FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ROBERT HENDERSON (CRD No. 1160413), Respondent.	Disciplinary Proceeding No. 2017053462401 Hearing Officer–RES **HEARING PANEL DECISION** September 7, 2021

Respondent Robert Henderson is fined $30,000 and suspended from associating with any FINRA member in any capacity for thirteen months for engaging in three outside business activities without providing written notice to his then-employer firm and for willfully failing to timely amend his Form U4 to disclose four federal tax liens totaling $368,220.

Appearances

For the Complainant: Michael Perkins, Esq., David Monachino, Esq., Matthew Minerva, Esq., Kay Lackey, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Richard E. Brodsky, Esq.

DECISION

I. Introduction

FINRA's Department of Enforcement filed a Complaint against Respondent Robert Henderson, a registered representative. The Complaint consists of two causes of action. The first cause of action alleges that from December 2010 through October 2018, Henderson engaged in three outside business activities ("OBAs") without providing prior written notice to his then-employer firm, IFS Securities ("IFS").[1] The second cause of action alleges that from October 2014 through October 2018, Henderson willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose four federal tax liens, totaling $368,220.[2] According to the Complaint, Henderson's alleged failure to provide prior

[1] Complaint ("Compl.") ¶ 1.

[2] Compl. ¶ 2. All monetary amounts in this Hearing Panel Decision are rounded to the nearest dollar.

written notice of the OBAs violated FINRA Rules 3270 and 2010, and his alleged willful failure to file an amended Form U4 violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.[3]

In his Answer, Henderson denies that he violated FINRA By-Laws or Rules. As for the first cause of action, Henderson contends his involvement in the three alleged OBAs did not require disclosure because it amounted to a passive investment, which is exempt from FINRA Rule 3270. In response to the second cause of action, he argues that he had no intention of withholding information about the federal tax liens, and there was already information in the public domain showing that he was subject to three earlier tax liens, totaling $625,260. Thus, his failure to disclose the liens was not willful, and the omitted information was not material.

The parties participated in a hearing before a Hearing Panel. After carefully considering the hearing testimony, the hearing exhibits, and the parties' pre-hearing and post-hearing briefs, the Hearing Panel finds, as explained below, that: (1) Henderson violated FINRA Rules 3270 and 2010 because he engaged in three OBAs without giving IFS written notice; and (2) Henderson violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 because he willfully failed to file an amended Form U4 to disclose four federal tax liens. Based on these findings, the Hearing Panel (1) fines Henderson $10,000 and suspends him from associating with any FINRA member firm in any capacity for four months for his failure to give notice of the three OBAs, and (2) fines Henderson $20,000 and suspends him from associating with any FINRA member firm in any capacity for nine months for his willful failure to file an amended Form U4 disclosing the four tax liens. The suspensions shall run consecutively.

II. Findings of Fact

A. Respondent

When Henderson was in his twenties, he studied to become a certified financial planner ("CFP") under the auspices of the University of Miami.[4] He remains a CFP to this day.[5] From 2005 through 2020, he was the host of an investor-related talk show on two local Florida radio stations.[6] He was a contributing author of two financial books on tax advice for small business owners.[7] The first book was titled *Tax Detective: Uncovering The Mysteries Of Small Business Planning*, and was published in 2015.[8] The second book was titled *You Can Deduct That?: How Small Business Owners Can Transform Ordinary Spending Into Tax Savings*, and was published

[3] Compl. ¶¶ 2-3.

[4] Hearing Transcript ("Tr.") 658-59.

[5] Tr. 660.

[6] Tr. 461-62.

[7] Tr. 466-67.

[8] Tr. 467.

in 2016.[9] The second book stated that the contributing authors, including Henderson, were America's top certified tax coaches.[10]

Henderson first became registered with FINRA in 1983 through his association with a FINRA member.[11] From 2010 through November 2019, Henderson was registered as a General Securities Representative and an Investment Company Products/Variable Contracts Representative through his association with IFS.[12] He holds Series 6, Series 7, and Series 63 licenses.[13] He also holds licenses as a life insurance agent and a real estate broker.[14]

Henderson voluntarily resigned from IFS in November 2019, when the firm ceased doing business as a broker-dealer.[15] Henderson is currently registered with FINRA through San Blas Securities, LLC ("San Blas").[16] The State of Florida has deferred action on his recent application for state re-registration as a securities broker pending the outcome of this case.[17] At San Blas, Henderson does not perform any duties requiring registration.[18]

B. Henderson Engages in Outside Activities

1. Henderson's Activities Before Associating With IFS

Before Henderson associated with IFS, he was already involved in two of the alleged OBAs. The first alleged OBA was SWH Holdings Corp. ("SWH Holdings"), and the second was 2001 Florida, LLC, also known as 2001 LLC ("Florida LLC").

a. Activities With SWH Holdings

In September 1999, SWH Holdings filed its Articles of Organization with the Division of Corporations for the State of Florida.[19] The Articles of Organization identified Henderson as President, Secretary, and a Director of the company.[20] The business of the company was to

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[9] Tr. 467-68.

[10] Tr. 468.

[11] Amended Joint Stipulations ("Stip.") ¶ 1; Tr. 447.

[12] Stip. ¶ 1; Tr. 450.

[13] Stip. ¶ 2; Tr. 446-47.

[14] Tr. 448-50.

[15] Tr. 451, 926.

[16] Tr. 458, 661-62.

[17] Tr. 662-63.

[18] Tr. 458-59, 663.

[19] Stip. ¶ 5; Joint Exhibits ("JX-") JX-42.

[20] Stip. ¶ 6; JX-42, at 2-3.

purchase real estate and build a condominium building in Fort Lauderdale, Florida.[21] Henderson owned 10 percent of the outstanding corporate stock.[22]

The construction of the condominium building was supervised by "ES", a builder and real estate developer.[23] When construction was completed, Henderson signed the Declaration of Condominium in his capacity as President of SWH Holdings.[24] In 2006, SWH Holdings completed the sale of all the condominium units except one, which the company retained and rented out to a tenant.[25] Henderson testified that he maintained a checking account for the company, collected rent from "[t]he one unit that we kept," and paid condominium fees and real estate taxes.[26] As an officer, he was involved with several of the company's corporate filings.[27] For example, in May 2009, Henderson applied for SWH Holdings' corporate reinstatement.[28]

In his defense, Henderson testified that ES was "the driver" of the condominium project because "[h]e had the know-how, he had the experience. He had an office, a team of engineers, architecture. So he put everything together, the plans, the drawings, the concept."[29] Henderson had nothing to do with (1) drafting the Declaration of Condominium, (2) obtaining permits for the construction, or (3) designing the building.[30]

b. Activities With Florida LLC

In January 2003, Florida LLC filed its Articles of Organization with the Division of Corporations.[31] The Articles of Organization identified Henderson as a member of the company or an authorized representative of a member.[32] The 2006 Limited Liability Annual Report for Florida LLC identified "LH" as a manager of the company.[33] LH was Henderson's sister-in-

[21] Tr. 106-07, 231-32, 576-77.

[22] Tr. 231.

[23] Tr. 681-82.

[24] Respondent's Exhibits ("RX-") RX-16, at 39; Tr. 741.

[25] Tr. 107.

[26] Tr. 578, 681.

[27] Tr. 579.

[28] Complainant's Exhibits ("CX-") CX-8.

[29] Tr. 683-84.

[30] Tr. 689-90.

[31] Stip. ¶¶ 10, 11; JX-46, at 2.

[32] Stip. ¶ 11; JX-46, at 2.

[33] JX-49.

law.[34] The 2007 and 2008 Limited Liability Annual Reports for Florida LLC identified Henderson as a manager.[35] Florida LLC owned a 10-unit apartment building in Miami, Florida.[36]

2. Henderson Does Not Disclose SWH Holdings or Florida LLC When He Associates With IFS

Henderson associated with IFS in December 2010. On December 17, 2010, Henderson filed an amended Form U4 identifying three OBAs—Henderson Financial Group, Henderson Realty Group, and his work as the host of the two local weekly radio shows.[37] He failed to disclose SWH Holdings and Florida LLC.[38] IFS's written supervisory procedures required a registered representative to disclose in writing all OBAs at the time of hiring.[39] The registered representative had to request and receive written permission from IFS before engaging in any OBA or receiving any compensation outside IFS.[40]

3. Activities After Henderson Associates With IFS

After associating with IFS, Henderson continued engaging in activities with SWH Holdings and Florida LLC. Henderson created a third company, RHPTJ Managers, LLC ("RHPTJ Managers"), that leased office equipment and furniture to Henderson Financial Group. Henderson's activities with these three companies are described below.

a. Activities With SWH Holdings

Henderson was the corporate officer of SWH Holdings who authorized the company's tax preparer to file the 2014 and 2015 tax returns.[41] Those tax returns showed Henderson's business address at IFS as the address for SWH Holdings.[42] The monthly account statements for the company's checking account were also mailed to his IFS address.[43] SWH Holdings sold the last condominium unit in 2017.[44] Henderson received 10 percent of the sale proceeds, amounting

[34] Tr. 452, 802.

[35] JX-50; JX-51.

[36] Stip. ¶ 12; Tr. 111, 809.

[37] Stip. ¶ 4; JX-75, at 8; JX-127, at 10, 12-13.

[38] Tr. 106, 127, 554-55, 557.

[39] JX-125, at 448.

[40] JX-125, at 448; Tr. 559-60.

[41] Tr. 584-85; JX-44; JX-45.

[42] Tr. 585-86; JX-44, at 1; JX-45, at 1.

[43] Tr. 587; JX-43, at 1.

[44] Tr. 110, 577.

to $61,266.[45] He testified about SWH Holdings, "I was not compensated. I only got a distribution when we sold the last" unit.[46]

b. Activities With Florida LLC

Florida LLC re-filed its Articles of Organization in March 2012.[47] These Articles of Organization identified LH and Henderson as managers of the company.[48] Florida LLC's Limited Liability Company Reinstatement, filed in October 2013, identified Henderson as a manager, as did the company's Annual Reports for 2014, 2015, 2016, and 2017.[49] Florida LLC provided him with Schedule K-1 forms for 2014 and 2015 showing that his share of the company's profit, loss, and capital was 50 percent.[50] According to the Schedule K-1 for 2014, his ordinary business loss from the company was $5,720.[51] His 2015 Schedule K-1 shows income of $1,078.[52] On Henderson's personal income tax return for 2016, he reported a non-passive loss of $6,800 from Florida LLC.[53]

Beginning in February 2017, Henderson maintained a checking account for Florida LLC at BB&T Bank.[54] On behalf of Florida LLC, Henderson picked up rent checks from the on-site property manager and deposited them into this account.[55] He was the signatory on the account and funded it with a loan of several thousand dollars.[56] Henderson testified that he opened the account because LH "[d]idn't have a bank account and she had to have rent deposited somewhere, so I helped my sister-in-law out."[57]

Henderson testified he was identified as a manager of Florida LLC "without my knowledge. I may be a member . . . without my knowledge."[58] LH testified she did not inform

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[45] Stip. ¶ 8; CX-47, at 51; Tr. 110, 237, 577, 686.

[46] Tr. 568.

[47] JX-58.

[48] JX-58, at 2.

[49] JX-59; JX-60; JX-61; JX-62; JX-63.

[50] Stip. ¶ 13; JX-52, at 8; JX-53, at 10.

[51] JX-52, at 8.

[52] JX-52, at 8; JX-53, at 10.

[53] JX-53, at 10; CX-69, at 6.

[54] Tr. 597.

[55] Tr. 120-21, 596-97, 600-01, 820-21, 846.

[56] Tr. 601-02.

[57] Tr. 601-02.

[58] Tr. 595; *accord* 691.

Henderson that she planned to name him as a manager on the Florida LLC corporate documents.[59] According to LH, she falsely certified that Henderson was a manager.[60]

c. Activities With RHPTJ Managers

In April 2014, RHPTJ Managers filed its Articles of Organization with the Division of Corporations.[61] RHPTJ Managers identified Henderson as the managing member of the company; in fact, he was the sole member.[62] From 2015 through 2019, the Annual Reports of the company identified Henderson as a manager.[63] The company's income tax return for 2014 stated he was the Chief Executive Officer.[64] The monthly account statements for the company's checking account were mailed to his IFS address.[65] He testified he created RHPTJ Managers as a tax strategy to reimburse himself for his and his spouse's health insurance premiums.[66] Henderson testified the premiums were "an expense that my accountant created."[67]

RHPTJ Managers bought office equipment and furniture and leased it to Henderson Financial Group.[68] Henderson provided the funds for the purchase of the office equipment and furniture.[69] The lease agreement required, for a term of five years, monthly lease payments of $1,359 to RHPTJ Managers.[70] In turn, RHPTJ Managers paid Henderson's spouse $307 per month as salary for her services as bookkeeper.[71] Henderson did not provide prior written notice to IFS before forming RHPTJ Managers.[72]

d. Henderson Does Not Disclose SWH Holdings, Florida LLC, or RHPTJ Managers in Post-Hiring Disclosures

In a FINRA Personal Activity Questionnaire that Henderson signed in March 2012, he represented he was not engaged in any OBAs for which he was compensated.[73] Henderson

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[59] Tr. 809-10, 824.

[60] Tr. 842-43.

[61] Stip. ¶ 15.

[62] Stip. ¶ 16; JX-65, at 3.

[63] JX-66; JX-67; JX-68; JX-69; JX-70.

[64] JX-71, at 1; JX-72, at 1; JX-73, at 1.

[65] JX-74, at 1.

[66] Tr. 616-17.

[67] Tr. 618.

[68] Stip. ¶ 18; Tr. 618.

[69] Tr. 122-23.

[70] Stip. ¶ 18; JX-112, at 1.

[71] Tr. 618-19.

[72] CX-21, at 3; Tr. 127, 555.

[73] JX-122, at 3.

testified he did not disclose to FINRA that he had been involved with SWH Holdings or Florida LLC because "I didn't believe that I was engaged in an outside business activity."[74] In an IFS Representative Update questionnaire that he signed in July 2014, he listed three already-disclosed OBAs, but did not disclose SWH Holdings, Florida LLC, or RHPTJ Managers.[75]

Henderson disclosed his activities in SWH Holdings and RHPTJ Managers in an amended Form U4 filed January 2, 2018.[76] Henderson made these disclosures after a FINRA Rule 8210 on-the-record interview in December 2017, in which he was asked about his failure to disclose SWH Holdings.[77] On October 4, 2018, he filed an amended Form U4 to disclose his involvement with Florida LLC.[78]

C. Henderson Fails to Disclose Four Federal Tax Liens

For many years, Henderson fell behind in paying federal income taxes that he owed. Henderson hired Fortress Financial Services, Inc. ("Fortress") in 2006 to assist him with resolving his personal balances due to the Internal Revenue Service ("IRS").[79]

1. The Three Earlier Tax Liens

On May 21 and June 11, 2014, the IRS recorded notices of three federal tax liens against Henderson and his spouse in the county courthouse of Broward County, Florida.[80] These three tax liens totaled $625,260.[81] Henderson disclosed the three tax liens in an amended Form U4 filed July 8, 2014.[82] As to all three, Henderson stated in his amended Form U4, "My tax attorney has been in communication with the IRS agent and is working diligently to have this issue rectified."[83]

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[74] Tr. 567.

[75] CX-33, at 2.

[76] Stip. ¶¶ 9, 19; CX-10, at 9; Tr. 135.

[77] Tr. 588-89.

[78] Stip. ¶ 14; JX-78, at 12.

[79] JX-129; Tr. 544, 898.

[80] Stip. ¶ 22; JX-24; JX-25; JX-26.

[81] JX-76, at 27-29.

[82] Stip. ¶ 24; JX-76, at 27-30.

[83] JX-76, at 28-30; CX-9, at 28-30.

2. The Four Liens Henderson Failed to Disclose

Several months later, the IRS filed notices of four more federal tax liens against Henderson, totaling $368,220 (collectively, "Four Liens" or "Liens").[84] These Four Liens are the liens at issue in this proceeding. The Four Liens are as follows:

Liens	Date Recorded	Tax Year(s)	Exhibit Nos.	Amount
First Lien	Oct. 8, 2014	2012	JX-5	$68,621
Second Lien	Nov. 3, 2014	2013	JX-6, JX-7	$56,128
Third Lien	Dec. 29, 2014	2008, 2011	JX-8, JX-9	$135,631
Fourth Lien	Dec. 29, 2014	2009, 2010	JX-10, JX-11	$107,840
		Total:		**$368,220**

The first federal tax lien ("First Lien"), for $68,621, was recorded in the county courthouse of Broward County on October 8, 2014.[85] The notice of the First Lien was addressed to Henderson and his spouse at their residential address.[86] The First Lien related to Henderson's failure to pay tax in 2012.[87] The other three federal tax liens contained similar information, with recording dates corresponding to those in the table above.[88] The IRS similarly addressed the Second, Third, and Fourth Liens to Henderson and his spouse at their residential address or at Henderson's business address at IFS.[89]

On February 4, 2015, an attorney employed by Fortress filed a power-of-attorney form with the IRS, covering Henderson's Form 1040 personal income tax returns and IRS civil penalties from 2000 to 2015.[90] Thereafter, this attorney received copies of Henderson's notices of federal tax liens.[91] Henderson spoke with the attorney about the Four Liens.[92]

3. CRED's Disclosure Letters

FINRA's Department of Credentialing, Registration, Education and Disclosure ("CRED") sent Henderson disclosure letters about the Four Liens, but as explained below, he did not take these letters seriously. The letters gave Henderson notice of the Four Liens and directed him to amend his Form U4 to disclose them. It took him eight months to respond to CRED's first

[84] Stip. ¶ 25.

[85] JX-5.

[86] JX-5; Tr. 494-95.

[87] JX-5; Tr. 494.

[88] JX-6; JX-7; JX-8; JX-9; JX-10; JX-11.

[89] JX-6; JX-7; JX-8; JX-9; JX-10; JX-11.

[90] JX-129; Tr. 898-99.

[91] JX-129; Tr. 545.

[92] Tr. 547.

disclosure letter, and five months to respond to the next two. The disclosure letters did not induce him to disclose the Liens.

a. CRED's May 2015 Disclosure Letter

On May 4, 2015, CRED sent IFS a disclosure letter about the First Lien ($68,621) and the Second Lien ($56,128).[93] The disclosure letter informed IFS that these Liens had been filed, the dollar amounts of the Liens, and the jurisdictions in which they had been filed (Broward and Miami-Dade Counties).[94] The disclosure letter directed IFS to "[a]mend disclosure questions with 'Yes' to 14K and/or 14M, if applicable. Provide complete details of the disclosure event(s) on the appropriate DRP type."[95] Question 14M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?"[96] The Chief Compliance Officer of IFS viewed the disclosure letter on October 15, 2015.[97] Henderson admits he also received and reviewed the disclosure letter.[98] He looked into the First Lien in October 2015 but did not disclose it at that time.[99]

The IRS sent Henderson a Notice of Federal Tax Lien and Right to Hearing in May 2015.[100] This Notice showed the First and Second Liens were still outstanding.[101] In August 2015, the IRS recorded a Certificate of Release of the First Lien.[102] The IRS recorded a Certificate of Release of the Second Lien in November 2015.[103]

Eight months after CRED's May 2015 disclosure letter, IFS sent an email attaching Henderson's two-sentence response.[104] This response stated that Henderson had disclosed the First and Second Liens in an amended Form U4 as part of a lump sum:

> Please be advised that the tax liens in question are presently disclosed on my U4 as a lump sum. The liens in question are federal tax liens and all of my tax liens are being actively addressed with the IRS by my tax attorneys.[105]

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[93] CX-56; Tr. 311-12.

[94] CX-56; Tr. 314.

[95] CX-56. "DRP" refers to the Disclosure Reporting Page of Form U4.

[96] JX-77, at 12.

[97] CX-56.

[98] Tr. 497.

[99] Tr. 498-99.

[100] JX-21, at 21; Tr. 548.

[101] JX-21, at 2-3.

[102] Stip. ¶ 26; JX-12.

[103] Stip. ¶ 27; JX-13.

[104] JX-131.

[105] JX-131, at 4.

But contrary to Henderson's representation, the First and Second Liens were not disclosed in an amended Form U4 as part of a lump sum.[106] Henderson's representation was not accurate.[107]

In the May 2015 disclosure letter, CRED directed Henderson to "submit correspondence and any supporting documentation … with complete details" showing that the First and Second Liens were not reportable at any time during his registration with FINRA.[108] Henderson's response did not include such correspondence or supporting documentation.[109]

b. FINRA's December 2015 Cautionary Action Letter

In a 2015 cycle examination of IFS, FINRA staff discovered eight earlier tax liens that had been recorded against Henderson, but he had not disclosed on his Form U4.[110] On December 15, 2015, FINRA issued a cautionary action letter to Henderson about these earlier liens.[111] This cautionary action letter stated, "We have completed our investigation into the matter regarding undisclosed liens."[112] The cautionary action letter cautioned Henderson about the following deficiency:

> Failure to comply with Article V, Section 2 of the By-Laws of the Corporation, in that while associated with various member firms, you failed to disclose liens that were filed against [you] by the Internal Revenue Service during the period October 1991 through August 2006.[113]

The cautionary action letter warned, "as it is a cautionary action, in accordance with long-standing FINRA practice, it will be taken into consideration in determining any future matter should repeat violations occur."[114] Henderson testified that, as a result of the cautionary action letter, he thought "every lien that I ever had, FINRA had investigated all undisclosed liens and there were no more as of December 14 [2015]."[115]

Henderson wrote a letter in response to the cautionary action letter stating, "I will maintain records and update information on my U4 upon receipt of notification of U4 amendable

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[106] Tr. 501.

[107] Tr. 510-11.

[108] CX-56.

[109] Tr. 501.

[110] Stip. ¶ 21; Tr. 139-40, 475; JX-118.

[111] Tr. 140-41.

[112] JX-119.

[113] Stip. ¶ 21; JX-119.

[114] JX-119.

[115] Tr. 488.

activities."[116] Henderson represented he would work closely with his Designated Supervising Principal at IFS to ensure that all information on his Form U4 was accurate and updated.[117] Despite these representations, he failed to work with IFS's Chief Compliance Officer (his Designated Supervising Principal).[118] Henderson did not review his outstanding tax liens to make certain they were disclosed on his Form U4.[119]

c. CRED's August 2016 Disclosure Letters

CRED sent two disclosure letters on August 30, 2016 to IFS about the Third Lien ($135,631) and the Fourth Lien ($107,840).[120] These disclosure letters informed IFS that the Third and Fourth Liens had been recorded in Broward and Miami-Dade Counties.[121] The Chief Compliance Officer of IFS viewed the disclosure letters three days after they were sent.[122] In an email to CRED five months later, IFS attached Henderson's single-page response.[123] This response stated Henderson understood the Third and Fourth Liens were part of a lump sum that had been previously disclosed:

> Regarding the liens recorded in Dade County on December 10, 2014 in the amounts of $135,631.44 and $107,840.39, I had no prior knowledge of these specific liens … It is my understanding that the liens in question are part of the aggregate total lump sum previously disclosed however, I can update my U4 to list these as well."[124]

Yet Henderson failed to update his Form U4 to list these Liens.

In its August 30, 2016 disclosure letters, CRED directed Henderson to "submit correspondence and any supporting documentation … with complete details."[125] Again, Henderson's response did not include such correspondence or supporting documentation.[126]

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[116] JX-120.

[117] JX-120.

[118] Tr. 487.

[119] Tr. 488.

[120] JX-132; JX-133; Tr. 336, 534.

[121] JX-132; JX-133.

[122] JX-132; JX-133.

[123] JX-135; Tr. 522.

[124] JX-135, at 3.

[125] JX-132; JX-133.

[126] Tr. 341-42.

Henderson entered into an installment payment plan with the IRS in September 2016.[127] He testified, "I knew I needed to have some sort of structure arrangement to pay my debt off."[128]

4. Henderson's Form U4 Amendments Related to the Four Liens

On February 14, 2017, CRED sent a disclosure letter to IFS with the subject line, "Correspondence rec'd re: the $135,631.44 and $107,840.39 liens which [have] not been reported on the U4."[129] The "Details" section of the disclosure letter stated, "Amend disclosure questions with 'yes' to 14M, if applicable. Provide complete details of the disclosure event on the appropriate DRP type."[130]

Henderson filed an amended Form U4 on March 2, 2017—i.e., two weeks after CRED's February 14, 2017 disclosure letter.[131] Question 14M of Form U4 asked, "Do you have any unsatisfied judgments or liens against you?"[132] Henderson answered this question, "Yes."[133] The amended Form U4 disclosed the Second Lien ($56,128), the Third Lien ($135,631), and the Fourth Lien ($107,840).[134] Henderson knew he had to amend his Form U4 to disclose tax liens within 30 days after learning of the liens.[135] Yet he filed the amended Form U4 two years after the Second, Third, and Fourth Liens were recorded.[136]

In the amended Form U4, Henderson responded to the prompt "Date individual learned of the Judgment/Lien (MM/DD/YYYY)" with the answer "12/01/2016" as to the Second, Third, and Fourth Liens.[137] As for the Second Lien Henderson stated, "I learned of this filing when compliance informed me about two other tax lien filings."[138] Henderson admits this statement was not true but testified, "I was confused."[139] With regard to the Third Lien Henderson stated in his amended Form U4, "I am not sure if this is a duplicate lien. I learned of this filing when compliance informed me."[140] As for the Fourth Lien Henderson stated, "I learned of this filing

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[127] Stip. ¶ 28; Tr. 673-74.

[128] Tr. 672.

[129] CX-57.

[130] CX-57.

[131] JX-77.

[132] JX-77, at 12.

[133] JX-77, at 12.

[134] Stip. ¶ 29; JX-77, at 25-28.

[135] Tr. 474.

[136] *Compare* JX-5, JX-6, JX-7, JX-8, JX-9, JX-10, JX-11, *with* JX-77, at 1, 25-28.

[137] JX-77, at 25-27.

[138] JX-77, at 27.

[139] Tr. 515.

[140] JX-77, at 25.

by compliance. It may be a duplicate lien."[141] The Third and Fourth Liens were not duplicate liens.

On August 3, 2017, FINRA sent Henderson a letter and request under FINRA Rule 8210 stating, "A search of the records of Broward County, Florida and FINRA's CRD system discloses" the existence of the Four Liens.[142] This FINRA Rule 8210 request included copies of the IRS Notices of the Four Liens[143] and directed Henderson to provide a written statement describing the reason he had failed to amend or timely amend his Form U4 to disclose the Liens.[144] Although Henderson's March 2, 2017 amended Form U4 had disclosed the Second, Third, and Fourth Liens, the First Lien ($68,621) had not been reported.

Henderson disclosed the First Lien in an amended Form U4 filed October 4, 2018—a year after the FINRA Rule 8210 request.[145] Henderson stated in this amended Form U4 that he had learned of the First Lien on October 4, 2018—the same day he filed the amended Form U4.[146] Henderson stated, "I learned of this filing when compliance informed me about it."[147] Henderson admits this statement was not accurate.[148]

III. Conclusions of Law

A. Henderson Failed to Provide Prior Written Notice of Outside Business Activities, in Violation of FINRA Rules 3270 and 2010

In the first cause of action of the Complaint, Enforcement charges Henderson with violating FINRA Rules 3270 and 2010 by engaging in three OBAs without giving IFS prior written notice. FINRA Rule 3270 prohibits a registered person from engaging in an undisclosed outside business activity:

> No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member. Passive investments and activities subject to the

[141] JX-77, at 25.

[142] JX-85, at 1.

[143] JX-85, at 5-11; Tr. 503.

[144] JX-85, at 1.

[145] Stip. ¶ 30; JX-78, at 37-38.

[146] JX-78, at 37.

[147] JX-78, at 38; Tr. 160.

[148] Tr. 507.

requirements of Rule 3280 [private securities transactions] shall be exempted from this requirement.[149]

FINRA Rule 3270 requires fulsome, prompt, and written disclosure of an OBA to the employer firm.[150] The Rule applies to all OBAs so the firm can raise its objections, if any, at a meaningful time and can exercise appropriate supervision.[151] The Rule is not limited to OBAs related to securities.[152] The Rule addresses the securities industry's concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on a registered person's unmonitored outside business activities.[153]

FINRA Rule 2010 provides, "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[154] A violation of FINRA Rule 3270 violates FINRA Rule 2010.[155]

Henderson violated FINRA Rules 3270 and 2010. Henderson was an employee of SWH Holdings in his position as President and Secretary.[156] He was an employee of Florida LLC in his position as a manager of that company.[157] He was an employee of RHPTJ Managers in his position as manager.[158] Henderson did not provide notice to IFS of these OBAs or his employment in them.

Henderson contends he could not have been an employee of Florida LLC because LH made him a manager of that company "without my knowledge."[159] LH testified to the same effect.[160] The Hearing Panel, however, does not find the testimony of Henderson or LH to be

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[149] *Accord Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *28-29 (Sept. 30, 2016).

[150] *Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *44 (NAC Dec. 29, 2015), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

[151] *Dep't of Enforcement v. Mathieson*, No. 2014040876001, 2018 FINRA Discip. LEXIS 9, at *15 (NAC Mar. 19, 2018); *accord Akindemowo*, 2016 SEC LEXIS 3769, at *31-32 ("[the respondent's] failure to provide the written notice required by the rule frustrated [the employer firm's] ability to assess the risk that his outside business activities may cause harm to potential investors and to manage those risks by taking appropriate action").

[152] *Dep't of Enforcement v. Connors*, No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *15-16 (NAC Jan. 10, 2017).

[153] *Connors*, 2017 FINRA Discip. LEXIS 2, at *32.

[154] *Accord Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *29 (NAC July 24, 2017), *appeal dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018).

[155] *Dep't of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *36-37 n.20 (NAC Mar. 5, 2019) ("A violation of FINRA Rule 3270 constitutes a violation of FINRA Rule 2010").

[156] JX-42, at 2-3.

[157] JX-50; JX-59; JX-60; JX-61; JX-62; JX-63.

[158] Stip. ¶¶ 15-16; JX-65.

[159] Tr. 595; *accord* Tr. 691.

[160] Tr. 844-45.

credible.[161] In particular, the proposition that LH would make false certifications under penalty of perjury in corporate documents filed with the State of Florida[162] detracts from her credibility as a witness testifying on behalf of her brother-in-law in a FINRA regulatory hearing. For the Hearing Panel to credit LH's testimony, we would have to find that she knowingly committed several acts of forgery (a felony under Florida state law) by falsely signing Henderson's name without his consent on the Articles of Organization and the Annual Reports.[163] We find that Henderson was an employee of Florida LLC because of his position as a manager.

Henderson was not only an employee of SWH Holdings, Florida LLC, and RHPTJ Managers, he was actively involved in the operation of those companies. Henderson's participation included the following:

- Henderson owned 10 percent of the outstanding corporate stock of SWH Holdings.[164]
- Henderson signed the SWH Holdings Declaration of Condominium in his capacity as President of the company.[165]
- Henderson maintained a checking account for SWH Holdings, collected rent from the tenant, and paid condominium fees and real estate taxes.[166]
- When SWH Holdings sold the last condominium unit, Henderson received $61,266 of the sale proceeds.[167]
- Florida LLC provided Henderson with Schedule K-1 forms for 2014 and 2015 showing that his share of the company's profit, loss, and capital was 50 percent.[168]
- On Henderson's personal income tax for 2016, he reported a non-passive loss of $6,800 from Florida LLC.[169]

[161] *Trevor Michael Saliba*, Exchange Act Release No. 91527, 2021 SEC LEXIS 865, at *40 (Apr. 9, 2021) ("we defer to demeanor-based credibility findings").

[162] Tr. 838.

[163] Tr. 842-43.

[164] Tr. 231.

[165] RX-16, at 39.

[166] Tr. 578, 684.

[167] CX-47, at 51; Tr. 110, 237, 577, 686.

[168] Stip. ¶ 13; JX-52, at 8; JX-53, at 10.

[169] JX-53, at 10; CX-69, at 6.

- Beginning in February 2017, Henderson maintained a checking account for Florida LLC at BB&T Bank.[170] He funded the account with a loan of several thousand dollars.[171]

- Henderson created RHPTJ Managers as a tax strategy to reimburse himself for his and his spouse's health insurance premiums.[172]

- Henderson provided the funds for the purchase of the office equipment and furniture that RHPTJ Managers leased to Henderson Financial Group.[173]

Thus, the Hearing Panel finds Henderson was actively engaged in SWH Holdings, Florida LLC, and RHPTJ Managers. If Henderson was confused about his obligation to disclose these companies as OBAs, he could have conferred with IFS's Chief Compliance Officer. Yet he admits, "I didn't consult anyone" about his obligation to give notice of his OBAs.[174]

In the hearing, the Chief Compliance Officer testified that Henderson should have given notice to IFS of SWH Holdings, Florida LLC, and RHPTJ Managers as OBAs.[175] In the view of the Chief Compliance Officer, Henderson had to disclose SWH Holdings because he was President, Secretary, and a Director of that company.[176] That he received 10 percent of the proceeds from the sale of the last condominium unit of SWH Holdings also meant he had to disclose the company.[177] The Chief Compliance Officer further stated that, based on Henderson's participation in Florida LLC as a 50 percent partner, and his reporting of 50 percent of the profits and losses on his income tax return, he was required to disclose that company.[178] He also testified that Henderson had to disclose RHPTJ Managers because he formed the company and was the managing member.[179]

Henderson defends his failures to disclose SWH Holdings, Florida LLC, and RHPTJ Managers by pointing out that FINRA Rule 3270 exempts passive investments from the requirement to disclose an OBA.[180] Henderson relies on the SEC's decision in *Joseph*

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[170] Tr. 597.

[171] Tr. 601-02.

[172] Tr. 121, 616-17.

[173] Tr. 122-23.

[174] Tr. 725.

[175] Tr. 948-51.

[176] Tr. 957-58.

[177] Tr. 958.

[178] Tr. 960.

[179] Tr. 961.

[180] Tr. 1020.

Abbondante as a "negative definition" of what a passive investment is not.[181] There, the SEC held that the registered person's investment in an outside company was not passive because he had organized the company, opened a bank account for the company, distributed the monetary proceeds of the company's activities, facilitated the creation and distribution of false account documents, and received a portion of the proceeds.[182] But Henderson's activities have many of the same elements as *Abbondante*. Henderson organized SWH Holdings and RHPTJ Managers, opened bank accounts for SWH Holdings and Florida LLC, distributed the proceeds of SWH Holdings and RHPTJ Managers, and received a portion of the proceeds of SWH Holdings and Florida LLC. Henderson was not a passive investor because he exercised varying degrees of control over the assets and funds of the business activities at issue.

For the reasons stated above, the Hearing Panel finds that Henderson violated FINRA Rules 3270 and 2010 by engaging in three OBAs without giving IFS written notice, as alleged in the first cause of action.

B. Henderson Failed to Amend his Form U4, in Willful Violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010

1. Henderson Committed the Violation

In the second cause of action, Enforcement charges Henderson with willfully violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to amend his Form U4 to disclose the Four Liens. Article V, Section 2(c) provides that "[e]very application for registration filed with [FINRA] shall be kept current at all times by supplementary amendments … filed with [FINRA] not later than 30 days after learning of the facts or circumstances giving rise to the amendments." FINRA Rule 1122 prohibits an associated person from failing to correct an incomplete or inaccurate FINRA filing after notice of the deficiency or inaccuracy:

> No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.

FINRA Rule 1122 applies to Form U4, which FINRA uses to screen applicants and monitor their fitness for registration in the securities industry.[183] An associated person has the obligation to ensure that the information in his Form U4 is truthful and accurate,[184] and must

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[181] *Joseph Abbondante*, Exchange Act Release No. 53066, 2006 SEC LEXIS 23 (Jan. 6, 2006), *aff'd*, 209 F. App'x 6, 2006 U.S. App. LEXIS 30982 (2d Cir. Dec. 12, 2006).

[182] *Abbondante*, 2006 SEC LEXIS, at *48.

[183] *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *10 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

[184] *Dep't of Enforcement v. Wyche*, No. 2015046759201, 2019 FINRA Discip. LEXIS 2, at *8 (NAC Jan. 8, 2019).

keep it current at all times.[185] Accurate and timely amendments to Form U4 assure regulatory organizations, employers, and members of the public that they have all fact-based, current, and material information about the associated person.[186] A violation of FINRA Rule 1122 violates FINRA Rule 2010.[187]

Question 14M of Form U4 asks: "Do you have any unsatisfied judgments or liens against you."[188] This question is unambiguous and does not limit the kinds of liens required to be disclosed.[189] If the answer is "yes," the associated person must provide details about the liens, including the "[date] the individual learned of the Judgment/Lien (MM/DD/YYYY)."

Question 14M of Form U4 required Henderson to disclose the Four Liens in supplementary amendments because the Liens were "unsatisfied … liens against" him. In May 2015, CRED informed Henderson of the First Lien ($68,621) and the Second Lien ($56,128); and in August 2016, CRED informed Henderson of the Third Lien ($135,631) and the Fourth Lien ($107,840).[190] He knew of the Second, Third, and Fourth Liens also because he entered into an installment plan with the IRS in September 2016.[191] Yet he did not disclose the Second, Third, or Fourth Liens until he filed an amended Form U4 on March 2, 2017. He misrepresented the date he first learned of these Liens, falsely stating it was on December 1, 2016.[192] Henderson admits the answers he gave about how he first learned of the Liens—that he was informed of them "by compliance"—was not true.[193]

Henderson was reminded again of the First Lien in August 2017, when FINRA sent him a letter and request under FINRA Rule 8210 attaching a copy of the IRS's Notice of the First Lien.[194] Henderson did not disclose the First Lien until an amended Form U4 on October 4,

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[185] *Dep't of Enforcement v. Ortiz*, No. 2014041319201, 2017 FINRA Discip. LEXIS 5, at *28 (NAC Jan. 4, 2017).

[186] *Dep't of Enforcement v. Riemer*, No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at *8-9 (NAC Oct. 5, 2017), *aff'd*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct. 31, 2018).

[187] *Wyche*, 2019 FINRA Discip. LEXIS 2, at *15-16 (by failing to disclose a Form U4 reportable event "within 30 days of learning of it, Wyche violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010").

[188] JX-77, at 12.

[189] *Dep't of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at *21 (NAC May 21, 2018), *aff'd*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903 (July 31, 2019), *petition for review denied*, No. 19-1251, 2021 U.S. App. LEXIS 208 (D.C. Cir. Jan. 5, 2021).

[190] CX-56; JX-132; JX-133; Tr. 311-12, 336, 534.

[191] Stip. ¶ 28; Tr. 532, 673-74.

[192] JX-77, at 25-27.

[193] Tr. 515.

[194] JX-85, at 5.

2018. Again, he misrepresented the date he learned of the First Lien, falsely stating it was on October 4, 2018—the same day he filed the amended Form U4.[195]

Henderson admits he failed to timely disclose the Liens and that he "absolutely" violated FINRA Rules.[196]

For the reasons stated above, the Hearing Panel finds that Henderson violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose the Four Liens, as alleged in the second cause of action.

2. Henderson's Violation Was Willful

The Complaint alleges that Henderson's violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 was willful. An associated person who willfully omits any material fact required to be disclosed in an application or report to FINRA is subject to statutory disqualification.[197] A willful violation means the associated person intentionally commits the act that constitutes the violation.[198] In the context of Form U4, an associated person commits a willful violation if he "'subjectively intend[s] to omit material information from' his required disclosures."[199] Willfulness does not require that the associated person know he is violating FINRA By-Laws or Rules.[200]

Henderson's failure to file his amended Form U4 was willful because he subjectively intended to omit material information—the Four Liens—from his required disclosure. When Henderson was notified of the First Lien ($68,621) and the Second Lien ($56,128) in the May 2015 CRED disclosure letter, he had a choice: he could verify that the Liens were not included in any "lump sum" and disclose them in an amended Form U4, or he could fail to act, relying on the false assumption that they were part of a lump-sum disclosure. He had the same choice in August 2016, when CRED sent two disclosure letters to IFS about the Third Lien ($135,631) and the Fourth Lien ($107,840).[201] When FINRA sent him the IRS Notice of the First Lien along with its August 2017 FINRA Rule 8210 request, he again had the choice of disclosing this Lien

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[195] JX-78, at 37.

[196] Tr. 634, 933.

[197] Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78c(a)(39); Section 15(b)(4)(A) of the Exchange Act, 15 U.S.C. § 78o(b)(4)(A); FINRA By-Laws Art. III, § 4; *McCune*, 2016 SEC LEXIS 1026, at *14. Form U4 is a required application to FINRA within the meaning of Sections 3(a)(39) and 15(b)(4)(A) of the Exchange Act.

[198] *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *13 (Oct. 31, 2018).

[199] *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *38 (July 31, 2019) (quoting *Robare v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019)).

[200] *Holeman*, 2019 SEC LEXIS 1903, at *38.

[201] JX-132; JX-133; Tr. 336, 534.

or continuing with non-disclosure. He did not disclose the First Lien for a year after the FINRA Rule 8210 request. Henderson acted with subjective intent or, at the least, with willful blindness.

Henderson denies that he willfully failed to timely amend his Form U4 to disclose the Four Liens. Henderson relies on *Robare Group, Ltd. v. SEC*, in which the United States Court of Appeals for the D.C. Circuit held that, to support a finding of willfulness, the SEC had to find, based on substantial evidence, that at least one of the principals of the respondent investment advisory firm "subjectively intended to omit material information" from the firm's regulatory filings.[202] Henderson also relies on *Dep't of Enforcement v. Murphy*, in which the Hearing Panel made a finding of subjective intent where the respondent made no disclosure of any tax liens for more than four years after the recording of a $4.2 million lien, and then only after many letters from FINRA, several FINRA Rule 8210 requests, and one session of on-the-record testimony.[203]

These decisions do not advance Henderson's cause, as the Hearing Panel has applied the standard of culpability set forth in the decisions and finds that he failed to file an amended Form U4 with subjective intent.

3. Henderson's Violation Was Material

A fact not disclosed on Form U4 is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would view the fact as significantly altering the total mix of information made available.[204] Materiality is an objective standard.[205] Because of the importance the securities industry places on full and accurate disclosure, all information reportable on Form U4 is presumed to be material.[206]

The Four Liens that Henderson failed to timely disclose on his Form U4 were material. Reasonable regulators, employers, and customers would view the Four Liens as significantly altering the total mix of information made available about Henderson. The $368,220 total amount of the Liens was notable and concerning. The number of the Liens—four—and the length of time the Liens were not disclosed—up to four years—would raise concerns about Henderson's ability to manage his financial affairs, the financial pressures he was facing, and his ability to comply with FINRA By-Laws and Rules.[207]

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[202] *Robare Group, Ltd. v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019).

[203] *Dep't of Enforcement v. Murphy*, No. 2017053843901, 2020 FINRA Discip. LEXIS 21 (OHO May 27, 2020).

[204] *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *30 (NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *petition for review denied*, 750 F. App'x 821 (11th Cir. 2018).

[205] *McCune*, 2016 SEC LEXIS 1026, at *23.

[206] *Holeman*, 2018 FINRA Discip. LEXIS 12, at *19.

[207] *Holeman*, 2019 SEC LEXIS 1903, at *34 ("The Second Circuit and the Commission found the failure to disclose liens on Form U4 to be material omissions after considering the number and dollar amount of the liens and the period of time during which the information was not disclosed.").

In arguing the Four Liens were not material, Henderson quotes the SEC's decision in *Allen Holeman* and contends that the materiality of a tax lien turns on whether "[a] substantial likelihood exists that a reasonable employer or regulator or the investing public would have viewed the liens as significant to an assessment of [the associated person's] ability to manage his financial obligations."[208] This is the standard the Hearing Panel has applied, and we find that the Four Liens were material. Yet Henderson contends the materiality of the Four Liens should be viewed along with the fact that, on July 8, 2014, he filed an amended Form U4 disclosing earlier tax liens totaling $625,260. The Four Liens were not material, Henderson's argument runs, because they would not significantly alter a reasonable person's previously held view of his inability to manage his financial affairs as shown by the earlier tax liens. He argues that the disclosure of the earlier liens already raised concerns and cast doubt about his financial acumen.

Contrary to Henderson's argument, accurate and complete disclosure on Form U4 of an associated person's serious financial problems is of inarguable importance in the securities industry.[209] The SEC and FINRA have consistently held that an undisclosed tax lien is significant information.[210] A tax lien raises concerns about whether an associated person can responsibly manage his own financial affairs, and casts doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf.[211] That the associated person has disclosed earlier tax liens does not lessen the importance of the undisclosed liens, which will show his financial irresponsibility is even worse than previously thought.

In Henderson's amended Form U4 disclosing the earlier tax liens he stated, "My tax attorney has been in communication with the IRS agent and is working diligently to have this issue rectified."[212] In other words, in the time it takes for a diligent tax attorney to finish his work, Henderson's tax problems would be rectified. The Four Liens were material because they undercut Henderson's attempt to downplay his tax problems. Instead of being resolved, his tax problems were getting worse—$368,220 worse.

For these reasons, the Hearing Panel finds that the Four Liens were material, even when added onto the $625,260 amount of Henderson's earlier tax liens.

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[208] *Holeman*, 2019 SEC LEXIS 1903, at *34.

[209] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *47 (Nov. 9, 2012).

[210] *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *53 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *petition for review denied sub nom. Troszak v. SEC*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

[211] *Dep't of Enforcement v. The Dratel Grp., Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *52 (NAC May 6, 2015).

[212] JX-76, at 28-30; CX-9, at 28-30.

For the reasons stated above, the Hearing Panel finds that Henderson violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to amend his Form U4 to disclose the Four Liens, as alleged in the second cause of action. Additionally, because Henderson's violation was willful and the information he failed to disclose was material, he is subject to statutory disqualification from the securities industry.[213]

IV. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.[214] The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

A. Failure to Disclose Outside Business Activities, in Violation of FINRA Rules 3270 and 2010 (First Cause of Action)

The Sanction Guideline for Outside Business Activities recommends a fine of $2,500 to $77,000.[215] As for a suspension, bar, or other sanction, adjudicators should consider suspending the respondent for a period of 10 business days to three months.[216] Where the outside business activity involves aggravating factors, adjudicators should consider a suspension of three months to one year.[217] Where aggravating factors predominate, adjudicators should consider a suspension of one to two years or a bar.[218]

The considerations specific to this Guideline are:

- Whether the outside activity involved customers of the firm.
- Whether the outside activity resulted directly or indirectly in injury to other parties, including the investing public and, if so, the nature and extent of the injury.
- The duration of the outside activity, the number of customers and the dollar volume of sales.

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[213] *See supra,* footnote 197.

[214] FINRA Sanction Guidelines ("Guidelines") at 2 (Oct. 2020) (General Principle No. 1), https://www.finra.org/sanctionguidelines.

[215] Guidelines at 13.

[216] Guidelines at 13.

[217] Guidelines at 13.

[218] Guidelines at 13.

- Whether the respondent's marketing and sale of the product or service could have created the impression that the employer firm had approved the product or service.

- Whether the respondent misled the employer firm about the existence of the outside business activity or otherwise concealed the activity from the firm.

- The importance of the role played by the respondent in the outside business activity.[219]

Henderson's OBAs involved several aggravating factors. Henderson carried on the OBAs for a long time (five to eighteen years).[220] He concealed the OBAs from IFS because he failed to disclose them in a FINRA Personal Activity Questionnaire in March 2012 and in an IFS Representative Update questionnaire in July 2014.[221] He played an important role in the OBAs, holding significant ownership interests and corporate positions.[222]

Based on the applicable Sanction Guideline, the Principal Considerations, and the aggravating factors, for Henderson's violation of FINRA Rules 3270 and 2010, the Hearing Panel imposes a $10,000 fine and suspends Henderson from associating in any capacity with any FINRA member firm for four months.

B. Failure to File a Form U4 Amendment, in Violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 (Second Cause of Action)

The Sanction Guideline for an Individual's Failure to File a Form U4 Amendment recommends a fine of $2,500 to $39,000.[223] Where aggravating factors predominate, adjudicators should consider a fine higher than $39,000.[224] Where aggravating factors are present, adjudicators should consider suspending the respondent for 10 business days to six months.[225] Where aggravating factors predominate, adjudicators should consider a suspension of

[219] Guidelines at 13.

[220] Guidelines at 7 (Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time); 13 (Specific Consideration No. 3: Duration of the outside activity).

[221] Guidelines at 13 (Specific Consideration No. 5: Whether the respondent misled his employer firm about the existence of the outside activity or otherwise concealed the activity from the firm).

[222] Guidelines at 13 (Specific Consideration No. 6: The importance of the role played by the respondent in the outside business activity).

[223] Guidelines at 71.

[224] Guidelines at 71.

[225] Guidelines at 71.

six months to two years. Where the respondent intended to conceal information or mislead, adjudicators should consider a bar.[226]

The considerations specific to this Guideline include:

- The nature and significance of the information at issue.
- The number of disclosable events at issue.
- Whether the omission of information was done in an intentional effort to conceal information or an attempt to mislead.
- The duration of the delinquency.
- Whether the failure to disclose delayed any regulatory investigation.
- Whether the failure resulted in a statutorily disqualified individual remaining associated with a firm.
- Whether the respondent's misconduct resulted directly or indirectly in injury to other parties and, if so, the nature and extent of the injury.[227]

Aggravating factors predominate in this case. The undisclosed information about the Four Liens was significant.[228] The total amount of the Four Liens ($368,220) was notable and concerning. Henderson did not accept responsibility for his belated disclosure.[229] The duration of the failure to disclose the Liens was long, spanning two to four years.[230] Henderson did not amend his Form U4 even though he received a cautionary action letter about earlier tax liens, and FINRA gave him notice of the Four Liens in CRED disclosure letters and a FINRA Rule 8210 request. Henderson misrepresented the date when he learned of the Liens, showing his lack of regard for FINRA By-Laws and Rules. He has not satisfied the Third Lien ($135,631) or the Fourth Lien ($107,840).

Based on the applicable Sanction Guideline, the Principal Considerations, and the aggravating factors, for Henderson's violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, the Hearing Panel imposes a $20,000 fine on Henderson and suspends him from associating in any capacity with any FINRA member firm for nine months.

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[226] Guidelines at 71.

[227] Guidelines at 71.

[228] Guidelines at 71 (Specific Consideration No. 1: The nature and significance of the information at issue).

[229] Guidelines at 7 (Principal Consideration No. 2).

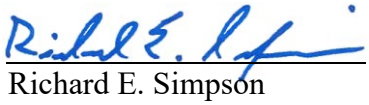
[230] Guidelines at 7 (Principal Consideration No. 9); Guidelines at 71 (Specific Consideration No. 4: The duration of the delinquency).

The suspension for the Form U4 violation shall run consecutively to the suspension for the first cause of action, the failure to give notice of the OBAs.

V. Order

The Hearing Panel orders that, for violating FINRA Rules 3270 and 2010 by engaging in three OBAs without providing written notice to his then-employer firm, Respondent Robert Henderson is fined $10,000 and suspended from associating with any FINRA member firm in any capacity for four months. For violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to timely file an amended Form U4 disclosing four federal tax liens, Henderson is fined $20,000 and suspended from associating with any FINRA member firm in any capacity for nine months. These suspensions shall run consecutively. Henderson shall pay the hearing costs of $8,779.83, consisting of a $750 administrative fee and $8,029.83 for the cost of the transcript. Because Henderson's Form U4 violation was willful, he is subject to statutory disqualification.

If this Decision becomes FINRA's final disciplinary action, Henderson's 13-month suspension in all capacities shall become effective at the opening of business on November 1, 2021. The fines and costs shall be due on a date set by FINRA, but not less than 30 days after this Decision becomes FINRA's final disciplinary action.[231]



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For the Hearing Panel

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[231] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.