condition.

64. On June 24, 2022, FINRA replied to Stuart's email and stated that FINRA was unable to adjourn his testimony again without setting a date for Stuart to resume his testimony.

FINRA invited Stuart to propose a date during the week of July 5 for the continuation of his testimony.

65. Stuart replied by email on June 24, 2022, stating that he would resume testimony when his condition allowed; however, Stuart did not propose any date for his testimony.

66. On June 27, 2022, FINRA issued a second request pursuant to FINRA Rule 8210 and in connection with its investigation scheduling Stuart's testimony for July 6.

67. The June 27 testimony request stated that it was "a second request for testimony pursuant to FINRA Rule 8210 and replaces the second request for testimony dated June 23, 2022."

68. FINRA sent the June 27 testimony request by first-class U.S. mail and first-class certified mail, return receipt requested, to the CRD Address. In addition, FINRA sent a copy of the June 27 testimony request to Stuart's Richfield Orion email address.

69. According to USPS tracking information, the June 27 testimony request sent via certified mail, return receipt requested, was "unclaimed" by Stuart.

70. The June 27 testimony request sent by first-class U.S. mail was not returned to FINRA.

71. On June 28, 2022, Stuart replied to FINRA's email (which had attached a copy of the June 27 testimony request) from his Richfield Orion email address, and provided an update on his condition. In the email, Stuart did not request that FINRA reschedule his testimony nor did he propose an alternate date for his testimony.

72. On July 5, 2022, FINRA Staff sent an email to Stuart's Richfield Orion email address and stated that Stuart may be subject to an expedited or formal disciplinary proceeding should he fail to appear for testimony on July 6, 2022.

73. Stuart did not appear for testimony on July 6, nor did he request that FINRA reschedule his testimony.

74. On July 12, Stuart emailed a letter from a physician requesting that FINRA delay his testimony for 30 to 45 days.

75. On July 14, 2022, following its receipt of Stuart's July 12 email, FINRA sent Stuart another request, pursuant to FINRA Rule 8210, that he appear for testimony in connection with FINRA's investigation on August 26, 2022, 46 days from the date of Stuart's July 12 email.

76. The July 14 testimony request stated that it was "a third request for testimony pursuant to FINRA Rule 8210" and that Stuart may be subject to an expedited or formal disciplinary proceeding should he fail to appear for testimony on August 26.

77. FINRA sent the July 14 testimony request by first-class U.S. mail and first-class certified mail, return receipt requested, to the CRD address.

78. FINRA also sent a copy of the July 14 testimony request to Stuart at his Richfield Orion email address.

79. According to USPS tracking information, the July 14 testimony request sent via certified mail, return receipt requested was "unclaimed" by Stuart and was returned to FINRA.

80. The July 14 testimony request sent via first-class U.S. mail was not returned to FINRA.

81. FINRA did not receive any notification that the copy of the July 14 testimony request sent via email to Stuart was undeliverable.

82. On August 24, 2022, Stuart sent an email to FINRA from his Richfield Orion email address and stated that he would not appear for testimony on August 26. Stuart did not

propose any alternative date for his testimony, nor did he claim that his medical condition prevented him from testifying.

83. On August 25, 2022, FINRA sent Stuart a letter stating that: (a) Stuart had not set forth any reason why he could not appear for testimony; (b) FINRA would proceed with Stuart's testimony as scheduled on August 26; and (c) Stuart may be subject to an expedited or formal disciplinary proceeding should he fail to appear.

84. Stuart did not appear for testimony on August 26, 2022, nor did he request that FINRA reschedule the testimony.

85. Stuart's failure to appear and provide testimony to FINRA impeded FINRA's investigation into Richfield Orion and Stuart's supervision of trading in customer accounts for potentially excessive trading, including in Customer A's and Customer B's accounts.

FIRST CAUSE OF ACTION
Failure to Supervise
(Violation of FINRA Rules 3110(a) and (b) and 2010)

86. The Department of Enforcement realleges and incorporates by reference all previous paragraphs.

87. FINRA Rule 3110(a) requires that member firms "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

88. FINRA Rule 3110(b) requires that member firms "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

89. Rule 3110 also requires that a firm's designated supervisors exercise reasonable supervision.

90. To comply with this supervisory obligation, a firm's designated supervisors must reasonably investigate red flags of potential misconduct and take appropriate action when misconduct has occurred.

91. FINRA Rule 2111 requires an associated person to "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile."

92. FINRA Rule 2111, former Supplementary Material 2111.05(c), which was in effect from May 1, 2014 through June 29, 2020, provided: "Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a)."

93. Since June 30, 2020, broker-dealers and their associated persons have been required to comply with Reg BI under the Exchange Act. Reg BI's Best Interest Obligation requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person making the recommendation ahead of the interest of the retail customer.

94. Reg BI defines a retail customer as “a natural person, or the legal representative of such person, who: (i) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker or dealer; and (ii) Uses the recommendation primarily for personal, family, or household purposes.”

95. Pursuant to the Care Obligation, as set forth in Exchange Act Rule 15c-1(a)(2)(ii)(C), an associated person of a broker or dealer is required to exercise reasonable diligence, care, and skill to:

Have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer’s best interest when viewed in isolation, is not excessive and is in the retail customer’s best interest when taken together in light of the retail customer’s investment profile and does not place the financial or other interest of the broker, dealer, or such natural person making the series of recommendations ahead of the interest of the retail customer.

96. The Care Obligation applies to a series of recommended transactions regardless of whether the broker-dealer or associated person exercises control over the customer’s account.

97. A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

98. From September 2018 through August 2021, Stuart was the principal responsible for ensuring that Richfield Orion had systems and procedures, including WSPs, reasonably designed to achieve compliance with applicable securities laws and regulations, including FINRA Rule 2111 and Reg BI.

99. During that time, Stuart failed to establish, maintain, and enforce a supervisory system, including WSPs, that was reasonably designed to achieve compliance with Reg BI and FINRA Rule 2111, as they pertain to excessive trading.

100. For the reasons alleged above in paragraphs 6-12, Stuart failed to ensure that the firm's WSPs were reasonably designed to achieve compliance with Reg BI and FINRA Rule 2111.

101. Moreover, Stuart did not update the WSPs to address Reg BI at any point between June 30, 2020, which is when Reg BI went into effect, and August 2021. For the reasons alleged above in paragraphs 6 through 12, Stuart failed to ensure that the firm's WSPs were reasonably designed to ensure compliance with Reg BI during this period.

102. Stuart also failed to reasonably supervise trading in Customer A's and Customer B's accounts, including failing to identify and respond reasonably to red flags of potentially excessive trading in these two customer accounts during the relevant period, as alleged above in paragraphs 13 through 49.

103. Based on the foregoing, Stuart violated FINRA Rules 3110(a) and (b) and 2010.

**SECOND CAUSE OF ACTION
Failure to Appear for Testimony
(Violation of FINRA Rules 8210 and 2010)**

104. The Department of Enforcement realleges and incorporates by reference all previous paragraphs.

105. FINRA Rule 8210(a)(1) provides that FINRA staff may "require a ... person associated with a member, or any other person subject to FINRA's jurisdiction ... to testify at a location specified by FINRA staff ... with respect to any matter involved in [an] investigation, complaint, examination or proceeding[.]"

106. FINRA Rule 8210(c) provides that "[n]o member or person shall fail to provide ... testimony ... pursuant to this Rule."

107. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

108. While associated with Richfield Orion and subject to FINRA's jurisdiction, Stuart failed to appear and provide testimony requested pursuant to FINRA Rule 8210 on two occasions—namely, July 6, 2022 and August 26, 2022.

109. Stuart's testimony was material to FINRA's investigation concerning Richfield Orion's and Stuart's supervision of trading in customer accounts for potentially excessive trading, including in Customer A's and Customer B's accounts.

110. Stuart's failure to appear for testimony impeded FINRA investigation because Staff was unable to question Stuart about Richfield Orion's and Stuart's supervision of trading in customer accounts for potentially excessive trading, including in Customer A's and Customer B's accounts.

111. Based on the foregoing, Stuart violated FINRA Rules 8210 and 2010.

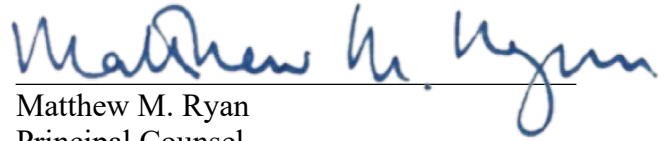
RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: October 27, 2023



Matthew M. Ryan
Principal Counsel
FINRA Department of Enforcement
1601 Market St., Suite 2700
Philadelphia, PA 19103-2339
Phone: (215) 209-7094
E-mail: matthew.ryan@finra.org

Melissa J. Turitz
Director
FINRA Department of Enforcement
581 Main St., Suite 710
Woodbridge, NJ 07095
Phone: (732) 596-2005
E-mail: melissa.turitz@finra.org

Jeff Fauci
Chief Counsel
FINRA Department of Enforcement
99 High St., Suite 900
Boston, MA 02110
Phone: (617) 532-3428
E-mail: jeff.fauci@finra.org