THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF JOHN D. NGUYEN, Respondent.	CFP Board Case No. 2023-64627 November 11, 2024

ORDER

CFP Board granted Respondent the right to use the CFP Board financial planner certification and CFP Board certification marks (including CFP®, CERTIFIED FINANCIAL PLANNER®, CFP and CFP™ certification marks) ("CFP® marks") on February 16, 2012, and Respondent has been certified since that date. (DEC Book[1] at 23.)

I. PROCEDURAL BACKGROUND

On September 5, 2023, following an investigation, CFP Board's Enforcement Counsel filed a Complaint with CFP Board's Disciplinary and Ethics Commission ("Commission" or "DEC") under Article 3 of CFP Board's *Procedural Rules* alleging Respondent's violations of CFP Board's *Rules of Conduct*.[2] (DEC Book at 3-20.)

On October 15, 2023, Respondent filed his Answer to the Complaint. (*Id.* at 3602-3618.)

On February 21, 2024, a Hearing Panel of the Commission convened by videoconference to review and consider the Complaint, the Answer, and other relevant documents and information. (Transcript of Hearing of John Nguyen, CFP®, February 21, 2024 ("Tr.") at 1.) Enforcement Counsel appeared for CFP Board, DEC Counsel appeared for the Commission and for a Hearing Panel of the Commission, and Respondent appeared on his own behalf.[3]

[1] The hearing materials in the "DEC Book" and any transcripts and exhibits to this Order will not be published under Article 17.7 of CFP Board's *Procedural Rules.*

[2] The conduct at issue in this matter occurred before June 30, 2020, at which point the *Rules of Conduct* was superseded by CFP Board's enforcement of the *Code of Ethics and Standards of Conduct*.

[3] At Respondent's request before the hearing, DEC Counsel admitted into the record a letter from the President and Chief Compliance Officer of Respondent's former firm. ("Exhibit-1.") During the hearing, Enforcement Counsel presented pages of the DEC Book with highlighted text but containing no new information, which Enforcement Counsel provided to Respondent and the Hearing Panel per DEC Counsel's request on February 21, 2024. ("Exhibit-2".) Also during the hearing, Respondent stated that he had saved all of his texts and emails with the clients and provided them to Enforcement Counsel, although Enforcement Counsel clarified that only a relevant subset of those communications was provided in the DEC Book. (Tr. at 204-208.) The Hearing Panel instructed the parties after the hearing to produce all further relevant evidence, and Respondent was reminded that he also may submit Case Histories that he believes support his position. ("Exhibit-3.") On February 27, 2024, the parties filed a joint email stating that they had conferred and had not identified any additional relevant communications to produce. (*Id.*) Nor did Respondent identify or submit any additional Case Histories. (*Id.*; *see also* Tr. at 267.)

IN THE MATTER OF JOHN D. NGUYEN
CFP Board Case No. 2021-62317
November 11, 2024

The Commission has considered the Hearing Panel's recommendation and issues this final Order.

II. FINDINGS OF FACT

A. Respondent's Professional Background

Respondent has passed the (a) Series 6 – Investment Company Products/Variable Contracts Representative Examination (2005); (b) Series 7 – General Securities Representative Examination (2011); (c) Series 26 – Investment Company Products/Variable Contracts Principal Examination (2005); and (d) Series 63 – Uniform Securities Agent State Law Examination (2005); (e) Series 65 – Uniform Investment Adviser Law Examination (2007); and (f) SIE – Securities Industry Essentials Examination (2018). (DEC Book at 32.)

During the relevant time period, Respondent was a registered representative with two brokerage firms—the first from 2007 to November 2016, the second from November 2016 through 2023; and an investment advisor representative with three registered investment advisors—the first from 2007 to November 2016, the second from November 2016 through 2023, and the third from January 2019 through 2023. (*Id.* at 34.) At the time of the hearing, Respondent had moved to a new investment advisory firm and was associated with a new brokerage firm. (Tr. at 128-130, 187, 223, 235, 248)

Respondent holds a California insurance license and is a licensed real estate agent. (*Id.* at 34, 55-56; Tr. at 125-127.) He also is an enrolled agent for a tax planning entity and is a partner, Chief Financial Officer, and 50% owner of a tax and accounting firm. (DEC Book at 35, 68-69.)

Respondent testified that his practice has focused on retirement and estate planning for sophisticated clients with above average income (*Id.* at 74. Tr. at 122.) He described his practice as "very referred-based" with "about [a] 50% return" on alternative investments that "solve[] specific problems." (Tr. at 121-122 "the majority of my clients are not financial planning clients. They don't want to be. These are sophisticated clients where they're very successful. They have their own plan, and … they have other financial professionals. They're looking at me, well, what else can you offer me?")

Respondent testified that he is very proud to be a CFP® professional and incorporates CFP Board's *Code of Ethics and Standards of Conduct* ("*Code and Standards*") into his practice—including by disclosing to clients the costs and risks of the products he recommends, as well as his background, such as his education and licenses, and the existence of the customer complaint and arbitration that is the subject of this matter. (Tr. at 222, 251.)

B. A Married Couple Retains Respondent as Their Investment Advisor

In early 2013, one of Respondent's clients referred a married couple (the "Clients") to Respondent. (DEC Book at 81, 300.) The Clients' non-retirement accounts were largely in cash and cash equivalents at the time. (DEC Book at 117-118, 131, 2991, 3076-3077.) According to Respondent, the Clients wanted him to recommend individual securities that had more tax advantages and higher returns than the CDs they held in savings accounts. (*Id.*) He said that the Clients sought alternative investment opportunities from him because their other financial advisors did not offer them. (Tr. at 23; *see also* DEC Book at 3338 and 3292 reflecting communications from one of the Clients about two prospective alternative investments.)

On April 7, 2013, the Clients, then both 50 years old, completed paperwork to open a joint tenancy account with Respondent's firm. The new account form reflects an estimated net worth of $4 million, and an annual income of $1.6 million. The form lists "generate income" and "accumulate wealth" as their investment purpose, and ranks their investment objectives in order of importance—(1) income, (2) capital appreciation, (3) preservation of capital, (4) speculation, and (5) trading profits. The form shows a six to ten-year investment time horizon, the Clients' liquidity needs as "somewhat important", and their risk tolerance on a scale of 1 to 10 as a 6 ("Moderate", reflecting a willingness "to assume some risk of fluctuation of principal for potentially higher returns"). Regarding their knowledge of products on page four of the form, "None" is checked by alternative investments, and "Limited" or "Good" is checked next to equities, bonds, and certain other types of investments. (DEC Book at 296-301.)

C. Respondent's Investment Recommendations

Between 2013 and 2020, the Clients purchased approximately $3.175 million in mostly illiquid alternative investments recommended by Respondent. (*Id.* at 109-110, 131; *see also id.* at 3036.) Respondent received between 6% and 8% upfront commissions on each of the transactions ($180,000 in total). He testified that because these were long-term investments (five to ten years), the commission amounted to 1% or less per year, and that the Clients were aware of his commissions. (Tr. at 118-119, 159-160; *see also* DEC Book at 3118, 147, 148, 239.)

1. "REIT-A"

On April 7, 2013, the Clients invested $75,000 in a non-traded real estate investment trust ("REIT") focused on medical office buildings and healthcare-related facilities ("REIT-A") based on Respondent's recommendation. (DEC Book at 302-309, 3036.) In a text that evening, Respondent advised one of the Clients that a REIT was "like mutual funds" but "real estate focused," and that REIT-A's current dividend was "**guarantee**[d] by current tenants with an average lease of 10 years." (DEC Book 3442.) (Empasis added.)

REIT-A's dividend was not guaranteed. The prospectus for REIT-A states in bold on the first page that "**[i]nvesting in our common stock involves a high degree of risk. You should purchase these securities only if you can afford a complete loss of your investment.**" (DEC Book at 310.) The prospectus also listed several risk factors, including the following:

- The amount of the distributions paid may decrease at any time. ***Due to the risks involved in the ownership of real estate, there is no guarantee of any return on your investment, and you may lose all or a portion of your investment***.
- For the three months ended March 31, 2012, we had cash flows provided by operations of $0.9 million and paid $1.3 million in total distributions, of which $0.7 million, or 55.6%, were funded from cash flows provided by operations and $0.6 million, or 44.4%, were funded under the distribution reinvestment plan, or the DRIP. ***Until we***

> ***acquire additional properties or other real estate-related investments, we may not generate sufficient cash flow from operations to pay distributions.*** Additionally, we may in the future pay distributions from sources other than from our cash flow from operations.
>
> - No public market exists for our shares of common stock, nor may a public market ever exist and our shares are illiquid.
>
> - There are substantial conflicts among the interests of our investors, our interests and the interests of our advisor, our sponsor, our dealer manager and their respective affiliates regarding compensation, investment opportunities and management resources. The fees payable to our advisor or its affiliates are substantial and may result in our advisor recommending riskier investments.
>
> - Our failure to qualify or remain qualified as a REIT would result in higher taxes, may adversely affect our operations, would reduce the amount of income available for distribution and ***would limit our ability to make distributions to our stockholders***.

(*Id.*) (Emphases added.)

In 2015, REIT-A was acquired by a different, publicly-traded REIT, and REIT-A's investors—including the Clients and Respondent himself—were issued cash and common stock by the acquiring REIT. (*Id.* at 142-143; 3036.) Respondent emailed the Clients on June 27, 2016, noting that their investment in the REIT was "up again" during "another down market day." This, according to Respondent's email, "**<u>[p]roves</u>** that commercial real estate with consistent income/dividends can **weather the market better than any other equity common stock**." (*Id.* at 3281.) (Emphasis added.) At the hearing, Respondent explained that he was comparing the performance of the stocks the Clients held in a particularly volatile market to the return of cash and common stock they had received because they had invested in REIT-A. (Tr. at 171.)

2. <u>"REIT-B"</u>

On June 14, 2014, the Clients invested $100,000 in a healthcare-related REIT ("REIT-B") based on Respondent's recommendation. (*Id.* at 672, 3036.) In an email sent the next day to the Clients, Respondent describes "alternative investments like REITs, DST, Private Placements, Limited Partnerships, and other Reg D Investments" as "secure investments" and recommends that the Clients take a portion of their IRA funds to invest in them. (*Id.* at 3232.)

The alternative investments Respondent identified were not secure investments. The REIT-B prospectus states on the first page in bold that **"[w]e are an 'emerging growth company' under the federal securities laws and will be subject to reduced public company reporting requirements. Investing in our common stock involves a high degree of risk. You should purchase these securities only if you can afford a complete loss of your investment."** (*Id.* at 672)

The prospectus also lists a number of risk factors, including:

- No public market exists for our shares of common stock, nor may a public market ever exist and our shares are, and may continue to be, illiquid.

- We established the offering price on an arbitrary basis; as a result, the actual value of your investment may be substantially less than what you pay.

- There are substantial conflicts among the interests of our investors, our interests and the interests of our advisor, sponsor, dealer manager and our and their respective affiliates, which could result in decisions that are not in the best interests of our stockholders.

(*Id.*)

Respondent testified that he intended to describe the dividend as "secured" by a share in the ownership of title to physical real estate—not that *all* alternative investments are safe and "secure", the word he uses in his email. (Tr. at 140: "no investment, period, or dividends is guaranteed in any way, shape, or form. That is … just basic finance … but the client is smart enough to know … we're talking about something very specific here … the dividends [are] guaranteed by the tenants. That's how REITs generate income, by tenants, and they sign personal guarantees, so there you go."; *see also* Tr. at 253-254.)

3. <u>"REIT-C"</u>

On August 16, 2014, the Clients invested $200,000 in another REIT ("REIT-C") based on Respondent's recommendation. (DEC Book at 1003-1009, 1013, 3036, 3607; *see also* Tr. at 50-51.) From its inception in July 2010, REIT-C had incurred operating losses. (*Id.* at 1081.)

4. <u>"Fixed Annuity"</u>

On January 8, 2016, Respondent emailed the Clients to schedule a meeting to discuss, among other things, rolling an IRA to a "more secure investment vehicle" like an index annuity. (*Id.* at 3260.) On April 1, 2016, the husband completed the transfer of nearly $1.5 million from his IRA to "Fixed Annuity" based on Respondent's recommendation. (*Id.* at 1756, *et seq.*, 3036.) On October 25, 2016, the wife also purchased Fixed Annuity using $712,000 rolled over from her IRA. (*Id.* at 2358, 3036.)

5. <u>"REIT-D"</u>

On July 9, 2016, the Clients' customer account profile form with Respondent's firm was updated. (DEC Book at 2049, *et seq.*) The form shows "accumulate wealth" under investment purpose and ranks their investment objectives ranked in order of importance as (1) income, (2) growth, (3) preservation of capital, (4) aggressive growth, and (5) speculation. It shows the Clients' risk tolerance on scale of one to ten as a "5", which is toward the higher end between "**Moderately Conservative** Seeks to provide high current income and moderate long-term capital appreciation" and "**Balanced** Seeks to provide above-average capital appreciation and a moderate level of current income". (*Id.* at 2051.)

That day, the Clients purchased $300,000 of another REIT ("REIT-D") based on Respondent's recommendation. (*Id.* at 2061, 3606.) The REIT-D prospectus states in bold on the first page that "**[i]nvesting in our Common Shares involves a high degree of risk.**" (*Id.* at 1796.) The prospectus also lists numerous risk factors, including:

- We and our advisor, . . ., a Delaware limited liability company, have no operating history and the performance of the prior real estate investment programs of our sponsor may not be indicative of our future results.

- There is no established trading market for our Common Shares, and there may never be one; therefore, it will be difficult for you to sell your Common Shares except pursuant to our share repurchase program. If you sell your Common Shares to us under our share repurchase program, you may receive less than the total price you paid for the Common Shares.

- We will pay some of or all our distributions from sources other than our cash flow from operations, including from the proceeds of this offering or other offerings, cash advances to us by our advisor, cash resulting from a waiver of fees, and borrowings, including borrowings secured by our assets; this will reduce our funds available for investments and your overall return may be reduced.

- Your interest will be diluted if we issue additional securities.

(*Id.*)

6. <u>"Private Placement-A"</u>

Also on July 9, 2016, the Clients purchased $100,000 of shares in a renewable energy private placement ("Private Placement-A") based on Respondent's recommendation. (*Id.* at 2055, 3606.) The Private Placement-A prospectus states in bold on the first page that "**[i]nvesting in our shares may be considered speculative and involves a high degree of risk, including the risk of a substantial loss of investment.**" (*Id.* at 2073.) The prospectus also lists numerous risk factors, including:

> The amount of any distributions we may pay is uncertain. We may not be able to pay you distributions, or be able to sustain them once we begin declaring distributions, and our distributions may not grow over time. We may pay distributions from any source and there are no limits on the amount of proceeds we may use to fund distributions. If we pay distributions from sources other than cash flow from operations, we will have less funds available for investments, and your overall return may be reduced.

(*Id.*)

7. <u>"Oil & Gas Program-A"</u>

In November 2016, Respondent moved to a different brokerage firm. (*Id.* at 44.) The Clients' new account paperwork dated November 20, 2016 identifies their portfolio objectives as "Income", "Total Return", "Tax Advantaged", and their portfolio time horizon as "Long-term (10+ years)". (*Id.* at 2392.)

That day, the Clients invested $200,000 in an oil and gas direct participation program ("Oil & Gas Program-A") based on Respondent's recommendation. (*Id.* at 2398, 3036, 3118, 3607.) The Clients signed a supplemental disclosure form that described Oil & Gas Program-A as a speculative investment involving a high degree of risk. (*Id.* at 2399.) Respondent received a 7% commission as part of a 10% upfront fee the Clients paid for the investment. (*Id.*; *see also id.* at 3606.) Respondent stated that he invested $88,000 of his own funds in Oil & Gas Program-A. (*Id.* at 3294; *see also* Tr. at 123: "I like to say I eat my own cooking, so I do have my money invested in some of these investments….")

8. <u>"REIT-E"</u>

On December 6, 2016, Respondent emailed the Clients about a non-traded parking lot and garage REIT ("REIT-E") that he considered to be a "great value", stating that he had invested $25,000 of his own funds in it. (*Id.* at 3294, 3607.) On December 14, 2016, the Clients purchased $200,000 of REIT-E based on Respondent's recommendation and paid him a 6.5% commission out of 13.6% in upfront fees (*Id.* at 2407, 3118, 3607.)

The order form for the Clients' purchase of REIT-E states that they had more than 17% of their overall net worth in alternative investments. Under "Client Investment Objectives" on the form, all of the boxes are checked (Income, Growth/Capital Appreciation, Tax Advantaged) *except* for "Speculation". (*Id.* at 2407.)

9. <u>"REIT-F"</u>

On March 9, 2017, Respondent sent the Clients third-quarter 2016 results for a non-traded REIT focused on self-storage properties ("REIT-F") along with the message: "let the numbers do the talking." (*Id.* at 2601, 3297, 3607.) On March 18, 2017, Clients invested $200,000 in REIT-F. (*Id.* at 2594.) The Clients' order form for REIT-F notes that they held 17.74% of their overall net worth in alternative investments at the time. (*Id.*)

The REIT-F prospectus states in bold on the first page that **"[w]e are an 'emerging growth company' under the federal securities laws and will be subject to reduced public company reporting requirements. Investing in our common stock involves a high degree of risk. You should purchase these securities only if you can afford a complete loss of your investment."** (DEC Book at 2604.) The prospectus also listed a number of risks including:

- ***As of June 30, 2015, our accumulated deficit was approximately $4.3 million, and we anticipate that our operations will not be profitable in 2015.***

- We cannot assure you ***if or when we will make cash distributions***. We may pay distributions from sources other than our cash flows from operations, including from the net proceeds from our offerings. We are not prohibited from undertaking such activities by our charter, bylaws or investments policies, and we may use an unlimited amount from any source to pay our distributions, and it is likely that we will use offering proceeds to fund a majority of our initial distributions. Paying distributions from the proceeds of this offering may negatively impact our ability to make investments and reduce your basis in our stock.

- We have no employees and must depend on our advisor to select investments and conduct our operations, and there is no guarantee that our advisor will devote adequate time or resources to us.

(DEC Book at 2604-2605.) (Emphasis added.)

On July 16, 2017, Respondent emailed one of the Clients about sharing her outside investment account statements. (*Id.* at 3488.) The email notes that it was time to "start reducing your risk into more secure and income focus investments instead of being in growth positions. (*Id.*)

10. <u>"REIT-G"</u>

On October 22, 2017, the Clients invested $100,000 in a non-traded REIT focused on mobile home parks ("REIT-G") based on Respondent's recommendation. Respondent received a 5.3% sales commission out of the 7.3% total upfront fee for the transaction. (DEC Book at 2851, 3118, 3607.) The Clients' order form lists an investment objective of "income" and a "moderately conservative" risk tolerance. (*Id.*)

In January 2021, Respondent reassured the Clients that he had recommended Commercial REIT-G because of its "50[-]year track record." (DEC Book at 3355.) He added: "This is a safer investment than investing in commercial real estate equity/property itself, as we're the bank's position, we hold their debt. And if needed, we can take their property/foreclosed on it and sell it to get the money back." (*Id.*)

11. <u>"REIT-H"</u>

On October 22, 2017, the Clients invested $200,000 in a non-traded Reg D[4] private placement ("REIT-H") based on Respondent's recommendation. (DEC Book at 2859, 3118, 3607.) Respondent received a 7% sales commission out of the 11% in upfront fees for the transaction. (*Id.*) The Clients' order form shows their investment objective as "income" and a "moderately conservative" risk tolerance. (*Id.*)

12. <u>"Oil & Gas Program-B"</u>

On December 3, 2017, the Clients invested $200,000 in another non-traded oil and gas direct purchase program ("Oil & Gas Program-B") based on Respondent's recommendation. Respondent received a 7% sales commission out of the 10% in upfront fees for the transaction. (DEC Book at 3036, 3118, 3607.) Respondent had described the Oil & Gas Program-B development platform in September 2015 as "high income potential for 15+ years but very low risk…." (DEC Book at 3256.)

13. <u>"REIT-I"</u>

On December 3, 2017, Clients purchased $200,000 of a non-traded REIT focused on student and senior housing ("REIT-I") based on Respondent's recommendation. Respondent received a 6% sales commission out of 12.2% in upfront fees for the transaction. (DEC Book at 2870, 3118, 3607.) The

[4] SEC Regulation D exemptions of the Securities Act of 1933 allow companies to sell private placement investments to raise capital without having to register the securities. (*See* DEC Book at 3659, 3680-3681, 3752.)

Clients' order form for the purchase shows their investment objective as "income" and their risk tolerance as "moderately conservative". (*Id.*)

14. <u>"REIT-J"</u>

In May 2018,[5] Clients purchased $200,000 of a non-traded REIT focused on lodging ("REIT-J") based on Respondent's recommendation. Respondent received a 7% sales commission out of 12.5% in upfront fees for the transaction. (DEC Book at 2881, 3036, 3118, 3607.) The Subscription Agreement for REIT-J describes the investment as involving a "high degree of risk." (DEC Book at 2884.)

15. <u>"Variable Annuity"</u>

In June 2018, the Clients purchased $500,000 in a variable annuity ("Variable Annuity") based on Respondent's recommendation. (DEC Book at 2894, *et seq.*, 2905, *et seq.*) The application listed "total return" as investment objective, with a moderate risk tolerance, and a six to ten-year investment time horizon. (*Id.*) The allocation option was listed on the application as 100% into the Nasdaq-100 Index, which the Clients later changed to allocate 50% to the Nasdaq-100 Index and 50% S&P500 Index, because one of the Clients wanted more risk for higher return potential, according to Respondent. (*Id.*; *see also id.* at 3607.)

16. <u>"Automotive Limited Partnership"</u>

On June 12, 2018, Respondent informed the Clients about an investment in a limited partnership focused on automotive dealerships ("Automotive Limited Partnership"), noting that it had already matured, had "only 11% debt," and was "paying 8% to investors that began in the 4th month." (DEC Book at 3326.) Later than month, the Clients purchased $200,000 of Automotive Limited Partnership. Respondent received a 7% sales commission out of 14% in upfront fees on the transaction. (DEC Book at 3036, 3118, 3608.)

17. <u>"Oil & Gas Limited Partnership-1"</u>

On December 22, 2018, the Clients purchased $200,000 of a non-traded oil and gas limited partnership ("Oil & Gas Limited Partnership-1") based on Respondent's recommendation. Respondent received a 7% sales commission out of 10% in upfront fees on the transaction. (DEC Book at 2917, 3118, 3608.) The Client's order form reflects an "investment objective" of "income," and a "risk tolerance" of "aggressive." (*Id.*) The disclosure form for Oil & Gas Limited Partnership-1 describes the investment as "SPECULATIVE" and involving a "high degree of risk." (*Id.* at 2920.)

18. <u>"REIT-K"</u>

In late December 2018, Clients purchased $200,000 of another non-traded REIT ("REIT-K") based on Respondent's recommendation. Respondent received a 7% commission out of 12% in upfront fees on the

[5] The order form incorrectly reflects a 2017 date.

transaction. (DEC Book at 2933, 3118, 3608.) The Client's order form for the purchase reflects a "Moderate" risk tolerance. (*Id.*)

19. "Oil & Gas Limited Partnership-2"

In December 2019, the Clients purchased $200,000 of a non-traded oil and gas limited partnership ("Oil & Gas Limited Partnership-2") based on Respondent's recommendation. Respondent received a 7% commission out of 10% in upfront fees from the transaction. (*Id.* at 2956, 3118, 3608.) The Client's order form for the purchase indicates "speculation" for "risk tolerance". (*Id.*) The disclosure form for the investment indicates that the offering was speculative and involving a "high degree of risk." (*Id.* at 2957.)

D. The Clients Sever Their Relationship with Respondent and File an Arbitration

Respondent's relationship with the Clients began to deteriorate in December 2020, when they learned about allegations of fraud involving a company associated with the Automotive Limited Partnership investment the Clients had purchased based on Respondent's recommendations. (Tr. at 153-154.)

In a December 25, 2020 text message to Respondent, one of the Clients expressed consternation about the performance overall of the investments Respondent had recommended, noting that they would have doubled their money had they invested in an S&P index fund over the last five years, but instead were "down about 10%" on the more than $3 million they had used to purchase alternative investments. (*Id.* at 3402-03.) The client remarked: "I don't recall asking anything about auto dealership that I want to have diversification in." (*Id.* at 3399.)

Regarding one of the oil and gas investments, the client asked Respondent when the Clients would receive a $12,000 annual dividend rather than "losing money on this fund too." (*Id.* at 3397.) Respondent explained that the investment was not designed to be sold early, "as it is to get upfront tax savings and [later] get money back." (*Id.*) He said that the first two years of the investment "are the slowest as it is about the wells [being] developed and processing, [but] after that it[]s very predictable." (*Id.*) The Clients expressed that they were "scared" and asked more than once if they could sell the investments immediately. (*Id.* at 3397.)

In February 2021, after some further exchanges with Respondent, the Clients filed arbitration claims against Respondent, his advisory firm, and his two brokerage firms in the Financial Industry Regulatory Authority, Inc. ("FINRA") Dispute Resolution forum. (DEC Book at 2990.) The Clients alleged that Respondent had made misrepresentations of material fact and breached his fiduciary duties to them with respect to investments he had recommended. (*Id.*) In June 2022, the first brokerage firm paid $90,000 to settle the claims. (*Id.* at 38-39.) On May 5, 2023, a FINRA arbitration panel issued an award finding Respondent and the second brokerage firm jointly and severally liable for $780,220 in compensatory damages plus interest. (*Id.* at 3080-85.) Respondent testified that the second brokerage firm paid the entire arbitration award, while Respondent only paid half of a $50,000 deductible associated with his professional liability insurance. (Tr. at 196.)

The second brokerage firm conducted its own investigation of Respondent, and FINRA has audited the firm twice since the arbitration. (Exhibit-1; *see also* Tr. at 147.) Although Respondent was placed on a heightened supervision plan, he was not formally disciplined in connection with his conduct. (*Id.*; *see also* DEC Book at 40, 104.) In a letter dated February 2024 submitted to the Commission, the firm's President and Chief Compliance Officer attested to Respondent's "sterling reputation," his integrity, and his "steadfast adherence to ethical standards." (Exhibit-1.) The letter states that the firm found that Respondent had not engaged in any "deliberate misconduct" and had adhered to firm guidelines and his customers' "best interest in presenting investment options to clients." (*Id.*) It states that Respondent cooperated fully with its enhanced supervision of him and that, since the complaint at issue, there had been no customer complaints, compliance issues or regulatory matters involving Respondent. (*Id.*)

E. Respondent's Defenses and Credibility

The Commission found Respondent's testimony on some topics to be more credible than it was on others. The Commission credits Respondent's testimony that he had many lengthy meetings with the Clients in which he discussed the details and risks of the investments that he recommended, even though he did not maintain contemporaneous documentation of those conversations. (*See* Exhibit-3; *see also* Tr. at 267.)

The Commission also credits Respondent's response to the allegation in the Complaint that, by May 1, 2014, he knew that at least one of the Clients (the husband) was afraid of risk, but that Respondent nevertheless continued making recommendations that injected "significantly more risk." (DEC Book at 8 ¶¶ 20-22.) In support of this allegation, the Complaint cites an email from Respondent about his meeting with the Clients earlier that day in which he states that they had discussed diversifying their existing investments of CDs and the husband's IRA, "spreading/reducing your overall risk, think 'investment pie' – what percentage to diversify and allocate for better yield/income, long term growth and reduce market volatility." (*Id.* at 3228.)

Respondent credibly addressed this allegation, explaining that the Clients were focused on mitigating stock market risk to their IRAs—not risk generally—as those accounts were invested in stocks, bonds, mutual funds and ETFs:

> Apart from the client's conservative banking assets like CDs and savings, which they wanted to protect, their IRAs were their second largest assets. They sought to mitigate stock market risks associated with these assets. By incorporating fixed index annuities along with their safe banking assets of CDs and savings, they were able to diversify into higher-risk and tax advantage investments, like alternative investments, using their discretionary funds, aiming for potentially higher returns than what their CDs and savings accounts were generating.
>
> With their annual income exceeding two million dollars and no debts, the clients had the liquid funds to allocate portions of their discretionary funds annually into higher-risk investments, seeking potential higher returns. This did not, in any way, affect their quality of life, especially given their ongoing contributions to their banking assets as well.

(*Id.* at 3605.)

Enforcement Counsel alleges that Respondent was put on notice more than once that continuing to recommend alternative investments and a variable annuity would be unsuitable for the Clients. Enforcement Counsel points to the Clients' twice changing their minds before investing in REIT-A. (DEC Book at 141). The Complaint cites statements by Respondent about one of the Clients and risk: "[he] likes to be aggressive but he doesn't like the risk, which is really odd … he complains … 'I'm not making as much money … but I'm afraid of the risks'",[6] and Respondent's admission: "Yeah, I really didn't catch on to this early on." (*Id.* at 188.) Enforcement Counsel stated that using the proceeds from the Clients' sale of CDs, which have extremely low risk, to invest in high-risk alternatives was not suitable because instead of reducing risk, Respondent increased their risk. (Tr. at 102-103.)

The Commission does not share this reading of the record. The Clients chose to invest in alternative investments using their discretionary liquid cash position, primarily sourced from their expired CDs; when Clients' CD terms matured, they would often seek further investment opportunities from Respondent instead of reinvesting funds back into the same CDs. This indicates the Clients' desire for higher returns and tax advantages. Respondent clearly drew the line between the Clients' retirement funds—which they wanted to keep in "safe" investments—and other funds the Clients were willing to invest in risker securities to make more money and generate tax-advantage income. Respondent recommended annuities with "guarantees" for retirement funds and alternative investments for the Clients' taxable money that was available for riskier funds.

Though Respondent could have better identified where the Client's stated willingness to take risks may not have matched their actual willingness to take risks, they first voiced concerns only after the failure of the Automotive Limited Partnership in December 2020 and after other investments underperformed during the COVID-19 pandemic. The evidence presented reflects the Clients' ultimate dissatisfaction with the performance of certain investments, but it does not establish their unwillingness to take on the *risks* associated with those investments.

Asked during the hearing whether Respondent believed the investments he recommended to the Clients were suitable for them, Respondent responded: "1,000 percent, I wouldn't do it any differently." (Tr. at 230-231.) Respondent testified that he only recommended investments that were on his broker-dealer's vetted list, and that he always recommended at least two choices for the clients. (Tr. at 168-169.) Respondent said that he provided information and prospectuses to the Clients, allowing them sufficient time to review the documentation. (Tr. at 102, 117, 228; *see also* Exhibit-1: letter from Respondent's former compliance officer.) Respondent stated he believes that the Clients knowingly and willingly assumed the risk of the alternative investments that he recommended and became dissatisfied with how certain of those investments performed. (DEC Book at 3603: "The clients never complained about having too much in alternative investments; their concerns were solely about the total returns of some compared to others.")

The Commission found Respondent's testimony about the suitability of the investments to be credible. Respondent stated that the Clients "were not new to investing or taking on risks, with over twenty years of investment experience" (*id.* at 3612), and as the Clients' income continued to go up, they reinvested in

[6] Examples of Clients' paradoxical aggressiveness and aversion to risk includes when Client-1 sent an email referring to market crashes (DEC Book at 3330) followed by another email where he was upset to have missed the rally (*id.* at 3403), and another instance when Clients expressed frustration that their investments had not outperformed the S&P 500 (*id.* at 3395).

CDs and came to Respondent with very specific amounts they were willing to invest in alternatives: "they were very specific and very purposeful" (Tr. at 218; *see, e.g.*, DEC Book at 3338, 3292). The Clients also occasionally sought investments in sectors for which Respondent did not have any available recommendation—*e.g.*, in cannabis, cryptocurrency (Tr. at 226; DEC Book at 3415), a closed-end fund investing in collateralized loan obligations (DEC Book at 3338), business opportunities (*id.* at 3303-3322), and real estate development (*id.* at 3417). Documentary evidence supports Respondent's assertion that the Clients thoroughly reviewed all investments and asked multiple questions. (*See, e.g.*, DEC Book at 3241 and 3231.) At times, the Clients decided *not* to invest in several of Respondent's recommendations. (*See, e.g.*, *id.* at 3328.)

The Commission found Respondent lacked credibility in explaining some of his inaccurate communications with the Clients. For example, in a May 5, 2015 email Respondent sent after meeting with the Clients, he states:

> Personal Investment: only Tax Advantage Investment works best as you guys are the highest s[t]ate & federal tax bracket! And of course, **only I** would **only recommend** investments that are 1) **secure/safe**, 2) **no** interest rate **risk** or will be negatively **impact**ed by inflation, and 3) has **great potential** for market **growth**!"

(*Id.* at 3248.) (Emphases added.)

The Commission was not convinced by Respondent's explanation that he was referring to IRA investments in the context of annuities that have certain of the features he was listing—rather than one investment with all those features. (*Id.* at 210-215; *see* Tr. at 133-134, 152[7], 161.) Respondent admitted that there is no investment that "fits all of these things." (DEC Book at 211.)

Similarly, the Commission did not find that Respondent credibly addressed the misstatements he made in a September 27, 2015 email he sent to the Clients about the level of risk alternative investments presented. In that email, Respondent states that a "Hotel Hospitality REIT" has "great upside and **minimal risk**"; a long term investment in an oil and gas development program has "high income potential for 15+ years but **very low risks**…"; and an equipment leasing investment has "**the lowest risk** with lowest upside". (DEC Book at 3256, 3605.) (Emphasis added.) The explanation Respondent offered in his Answer—that he was describing risk relative to the various alternative investments he had reviewed with the Clients, not that alternative investments in general have low risks—was not persuasive to the Commission. (*Id.* at 3606.)

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[7] Respondent testified:

> …let me unravel some of the words I used. Guarantees are specifically referred to annuities. Safe and secure, what I mean by that is if an investment -- because they're a hard investment. They're backed by real estate, so they're secured by real estate.
>
> So, in no way, shape, or form that it can be misinterpreted by this panel or anybody outside that think that oh, he's representing all of these alternatives as safe and secure, of course not, in no way, shape, or form, but I can see how that could be, in isolation, that could be misrepresented.

(Tr. at 152.)

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The Commission found Respondent reckless in making statements that misrepresented to the Clients the risks associated with the alternative investments they purchased based on his recommendations. As Respondent himself acknowledged during the hearing: “words do matter.” (Tr. at 117.)

The Commission also found that Respondent lacked credibility when he tried to make excuses or blame others rather than take responsibility for his misconduct. Respondent states, for example, that the Clients should have provided documentation of their conversations to him (DEC Book at 181) and that his compliance departments should have “caught” the emails he sent misdescribing investments as “safe and secure” (*id.* at 214). Respondent appeared to minimize the impact of his misconduct by saying that the Clients’ investment losses were immaterial because they did not significantly impact their lifestyle. (*Id.* at 3604; *see also e.g.* Tr. at 200: “it's never an issue that, oh, my gosh … if we lose this money, it would put us in the poor house or … we can't drive a Ferrari or have the quality of life that we have in any way.”) He drew attention to a customized Ferrari with vanity license plates that one of the Clients drove, stating that the client was “exceptional in every way.” (Tr. at 115.)

Respondent also appeared to call into question the Clients’ motivations, testifying that they and their attorneys presented evidence out of context during the arbitration (*id.* at 208) and that he “fell into their trap” (*id.* at 196). Respondent said that he always thinks “well” of people but he “let his guard down” in his communications with the Clients, which “bit him in the butt.” (*Id.* at 265.) This too suggested to the Commission an attempt by Respondent to avoid taking responsibility.

F. Documentation of the Clients’ Sophistication and Financial Wherewithal

The Commission did not find many of the documents presented to be reliable indicators of the Clients’ risk tolerance or financial status at the time of each investment. Both parties acknowledged that several of the forms and records appeared to reflect erroneous information about the Clients’ financial status, net worth, and alternative investment concentration. (*See, e.g.,* DEC Book at 2394, 2851, 2857, 2861; *see also* Tr. at 129-130: “our broker dealer admitt[ed] that they didn’t follow their own procedure, and when I submitted paperwork for review, they did not do their proper review.”)

Respondent also acknowledged having pre-populated some new account forms based on discussions with the Clients and then modifying them in handwriting during his meetings with the Clients; this made some information on the account forms unreliable.[8] (Tr. at 239-249; *see also id*. at 213-215: “That is myself and my office. But obviously, I take full responsibility for that. That is clearly bad.”)

Respondent testified that his brokerage firms’ processes for calculating particular investment types as a percentage of the Clients’ net worth were systemically incorrect. (*See* Tr. at 183-184.) He said that compliance deficiencies and lack of support contributed to his seeking new employment. (*Id.* at 217.)

Notwithstanding the apparent inaccuracies in the Clients’ account documentation, the Commission drew the following conclusions about the Clients’ financial position based on the consistency of certain information over time.

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[8] The Commission did not find credible Respondent’s testimony that he could not identify his own handwriting on one of the new account forms. (Tr. at 239-249; *see also* DEC Book at 296-301.)

First, the Clients had a high annual income—$1.6 million climbing to $2.9 million during their relationship with Respondent. (DEC Book at 298, 1003, 2051, 2398, 2407, 2594, 2851, 2859, 2870, 2881, 2917.) The Clients generated excess cash from their successful medical business and came to Respondent for investment advice about products other than CDs, stocks, and bonds. (*Id*. at 3338, 3292.)

Second, the Clients' net worth and liquid net worth started at $4 million and $2 million, respectively, and rose to $3.3 million and $15.4 million over the course of the relationship. (*Id.* at 298, 1003, 2051, 2398, 2407, 2594, 2851, 2859, 2870, 2881, 2917.)

Third, the Clients' alternative investment holdings constituted approximately 10-15% of the Clients' total net worth throughout their relationship with Respondent. (*Id.*) As the Clients' nominal exposure to alternative investments increased, so did their liquid net worth as their business generated cash. (*Id.*)

III. DISCUSSION

The Commission found grounds for sanction against Respondent under the authority granted to it in Article 12 of the *Procedural Rules*.

First Grounds for Sanction

Rule 2.1 of the *Rules of Conduct* states that a CFP® professional shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services; nor mislead any parties about the potential benefits of the certificant's service; nor fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

Respondent was a CFP® professional at all times relevant to this violation.

In numerous communications, Respondent mischaracterized the risks associated with the alternative investments he recommended. He misrepresented the dividends on those investments as "guaranteed" (they were not). He misrepresented alternative investments as presenting "minimal risk," "very low risks," and "the lowest risk" (in fact, each entailed significant risks). He inaccurately stated that the cash and common stock the Clients' received related to their investment in REIT-A "proves that commercial real estate with consistent income/dividends can weather the market better than any other equity common stock" (it does not). And he misrepresented to the Clients that he would only recommend investments that were "secure" and "safe" (he recommended numerous high-risk alternative investments).

Respondent's statements were at least reckless. They misled the Clients about the potential benefits of Respondent's services as an advisor representative presenting investment opportunities, and they omitted material facts that were necessary to avoid misleading the Clients. Respondent's assertion that his emails are taken out of context is irrelevant. Respondent had an obligation, under the facts and circumstances here, to put the risk and return characteristics of each investment in their proper contexts. Respondent's omissions, failures to disclose, and words used to describe the risk involved with the investments he recommended to the Clients were inappropriate. Respondent admitted during the hearing that "words do matter." (Tr. at 117.)

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For these reasons, there are grounds to sanction Respondent for violating Rule 2.1 of the *Rules of Conduct*.

Second Grounds for Sanction

Rule 4.5 of the *Rules of Conduct* states that a CFP® professional shall make and/or implement only recommendations that are suitable for the client.

Respondent was a CFP® professional at all times relevant to this violation.

The Commission considered whether Respondent's misleading statements to the Clients about the investments he recommended necessarily meant that the investment recommendations were unsuitable. The Commission concluded that, under the facts and circumstances presented here, they did not.

The Clients were experienced and sophisticated investors. They had a high net worth and liquid net worth, which consistently increased in relation to the cash flow from their businesses. They consistently indicated their top three investment objectives in order of importance were 1) income; 2) capital appreciation; and 3) preservation of capital. They noted that their liquidity needs were "somewhat important"; and on a risk tolerance scale of "1" through "10", they selected a number indicating their risk tolerances were moderate.

The Clients had access to other financial professionals and were referred to Respondent specifically for the alternative investments he could offer. During their relationship with Respondent, the Clients expressed interest in higher risk opportunities such as cannabis and cryptocurrencies, closed end fund investing in CLOs, business opportunities, and real estate development.

Respondent presented the Clients with multiple investment options that were vetted by his brokerage firms, along with relevant disclosures and research materials. For each investment, the Clients were presented with forms showing their investment objectives, risk tolerance, liquid net worth, total net worth. The Clients' signatures and initials on these forms, and their statements in emails and other communications, indicate their awareness that the investments Respondent recommended were not liquid. For each investment, the Clients acknowledged that they had read the prospectus and understood that the investment carried significant risk. Respondent encouraged the Clients to ask questions and seek other professional perspectives, which they did. The Clients rejected many of the options that Respondent recommended.

The Clients demonstrated both the capacity and the willingness to assume the risks involved with the investments that Respondent recommended to them.

Enforcement Counsel has not met its burden of proving that Respondent made or implemented recommendations that were not suitable for the Clients, and therefore there are no grounds to sanction Respondent for violating Rule 4.5 of the *Rules of Conduct*.

Third Grounds for Sanction

Rule 4.4 of the *Rules of Conduct* states that a CFP® professional shall exercise reasonable and prudent professional judgment in providing professional services to clients.

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Respondent was a CFP® professional at all times relevant to this violation.

At the hearing, Enforcement Counsel confirmed that the "professional services" at issue in these grounds for sanction concern the suitability of the alternative investments Respondent recommended. (*See id.* at 86 (confirming the second and third grounds for sanction go "hand in hand")).

Because the Commission did not find that Respondent made or implemented unsuitable recommendations in violation Rule 4.5 of the *Rules of Conduct*, Enforcement Counsel has also not met its burden of proving that Respondent failed to exercise reasonable and prudent professional judgment by making those recommendations, and there are no grounds to sanction Respondent for violating Rule 4.4 of the *Rules of Conduct*.

IV. THE COMMISSION'S DECISION

Under Article 12.3 of CFP Board's *Procedural Rules*, the Commission's final order must impose a sanction if the Commission finds a violation that warrants a sanction. The Commission has discretion to order a sanction among those in Article 11.1.

CFP Board's non-binding *Sanction Guidelines* serve as guidance for determining appropriate sanctions.[9] The Commission considered the following categories of conduct and recommended sanctions in the *Sanction Guidelines*.

- Conduct 20: Fraud, Misrepresentation or Deceit
    - Conduct 20(a): Fraud Involving Professional Activities (Suspension for at least one year and one day)
    - Conduct 20(d): Misrepresentation to Clients and Prospective Clients (Public Letter of Admonition)
- Conduct 31: Suitability Violation (Suspension for one year).[10]

The Policy Notes to Conduct 20 state:

[9] CFP Board's *Sanction Guidelines* (effective August 27, 2012 through June 29, 2020) is available on CFP Board's website at: https://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/enforcement/cfpboard_sanction_guidelines_2012-07-reference.pdf. (Last accessed November 11, 2024.)

[10] Enforcement Counsel cited the wrong version of the *Sanction Guidelines* in its Complaint and during the hearing. (DEC Book at 20; Tr. at 89, 91.) The Commission takes notice that the correct Conduct Category for "Suitability Violation" is Conduct 31, not Conduct 32, under the *Sanction Guidelines* effective at the time of Respondent's misconduct. (See supra note 9.)

> Fraud is a finding by the Commission that a Respondent knowingly or recklessly misrepresented or concealed a material fact to induce another to act to his or her detriment.[11]
>
> The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction: (1) What was the nature of the conduct? (2) Was there harm to the client or a prospective client? (3) Was the CFP® professional negligent? (4) Was the CFP® professional reckless? (5) Was this an isolated incident?

The Commission found Conduct 20 concerning fraud to be most relevant due to Respondent's misleading statements to the Clients addressed in the First Grounds for Sanction. The Commission found Conduct 31 concerning suitability to be inapplicable in this matter because Enforcement Counsel did not meet its burden to prove the alleged second or third Grounds for Sanction concerning reasonable and prudent professional judgment and suitability.

Consistent with the Policy Notes for Conduct 20, the Commission found that Respondent acted fraudulently when he at least recklessly misrepresented or concealed material facts to induce the Clients to act to the Clients' detriment. The Commission considered the Conduct 20 Policy Notes's requirements to make a finding of fraud, including whether the Clients were "induced" to act to their "detriment."

The Commission did not have evidence sufficient to calculate any monetary losses to the Clients associated with their alternative investments but found Respondent's conduct harmed the Clients.[12] The Automotive Limited Partnership and REIT-I investments failed and were liquidated, and the Clients pursued damages by filing a FINRA arbitration against Respondent and others. The Clients also expressed significant emotional distress from the conduct.

The Commission considered whether there were any material aggravating or mitigating factors relevant to Respondent's sanction and what weight those factors may have in the Commission's decision. This included a review of aggravating or mitigating factors offered by the parties.

The Commission cites the following aggravating factors:

1. Respondent acted at least recklessly;
2. Respondent made numerous misrepresentations over a period of time spanning six years;
3. Respondent lacked credibility when he stated that he could not recognize his own signature on client documents;
4. Respondent caused the Clients harm; and
5. Respondent did not appear to fully acknowledge the harm that he caused to the Clients or fully take responsibility for that harm.

The Commission cites the following mitigating factors:

[11] *Black's Law Dictionary* (2d Pocket ed. 2001). (Footnote in *Sanction Guidelines*, supra note 9 at 16, n.1.)

[12] The Clients' FINRA arbitration documentation showed only a 'snapshot' in time before the investments had run their course, and the Clients elected to liquidate one or two investments before the 5-year holding period was complete.

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1. Respondent would have benefited from more support by his broker-dealers;
2. Respondent relied on his broker-dealers' approved lists of alternative investments;
3. The Clients were sophisticated investors—each had more than 20 years of investing experience and showed some understanding of tax law, types of investments, and liquidity.
4. Respondent has no other disciplinary history or customer complaints in his approximately 20 years in the financial services industry.
5. Respondent provided extraordinary cooperation to CFP Board—the Commission rarely considers cooperation with CFP Board's investigation to be a mitigating factor, but in this case, Respondent provided every email and text message exchanged with Clients since 2013.

The Commission found that the aggravating factors to outweigh the mitigating factors. Particularly significant was Respondent's recklessness in his misrepresentations over many years and his failure to meaningfully take responsibility for his misconduct. Respondent continued to insist that his communications were taken out of context, that the Clients understood the risk involved in the investments but were dissatisfied simply because they "didn't make more money." Respondent's suggestion that the Clients were not harmed because they are not "in the poor house" or did not have to stop driving their "Ferraris" does not excuse the inaccurate statements he made about the investments he recommended. While Respondent acknowledged that he should have had better processes and documentation, he repeatedly blamed others and did not appear to take full responsibility for his conduct.

The Commission consulted various Case Histories[13] (referred to as "CHs" or "ACHs"), including ones identified by the parties, to determine if any contained non-binding precedent that may be persuasive to the Commission. Although they did not involve the same exact facts and were relatively old, the Commission has identified two Case Histories—ACH 28783 and ACH 22986—that are relevant to its decision.

In ACH 28783, issued in 2015, a CFP® professional received a one-year suspension for recommending that clients invest a substantial portion of their net worth in securities that were exempt from registration. The clients purchased the securities having indicated to the CFP® professional that they had a low risk tolerance and a primary objective of "income" or "capital preservation." The investment ultimately failed after the CFP® professional had represented it as "low risk" and secured by buildings and property.

In ACH 22986, issued in 2010, a CFP® professional received a four-year suspension for misrepresenting to four elderly clients that an investment in a real estate company was safe, and that the notes purchased were secured by real property and carried her son's unconditional and irrevocable personal guarantee. Not long after the purchase, the real estate company declared bankruptcy and the clients lost hundreds of thousands of dollars they had invested. The notes were not in fact recorded on the land records or secured by real property. The CFP® professional had conducted no due diligence and had failed to disclose her son's lack of experience and his recent personal bankruptcy. The CFP® professional entered into an Acceptance, Waiver and Consent with FINRA consenting to a fine and suspension, and a consent order with a state securities regulator. The CFP® professional did not notify CFP Board of these regulatory actions and did not timely renew her certification.

[13] Case Histories are available on CFP Board's website at www.cfp.net/ethics/enforcement/case-history.

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Like the CFP® professional in ACH 28783 who received a one-year suspension, Respondent here misrepresented the risks associated with the recommended investments, but Respondent did so recklessly over a 6-year period involving $3.175 million in purchases. Unlike the CFP® professional in ACH 22986 who received a four-year suspension, Respondent always recommended at least two investment options that had been vetted by his firms, no regulatory actions were involved, Enforcement Counsel alleged no conflicts of interest violations, and Respondent made no misrepresentations about the value of the investments he recommended—just about the risks they involved.

After carefully considering the violations found, the minimum sanction recommended by the *Sanction Guidelines*, the mitigating and aggravating factors, and the relevant Case Histories, the Commission issues this Order imposing on Respondent a **Suspension for Two Years**.

In the event Respondent files a Petition for Reinstatement Eligibility following this suspension, any future Commission is encouraged to consider whether Respondent demonstrates that he has implemented reasonable processes for (1) assessing suitability; (2) assessing risk tolerance; (3) monitoring concentration levels; and (4) applying the fiduciary standard.

Ordered by:

The Disciplinary and Ethics Commission, CFP Board
Date: November 11, 2024