

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Glen Rauch (CRD No. 3102961)

Respondent.

DISCIPLINARY PROCEEDING  
No. 2014039358002

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. In January 2016, while he was registered as a General Securities Representative (GSR) with Avenir Financial Group, Inc. (Avenir or the Firm), and continuing into February and March 2016 after the termination of his registration with the Firm, Rauch repeatedly sent abusive, obscene and threatening messages to a principal of the Firm, who was the Firm's Chief Operating Officer, Chief Financial Officer and FINOP (the CFO) until January 28, 2016, in violation of FINRA Rules 5240 and 2010. Rauch's harassing and threatening messages stopped only after the CFO obtained a restraining order against Rauch due to the threats and after a police officer warned Rauch that further contact with the CFO would violate the restraining order.

2. Additionally, from August 2013 through mid-February 2016, while registered with Avenir, Rauch committed an array of serious sales practice violations that demonstrated dishonesty, evasiveness, and a disregard for FINRA rules. Rauch's misconduct caused customer losses.

3. In particular, from September through November 2013, in the Avenir Individual Retirement Account (IRA) of one unsophisticated senior investor of modest means, Rauch **unsuitably concentrated the customer's account and recommended 10 unsuitable options transactions**. For the same investor, Rauch also mismarked or caused others to mismark electronic order tickets for 10 transactions as "unsolicited" when the transactions were solicited, in order to create the impression that the inexperienced investor understood and controlled the overall trading in his account, including the unsuitable options trading strategy. As a result, Rauch violated FINRA Rules 2111, 2360(b)(19)(A)-(B), 4511 and 2010.

4. In the account of a second customer, Rauch effected at least 37 unauthorized transactions in nine securities between June and September 2014. Rauch also effected 16 **unsuitable options transactions in July and August 2014**. Rauch further mismarked or caused others to mismark electronic order tickets as "unsolicited" when the 64 transactions at issue were either solicited or unauthorized, in order to give the false impression that the investor was actively suggesting transactions, including some of the unsuitable transactions. As a result, Rauch violated FINRA Rules 2111, 2360(b)(19)(A), 4511 and 2010.

5. To mask his significant financial problems, Rauch willfully failed to disclose an Internal Revenue Service (IRS) tax lien and an Offer in Compromise with respect to two state tax liens on his Uniform Application for Securities Industry Registration or Transfer (Form U4). He also willfully failed to disclose the two state tax liens timely on his U4. Specifically, Rauch disclosed one state tax lien nine months late and the other four months late, and only after he realized that FINRA was aware of the liens. As a result, Rauch violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.

6. In related misconduct, Rauch made a false statement to his member firm in a quarterly compliance questionnaire with respect to the accuracy of his Form U4. As a result, Rauch violated FINRA Rule 2010.

### **RESPONDENT AND JURISDICTION**

7. Rauch first became registered as a GSR in June 1998 through his association with a FINRA member. From June 1998 through August 2013, he was consecutively registered with ten FINRA member firms. From August 27, 2013 through February 15, 2016, Rauch was registered with Avenir, a FINRA member.

8. On February 16, 2016, Avenir filed a Uniform Termination Notice for Securities Industry Registration (Form U5), reporting Rauch's resignation from the Firm. Although Rauch is not currently registered or associated with another 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 the effective date of termination of Respondent's registration with Avenir, namely February 16, 2016, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

### **FACTUAL BACKGROUND**

#### ***A. Rauch Harasses and Threatens Avenir's CFO While He is Registered with FINRA***

9. In or about January 2016, Rauch texted the CFO to complain about an action that the CFO took regarding a transaction in one of Rauch's customer accounts.

10. Beginning on January 22, 2016, in retaliation for the CFO's involvement in the customer transaction, Rauch sent a series of offensive text messages in which he disparaged, threatened and harassed the CFO. Those text messages are provided in full in Appendix A.

11. On January 22, 2016, Rauch sent 45 text messages to the CFO. The text messages repeatedly used offensive language, threatened to have the CFO jailed and accused the CFO of causing the downfall of the Firm. Despite the CFO's requests that Rauch stop threatening and texting him, Rauch continued these communications.

12. On January 26, 2016, Rauch sent a series of 40 text messages to the CFO. In these text messages, Rauch accused the CFO of stealing telephone equipment from him, harassed the CFO to return the property and tried to intimidate the CFO with threats of legal action. Rauch also threatened that he would travel from his home on Long Island, or have others travel, to the CFO's home in Vermont to harm the CFO and his family members.

***B. Rauch Continues to Harass and Threaten Avenir's CFO After Rauch is No Longer Registered with FINRA***

13. After Rauch resigned from Avenir on February 15, 2016, Rauch continued sending threatening and harassing text messages to the CFO, who had not been registered in the securities industry since he left Avenir on January 28, 2016. Rauch also left the CFO at least six harassing and threatening voicemail messages. The voicemail messages are transcribed in Appendix B.

14. On March 15, 2016, Rauch texted to the CFO 31 threatening and harassing messages, among them:

- "...I hope you and your sick kids die"
- "...you better watch your back because I will always wish hell on you"
- "You stole from Us you [REDACTED] I wish nothing more than you get the same done to your family"
- [REDACTED] you and your family you evil [REDACTED]
- "You RAT [REDACTED] I will do everything in my legal power to [REDACTED] you" and

- “I pray to God that you and your son wife [sic] and all the rest of your siblings receive Gods [sic] wrath.”

15. On March 15, 2016, Rauch left the CFO two threatening and harassing voicemails which included: “You [REDACTED] rat. You’re a [REDACTED] rat, [REDACTED]. You deserve every [REDACTED] thing that’s coming to you.”

16. On March 17, 2016, Rauch left the CFO another threatening and harassing voicemail and sent the CFO another series of text messages threatening to “visit” the CFO and asserting threatening allegations that the CFO and his daughter would be imprisoned.

17. On March 17, 2016, the CFO contacted Vermont law enforcement authorities about Rauch’s threatening behavior. On March 18, 2016, the CFO obtained a Vermont Superior Court Civil Division temporary restraining order (Restraining Order) against Rauch. The Restraining Order required that Rauch, among other restrictions, cease all contact with the CFO, including via text messages or telephone calls. Rauch was served with the Restraining Order in the evening of March 18, 2016, at his home on Long Island.

18. After receiving the Restraining Order, Rauch continued threatening, harassing and intimidating the CFO through text messages and voicemails. In a March 20, 2016 voicemail Rauch threatened: “You [REDACTED] I’m coming to see you, do you understand? Do you understand? The only thing is you’ll never know when. Better keep an eye on everybody.” Amongst the last text messages Rauch sent to the CFO were threatening texts stating that Rauch’s “friend[s]” know the CFO and that “they started watching [the CFO],” and also saying:

Oh and try a [sic] sell my house now and move out of the country before we do it for you. It’s called Restitution ( [sic] go get a dictionary a [sic] put by your toilet. Because I have never failed or been wrong with idiots like you. My last 3 out of 5 bosses are either in the midst of serving time or will soon.

19. Rauch did not cease this behavior until March 20, 2016, after a Vermont police officer called Rauch and told Rauch to stop contacting the CFO.

***C. Rauch's Violative Sales Practices With Respect To Customer LM***

20. In November 2012, LM opened an IRA at another broker-dealer (Firm 1) by rolling over his 401(k). Rauch was one of the brokers-of-record for that account at Firm 1.

21. After Rauch left Firm 1 and became registered with Avenir, LM agreed to transfer his IRA to Avenir. In September 2013, LM opened an IRA at Avenir. At that time, LM was a 62 year old Maryland resident. He was an electrician and had an annual income of approximately \$60,000 and a net worth of approximately \$75,000 to \$85,000, of which less than \$10,000 was liquid. From September 2013 through November 2013, Rauch was the broker-of-record for LM's Avenir IRA and an Avenir trading account that LM also opened but in which Rauch effected only two transactions.

22. LM had no investing experience prior to opening his Firm 1 account. At no point during his relationship with Rauch or Avenir did LM understand options trading or the meaning of "speculation." Despite LM's lack of understanding of "speculation" as an investment objective, it was pre-populated on his Avenir IRA new account application. However, LM did not sign the new account application. At the time LM opened his Avenir account, his investment objective was actually capital preservation.

23. LM told Rauch that he intended to use his Avenir IRA funds for his daughter's college education and to have a "nest egg upon retirement." LM specifically told Rauch that he could not afford to lose the funds and Rauch promised that LM's money would be "safe."

***Rauch's Purchases in, and the Concentration of, LM's Avenir IRA***

24. In September and October 2013, which was right after LM opened his Avenir IRA with Rauch, Rauch unsuitably concentrated LM's IRA in the stock and call options of one security (Stock 1; see Appendix C). In November 2013, Rauch engaged in the same misconduct with respect to the stock of a second security (Stock 5; see Appendix C). The transactions that Rauch effected in LM's Avenir IRA are listed in Appendix D.

25. Between September 19 and 20, 2013, Rauch purchased in LM's IRA a total of 4,000 shares of Stock 1, worth \$50,045.60 as of September 20, 2013. Stock 1 is an online local commerce marketplace. On September 20, 2013, he purchased 300 shares of Stock 2, worth \$8,285.97. As of September 20, 2013, LM's IRA consisted only of the 4,000 shares of Stock 1, 300 shares of Stock 2 and \$196 cash. Therefore, as of September 20, 2013, LM's IRA value was 86% concentrated in Stock 1. Stock 1 accounted for approximately 59% of LM's total net worth.

26. In October 2013, Rauch effected a series of equity and/or options transactions in Stocks 1, 2, 3, and 4 in LM's IRA. As of October 15, 2013, LM's IRA held:

| Security    | Type         | Value       |
|-------------|--------------|-------------|
| Stock, 1    | Stock        | \$33,240    |
| Stock 1     | Call Options | \$3,980     |
| Stock 3     | Stock        | \$6,094.50  |
| Stock 3     | Call Options | \$1,450     |
| Stock 4     | Call Options | \$5,450     |
| Cash        | Cash         | \$322.59    |
| Total Value |              | \$50,537.09 |

Therefore, as of October 15, 2013, LM's IRA had a 74% concentration in Stock 1 (stock and options).

27. As of October 18, 2013, LM's IRA held:

| Security    | Type         | Value       |
|-------------|--------------|-------------|
| Stock 1     | Stock        | \$31,950    |
| Stock 1     | Call Options | \$6,640     |
| Stock 3     | Stock        | \$5,950     |
| Stock 3     | Call Options | \$1,300     |
| Cash        | Cash         | \$3,832.56  |
| Total Value |              | \$49,672.56 |

Therefore, LM's IRA had a 78% concentration in Stock 1 (stock and options).

28. As of the end of October 2013, LM's IRA consisted only of:

| Security    | Type         | Value       |
|-------------|--------------|-------------|
| Stock 1     | Stock        | \$27,405    |
| Stock 1     | Call Options | \$3,120     |
| Stock 3     | Call Options | \$1,530     |
| Stock 4     | Call Options | \$2,250     |
| Cash        | Cash         | \$6,625     |
| Total Value |              | \$40,930.05 |

LM's IRA had a 75% concentration in Stock 1 (stock and options), which was approximately 46% of LM's total net worth.

29. Between November 8 and November 13, 2013, Rauch effected equity and options transactions in Stock 1 and an options transaction in Stock 4. On November 13, 2013, Rauch purchased 2400 shares of Stock 5 (valued at \$32,878), a company that provides mobile internet services for international locations. In addition to the shares of Stock 5, as of November 13, 2013, LM's IRA held 70 call options for Stock 1 (valued at \$7,560) and 10 call options for Stock 3 (valued at \$2,220), as well as \$1,985 in cash. As of November 13, 2013, LM's IRA was approximately 74% concentrated in Stock 5, and the concentration of Stock 5 was approximately 47% of LM's net worth.

30. When LM closed the Avenir IRA on November 19, 2013, the IRA had declined more than \$21,000 in value from when it was opened in September 2013. This \$21,000 loss in value was more than double LM's liquid net worth and was approximately 33% of his total net worth.

#### ***Rauch's Unsuitable Options Trading Strategy in LM's Avenir IRA***

31. Options are contractual agreements between a seller (writer) and buyer (holder) that give the holder the right to buy or sell a specific security at a set price by an agreed-upon date. A "call" is an option contract that gives the holder the right to buy the underlying security at a specified price (the strike price)<sup>1</sup> for a specified fixed period of time. A "put" is an option contract that gives the holder the right to sell the underlying security at a specified price for a specified fixed period of time. Generally, one option is written for every 100 shares of stock. The writer of a call option receives cash for selling the call but can be obligated to sell the stock at the call's strike price if the holder exercises the call option, thereby capping further upside if the

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<sup>1</sup>The "strike" price is the stated price per share for which the underlying security may be purchased (in the case of a call) or sold (in the case of a put) by the option holder upon exercise of the option contract. See, *Chicago Board Options Exchange – "Options Dictionary"*; *cboe.com*.

stock price increases. An option contract derives its value from the value of the underlying stock and the amount of time until the contract expires. If the underlying stock value stays relatively constant, the value of the option decreases with time because there is less time available for the option to be exercised.

32. When LM opened his IRA at Avenir with Rauch, LM did not understand the concept of options trading. LM had no options trading experience prior to his relationship with Rauch. Rauch did not explain to LM options trading or the associated risks. LM was unaware that his brokers at Firm 1, including Rauch, had traded options in his IRA at Firm 1.

33. LM's Avenir IRA was open from September 19, 2013 until November 19, 2013. As depicted in Appendix D, during that time period, Rauch effected a total of 10 options trades in LM's IRA based on three underlying stocks: Stock 1, Stock 3, and Stock 4. Rauch effected only options trades in Stock 4 and never traded the underlying Stock 4.

34. LM was unable to exercise any of the options that Rauch purchased for his IRA because the IRA lacked the liquidity required to exercise the options. Further, due to the legal limitations of an IRA, LM was restricted in the amount of additional funds that could be deposited into the IRA.<sup>2</sup> He therefore could not add enough money to the IRA to exercise the call options Rauch purchased for him.

35. Rauch's purchases of the underlying stock and call options for both Stock 1 and Stock 3 constituted an options trading strategy that was inconsistent with capital preservation and was too risky for LM's limited financial resources. Rauch's strategy exposed LM's IRA to risk only on the buy side of the market because he was *purchasing* both underlying stock and calls. The purchase of options calls, which gave LM the right to purchase additional shares of

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<sup>2</sup>2013 Publication 590, Individual Retirement Arrangements (IRAs), IRS, p. 10-11.

underlying stock, was therefore tantamount to purchasing additional shares of the underlying stock. A decline in the market value of either Stock 1 or Stock 3 would have had a precipitous effect on LM's IRA value and, consequently, his overall net worth. Indeed, the decline in the market value of Stock 1 caused a dramatic decline in the overall value of LM's IRA. In addition, Rauch's decision to purchase the call options for Stock 1 and Stock 3 also exposed LM to the potential risk of the loss of the premiums paid for the options, i.e., \$7,280 for Stock 1 and \$1,450 for Stock 3, if Rauch were not able to sell the options contracts or exercise them before expiration. Based on LM's meager financial portfolio and his need to save funds for retirement, the IRA should not have been exposed to this amount of potential losses.

36. With respect to one of two call options transactions for Stock 4, after purchasing call option contracts for Stock 4, Rauch later sold out-of-the-money<sup>3</sup> Stock 4 call options at a lower premium price than the premium price paid for the options. Rauch therefore caused LM's IRA to incur a net realized loss of \$1,660 with respect to the Stock 4 call options. Rauch's call options trading strategy regarding Stock 4 highlights that Rauch lacked any reasonable basis to engage in options trading for an unsophisticated customer, who had no knowledge or understanding of options trading, in an account with limited financial resources that could not withstand the risk of potential loss from any options trading strategies.

#### ***Inaccurate Order Tickets for LM's Trades***

37. During the period that he owned his Avenir IRA, LM never contacted Rauch to request an "unsolicited" trade order. Therefore, Rauch incorrectly marked or caused others to mark electronic order tickets for 10 trades as "unsolicited" when in fact the order tickets should have been marked "solicited." The mismarked trades are listed in Appendix E.

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<sup>3</sup>A call option is "out-of-the-money" if the strike price is greater than the market price of the underlying security. *Supra*, Chicago Board Options Exchange – "Options Dictionary"; *choe.com*.

***D. Rauch's Violative Sales Practices With Respect To Customer SM***

38. SM is a resident and citizen of Switzerland where he works as a physician. When he opened an Avenir account in March 2014, SM was 53 years old. SM is married, and he has three children, one of whom is disabled. Prior to opening his Avenir account, SM had not had an account at any United States-based broker-dealer.

39. SM opened an Avenir account after he received a cold call in March 2014 from an Avenir registered representative, who helped Rauch open the account. Rauch was the broker-of-record for SM's account from March 2014 through mid-October 2014.

40. When SM opened his Avenir account, he told Rauch that he wanted a conservative trading strategy in order to protect his investments because he planned to use them in the short-term to buy a house closer to where his disabled son would be receiving medical treatments. Rauch told SM that he would effect or recommend trading strategies only when SM was comfortable with them.

41. SM received the Avenir new account application with pre-populated information. SM corrected the pre-populated information for his investment objective and risk tolerance before signing and returning the new account application. For his investment objective, SM changed the pre-populated answer from "Speculation (Aggressive Risk Only)" to "Growth" and "Trading." SM changed the pre-populated risk tolerance from 7 (on a scale of 1-9, with 7 being most conservative of the three options labeled "aggressive – maximize growth potential higher risk of loss"), to 6 (the least conservative of the three options labeled "moderate – better growth potential moderate risk of loss").

### ***Rauch's Unauthorized Transactions in SM's Avenir Account***

42. SM and Rauch spoke regularly on the telephone while Rauch was SM's Avenir broker-of-record. However, SM also regularly emailed Rauch requesting additional information about his account or asking Rauch to explain transactions about which SM had been unaware prior to looking at his online account statement.

43. Between June 2014 and September 2014, Rauch effected 37 transactions in nine securities in SM's Avenir account without prior approval. He neither called SM nor otherwise obtained his authorization prior to the trades. A list of the 37 unauthorized transactions that Rauch effected in SM's account is attached as Appendix F.

### ***Rauch's Unsuitable Options Trading Strategies in SM's Avenir Account***

44. In May 2014, SM signed an option account agreement for his account at Avenir. Below his signature on that agreement SM wrote "level to be discussed with me." SM had never engaged in options trading prior to his account at Avenir with Rauch. Rauch told SM that the options trading he would do in SM's account would be a conservative investing strategy involving a small amount of puts and calls on stocks. Rauch did not thoroughly explain to SM options trading or the risk associated with it.

45. Despite SM's risk profile and his statements to Rauch that he wanted to be conservative with the activity in his Avenir account, Rauch engaged in two types of unsuitable options trades in SM's account.

### ***Highly Speculative Options Trades in SM's Account***

46. In July and August 2014, Rauch engaged in extremely speculative options transactions for three securities (Stock 6, Stock 7, and Stock 8) that are listed in Appendix G.

With respect to the options trades for each of these securities, the chance of capturing upside reward on the transaction started extremely small and shrunk with each passing day.

47. On July 31, 2014, Stock 6 closed at \$7.87. After the market closed on July 31, 2014, Stock 6 released earnings figures. Stock 6 opened at \$6.51 on August 1, 2014.

48. As of the open of the August 1, 2014 trade date, SM held a long position in Stock 6, owning 35,000 shares of the underlying stock, 150 August 15, 2014 7.5 calls and 50 November 22, 2014 7.5 calls. Despite the market reaction to Stock 6's July 31, 2014 earnings report and the overnight fall in the price, Rauch purchased an additional 350 August 16, 2014 7.5 calls for Stock 6. Those calls were out-of-the-money; therefore they had a very low probability of returning a profit because of the large difference between the stock price and the strike price, coupled with the short time until the expiration of the options. Due to Rauch's purchase of the highly risky calls, which expired worthless in 15 days, SM's account lost the price of the premiums paid for the 350 calls, or \$3,400. SM received no gain on the purchase.

49. On August 1, 2014, Rauch also made extremely speculative options transactions in SM's account related to Stock 7 while the bid and ask prices for the underlying stock ranged from \$32.28 to \$32.76. SM did not own any underlying Stock 7 when Rauch purchased 300 August 1, 2014 32 puts and, after the stock price rose mid-day, he purchased an additional 350 August 1, 2014 32.5 puts. These transactions resulted in significant market exposure for SM, with a very low chance of profitability because the options expired the same day. All of the calls Rauch had purchased in Stock 7 expired worthless and SM's account lost \$21,620 from these trades.

50. Rauch effected highly speculative options transactions in SM's account on August 19 and August 20, 2014 for Stock 8. On August 19, 2014, when Stock 8 was trading at

approximately \$100, Rauch purchased 400 August 22, 2014 102 calls for .10 and 200 August 22, 2014 98 puts for \$.15. On August 20, 2014, Rauch purchased an additional 150 August 22, 2014 102 calls for \$.08. These transactions were extremely risky due to the short time frame between the purchases and the expiration of the options. Unsurprisingly, due to the short time frame, the price of Stock 8 remained between \$98 and \$102, so both the 102 calls and the 98 puts expired worthless. As a result, SM lost money on both the calls and puts in Stock 8, for a loss of \$8,142.

### ***Options Trades Executed Under Parity in SM's Account***

51. Rauch's second unsuitable options trading strategy in SM's account consisted of transactions in August 2014 in five securities that are listed in Appendix H. These transactions were unsuitable because Rauch sold calls under parity<sup>4</sup> while SM owned the underlying stock. By selling deep in-the-money contracts below the intrinsic value, Rauch essentially assured losses in [REDACTED] account with a strategy that ran an unreasonably high risk that SM would incur losses greater than he would have incurred by selling his underlying stock.

52. For each of the transactions, the best result that SM could achieve, as compared with selling the underlying stock, would be a loss equal to the amount the price was under parity multiplied by the number of contracts sold at that price multiplied by 100. SM also was exposed to increased downside risk due to this strategy because, if the stock price decreased below the strike price during the term of the options, SM's losses would have been greater than the

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<sup>4</sup>Parity describes an in-the-money option trading for its intrinsic value, i.e., an option trading at parity with the underlying stock. "In-the-money" describes any option that has "intrinsic value" when the price of the underlying security is higher than the striking price of the call, i.e., if the difference is a positive number or zero otherwise. Parity is also used as a point of reference: for example, an option can trade at a half-point over parity or at a quarter-point under parity. An option trading under parity is a discount option. *Supra* at *Chicago Board Options Exchange* – "Options Dictionary"; *cboe.com*.

minimum loss. An illustration for one of the transactions of the assured loss to SM is attached as Appendix I.

***Inaccurate Order Tickets For SM's Trades***

53. During the period that Rauch was SM's broker, SM never contacted Rauch to request an "unsolicited" trade order. As a result, Rauch incorrectly marked or caused others to mark electronic order tickets for 64 trades as "unsolicited" when in fact 59 of the order tickets should have been marked "solicited." Five trades should not have occurred at all because SM neither suggested nor authorized the trades. A list of the mismarked trades is attached as Appendix J.

***E. Rauch's IRS Tax Lien, New York State Tax Liens and Offer in Compromise***

54. At all times relevant to this Complaint, Forms U4 included question 14M, which asked: "Do you have any unsatisfied judgment or liens against you?" Rauch was required to update his Form U4 within 30 days of an event requiring disclosure.

55. Rauch is the subject of an IRS tax lien in the amount of \$61,302, filed on April 29, 2015 (the 2015 IRS lien). Rauch was aware of the 2015 IRS lien in or about May 2015. As of February 2016, the 2015 IRS lien remained unsatisfied. Rauch never updated his response to Form U4 question 14M to disclose the 2015 IRS lien between May 2015 and Rauch's resignation from Avenir on February 15, 2016.

56. Question 14K(1) on the Form U4 asks, "[w]ithin the past 10 years: have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary petition?"

57. Rauch submitted an Offer in Compromise that included both an August 2013 lien and a June 2014 lien to the New York Tax Department of Taxation and Finance (New York Tax Department) in October 2015 (the Offer in Compromise). Rauch was aware that the New York Tax Department accepted the Offer in Compromise on or about October 29, 2015. At no time has Rauch disclosed the Offer in Compromise in response to Question 14K(1) on his Form U4.

58. Rauch became the subject of and was aware of two state tax liens during his registration with Avenir, as follows:

- On or about August 3, 2013, the New York Tax Department issued a tax warrant against Rauch in the amount of \$17,969.17 (the August 2013 lien). By August 2013, Rauch was aware of the August 2013 lien.
- On or about June 30, 2014, the New York Tax Department filed a tax warrant against Rauch in the amount of \$22,283.03 (the June 2014 lien). By July 2014, Rauch was aware of the June 2014 lien.

59. Rauch did not disclose the August 2013 lien on his Form U4 until June 23, 2014 and only after he realized that FINRA was aware of its existence. Between August 2013, when Rauch was on notice of the August 2013 lien, and June 23, 2014, when he disclosed it, Rauch filed with FINRA approximately 6 amendments to his Form U4. He did not update his answer to Form U4 question 14M to disclose the August 2013 lien on any of those amendments or in any other way.

60. Rauch did not disclose the June 2014 lien on his Form U4 until December 18, 2014, only after he realized that FINRA was aware of the existence of the June 2014 lien. Between July 2014, when Rauch was on notice of the June 2014 lien, and December 18, 2014, when he disclosed it, Rauch filed with FINRA two amendments to his Form U4. He did not update his answer to Form U4 question 14M to disclose the June 2014 lien on either of those amendments or in any other way.

***F. Rauch Falsely Completed and Signed a Compliance Attestation for the Fourth Quarter of 2015***

61. During his registration with Avenir, Rauch completed and signed compliance attestations, as required by Avenir's written supervisory procedures.

62. On or about January 22, 2016, approximately nine months after Rauch was on notice of the 2015 IRS lien and approximately two months after he was on notice of the Offer in Compromise, Rauch completed and signed a quarterly compliance attestation applicable to the fourth quarter of 2015 (the Q4 2015 attestation).

63. In January 2016, Rauch answered "yes" to the Q4 2015 attestation question: "Have you reviewed your Form U4 to ensure that your information including disclosure events is current?"

64. Rauch's Form U4, as of January 2016, was not current or accurate because it did not include disclosure of the 2015 IRS lien, in response to question 14M, or the Offer in Compromise, in response to question 14K(1).

**FIRST CAUSE OF ACTION**

**Threatening, Harassing and Intimidating Statements to Avenir's CFO  
(Violation of FINRA Rules 2010 and 5240)**

65. The Department realleges and incorporates by reference paragraphs 1 through 64 above.

66. FINRA Rule 5240(a)(3) provides in relevant part that: no "person associated with a member shall: ... engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, a person associated with a member, or any other person."

67. As described in paragraphs 9 through 12 above, and attached in Appendix A, in January 2016 Rauch made threatening, harassing, and intimidating communications to the Avenir CFO. Rauch sent multiple obscene text messages to the CFO even after the CFO told him to stop harassing him. Through that behavior, Rauch violated FINRA Rules 5240 and 2010.

## **SECOND CAUSE OF ACTION**

### **Unsuitable Trading (*Quantitative Unsuitability*) (FINRA Rules 2111 and 2010)**

68. The Department realleges and incorporates by reference paragraphs 1 through 67 above.

69. FINRA Rule 2111 requires associated persons to have a reasonable basis to believe that an investment strategy is suitable for a customer, based on the customer's investment profile.

70. FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

71. When LM opened his Avenir IRA in September 2013, he told Rauch that he was interested in capital preservation for his Avenir IRA and that LM had limited financial resources. Rauch told LM that LM's funds would be "safe."

72. Rauch ignored LM's stated objectives and financial profile and instead recommended transactions to LM that resulted in the value of LM's IRA being between 74% and 86% concentrated in Stock 1 on several dates between September 20, 2013 and October 31, 2013. The unsuitable transactions and resulting overconcentration percentages are listed in Appendix C.

73. Subsequently, Rauch also ignored LM's stated objectives and financial profile and instead recommended transactions to LM that resulted in the value of LM's IRA being 74% concentrated in Stock 5 on November 13, 2013. The unsuitable transactions and resulting overconcentration percentages are listed in Appendix C.

74. This overconcentration was not suitable for LM, given his overall limited financial circumstances, including, on the dates of the overconcentration, his net worth of approximately \$85,000 or less and his liquid net worth of less than \$10,000, and his lack of investment knowledge and experience.

75. By recommending unsuitable investments to LM, Rauch violated FINRA Rules 2111 and 2010.

### **THIRD CAUSE OF ACTION**

#### **Unsuitable Options Trading (*Qualitative Unsuitability*) (FINRA Rules 2111, 2360(b)(19)(A)-(B) and 2010)**

76. The Department realleges and incorporates by reference paragraphs 1 through 75 above.

77. FINRA Rule 2360(b)(19)(A) provides:

no member or person associated with a member shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract unless such member or person associated therewith has reasonable grounds to believe upon the basis of the information furnished by such customer after reasonable inquiry by the member or person associated therewith concerning the customer's investment objectives, financial situation and needs, and any other information known by such member or associated person, that the recommended transaction is not unsuitable for such customer.

78. FINRA Rule 2360(b)(19)(B) provides:

no member or person associated with a member shall recommend to a customer an opening transaction in any option contract unless the person

making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risk of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.

***Options Trading in LM's Avenir IRA***

79. LM was Rauch's customer at Avenir between September and November 2013. LM told Rauch that he wanted to preserve his investment funds, which were his savings for retirement and his daughter's college education.

80. Rauch's recommendations of 10 options transactions for LM's IRA were unsuitable based on LM's investment objective of capital preservation. The options transactions were also unsuitable because of LM's limited financial situation and needs, including that he was close to retirement. The options transactions were unsuitable for LM because, due to his age and his limited financial resources, he was unable to bear the risks associated with the options recommendations from Rauch. Further, the options transactions were unsuitable for LM because LM lacked the financial knowledge and experience that was required for him to be able to evaluate the risks of the recommended transactions.

81. As a result of the foregoing conduct, Rauch did not have reasonable grounds for believing that the options trading strategies that he recommended to LM were suitable in light of his financial situations and needs, and Rauch therefore violated FINRA Rules 2111, 2360(b)(19)(A)-(B) and 2010.

***Options Trading in SM's Avenir Account***

82. SM told Rauch that within a year he intended to use a significant portion of his Avenir investment funds to purchase a house for his family near where his disabled son would

receive medical treatment. SM also corrected his Avenir new account application to reflect that he did not want a speculative strategy. Despite this, Rauch effected two speculative options strategies in SM's Avenir account.

83. The first speculative options strategy involved extremely risky options transactions that had a very low chance of being profitable for SM because of the short time between the purchase of the options and their expiration. The second options strategy of selling deep in-the-money contracts below the intrinsic value assured an unreasonable likelihood of losses in SM's account greater than SM would have incurred had Rauch sold the underlying stock, which SM held.

84. Both of these speculative options trading strategies that Rauch recommended in SM's Avenir account were inconsistent with SM's investment objective of growth and trading and his explicit rejection of a speculative objective. The speculative options trading strategies were also inconsistent with SM's stated need to use a significant portion of the investment funds for a new family home.

85. As a result of the foregoing, Rauch violated FINRA Rules 2111, 2360(b)(19)(A) and 2010.

#### **FOURTH CAUSE OF ACTION**

##### **Unauthorized Trades (FINRA Rule 2010)**

86. The Department realleges and incorporates by reference paragraphs 1 through 85 above.

87. Unauthorized transactions are defined as causing the execution of transactions that are unauthorized by the customer. It is well settled that unauthorized trading in a customer's

account is a serious violation of just and equitable principles of trade. Executing unauthorized trades is a breach of the duty owed by a salesman to his customers, and is a violation of Rule 2010.

88. Rauch effected 37 unauthorized transactions in SM's account in between July 2014 and September 2014, which are described above in paragraphs 42 and 43 above and listed in Appendix F. Additionally Rauch marked five of these unauthorized transactions as "unsolicited."

89. By repeatedly engaging in unauthorized trading in SM's account, Rauch failed to observe high standards of commercial honor and just and equitable principles of trade, thereby violating FINRA Rule 2010.

#### **FIFTH CAUSE OF ACTION**

##### **Causing Member Firm to Maintain Inaccurate Books and Records (FINRA Rules 4511 and 2010)**

90. The Department realleges and incorporates by reference paragraphs 1 through 89 above.

91. FINRA Rule 4511(a) provides that "[m]embers shall make and preserve books and records as required under FINRA Rules, the Exchange Act and the applicable Exchange Act rules." The books and records made and preserved under Rule 4511 must be accurate. Further, the maintenance of inaccurate books or records violates FINRA Rule 2010.

92. FINRA Rule 0140(a) states that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

93. Rule 17a-3(a)(6)(i) promulgated under the Securities Exchange Act of 1934 requires firms to make and keep current "[a] memorandum of each brokerage order, and of any

other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted,” which shall include “the terms and conditions of the order or instructions.”

94. As alleged in paragraph 37, above, between September 19, 2013 and November 13, 2013, Rauch provided false information to Avenir regarding certain transactions in LM’s IRA. Rauch recommended to LM all the transactions that were effected in LM’s IRA. However, Rauch falsely marked or caused to be marked 10 of the transactions in LM’s IRA as “unsolicited,” which are listed in Appendix E. Rauch knew that the transactions were solicited.

95. Additionally, as alleged in paragraph 53, above, between June 9, 2014 and October 15, 2014, Rauch provided false information to Avenir regarding certain transactions in SM’s Avenir account. Rauch recommended all of the transactions that were effected in SM’s Avenir account to SM. However, Rauch falsely marked or caused others to mark 64 of the transactions in SM’s Avenir account as “unsolicited,” which are listed in Appendix J. Rauch knew that 59 of the transactions were solicited and the other five transactions were in fact unauthorized and improperly marked “unsolicited.”

96. Based on Rauch’s conduct, Avenir failed to comply with SEA Rule 17a-3(a)(6). Therefore, by reason of the foregoing, Rauch violated FINRA Rules 4511(a) and 2010 by causing Avenir’s books and records to be inaccurate.

#### **SIXTH CAUSE OF ACTION**

##### **Willful Failure to Update Timely Form U4 and Willful Failure to Update Form U4 (Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010)**

97. The Department realleges and incorporates by reference paragraphs 1 through 96 above.

98. Article V, Section 2 of the NASD and FINRA By-Laws requires that associated persons who apply for registration must provide “such . . . reasonable information with respect to the applicant as [NASD or FINRA] may require” and further requires that such applications “shall be kept current at all times by supplementary amendment . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

99. FINRA Rule 1122 prohibits associated persons from filing or failing to correct registration information that is incomplete or inaccurate so as to be misleading.

100. While he was registered with Avenir, Rauch failed to make any disclosure of an IRS tax lien and a state Offer in Compromise, and failed to disclose timely two state tax liens.

101. Specifically, Rauch willfully failed to disclose the 2015 IRS lien, despite having notice of the 2015 IRS lien at or around the time it was issued. Rauch never updated his Form U4 to disclose the 2015 IRS lien.

102. Additionally, Rauch willfully failed to disclose the Offer in Compromise that was accepted by the New York Tax Department, despite having notice that it was accepted at or around the date it was accepted. Rauch has never updated his Form U4 to disclose the Offer in Compromise.

103. Further, Rauch willfully failed to disclose timely the August 2013 lien and update his Form U4 to report it, despite having notice of the August 2013 lien at or around the time it was issued. Rauch’s disclosure of the August 2013 lien was nine months late.

104. Additionally, Rauch willfully failed to disclose timely the June 2014 lien and update his Form U4 to report it, despite having notice of the June 2014 lien at or around the time it was issued. Rauch’s disclosure of the June 2014 lien was four months late.

105. By willfully failing to update his Form U4 to disclose the 2015 IRS lien and the Offer in Compromise, and by willfully failing to update timely his Form U4 to disclose the August 2013 lien and the June 2014 lien, Rauch violated Article V, Section 2(c) of the By-Laws, and FINRA Rules 1122 and 2010.

**SEVENTH CAUSE OF ACTION**  
**False Attestations on Firm's Annual Compliance Questionnaires**  
**(FINRA Rule 2010)**

106. The Department realleges and incorporates by reference paragraphs 1 through 105 above.

107. On or about January 22, 2016, approximately nine months after Rauch was on notice of the filing of the 2015 IRS lien and approximately two and a half months after Rauch was on notice of the Offer in Compromise, he signed an Avenir compliance attestation falsely attesting that he had reviewed his Form U4 to ensure that the information on it, including disclosure events, was current.

108. At the time Rauch signed the compliance attestation, his Form U4 was not current. His Form U4 did not disclose the material information of either the 2015 IRS lien, in response to question 14M, or the Offer in Compromise, in response to question 14K(1).

109. In making this false and inaccurate representation, Rauch violated FINRA Rule 2010 by engaging in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade.

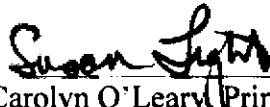
**RELIEF REQUESTED**

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Rauch committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest, and including monetary sanctions, be imposed;
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the Sixth Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 16, 2016

  
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Carolyn O'Leary, Principal Counsel  
Myles Orosco, Senior Trial Counsel  
Elissa Meth Kestin, Director  
Susan Light, Chief Counsel & Senior V.P.  
FINRA Department of Enforcement  
One Brookfield Place  
200 Liberty Street  
New York, New York 10281  
T: (646) 315-7333  
susan.light@finra.org