

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CRAIG SCOTT HARTMAN
(CRD No. 2335606),

Respondent.

Disciplinary Proceeding
No. 2016052604602

Hearing Officer–LOM

DEFAULT DECISION

November 6, 2018

Respondent failed to timely disclose four federal tax liens on his Form U4. For this misconduct, he would be fined \$5,000 and suspended four months. In light of the bar imposed for another violation, however, these sanctions are not imposed.

Respondent made false statements to his FINRA member firm regarding the accuracy of his Form U4, which was unethical. For this misconduct, Respondent would be fined \$10,000 and suspended for one year. In light of the bar imposed for another violation, however, these sanctions are not imposed.

Respondent failed to provide documents and information requested pursuant to FINRA Rule 8210 in a timely manner. For this misconduct, Respondent would be fined \$5,000 and suspended four months. In light of the bar imposed for another violation, however, these sanctions are not imposed.

Respondent failed to appear and provide testimony in response to two Rule 8210 requests for on-the-record testimony. For this misconduct, Respondent is barred from associating with any member firm in any capacity.

For the Complainant: Rebecca Carvalho, Esq., Tiffany A. Buxton, Esq., and Richard Chin, Esq.,
Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Respondent, Craig Scott Hartman (“Respondent”), was in the securities industry for close to 14 years, until December 2016, when the firm with which he was then associated terminated his employment. Respondent’s firm reported on a Uniform Termination Notice for Securities Industry Registration (a “Form U5”) that he had failed to amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) in a timely manner. FINRA staff opened an investigation that led to the filing of the Complaint in this matter.

The Complaint charges Respondent with willfully failing to timely disclose four federal tax liens (First Cause of Action), making false statements to his FINRA member firm employer regarding the disclosures on his Form U4 (Second Cause of Action), failing to timely respond to a request for documents and information pursuant to FINRA Rule 8210 (Third Cause of Action), and failing to appear and provide testimony as twice requested pursuant to Rule 8210 (Fourth Cause of Action).

The Department of Enforcement (“Enforcement”) served the Complaint and Notice of Complaint in accordance with the requirements set forth in FINRA Rules 9131 and 9134. When Respondent did not file an Answer by the due date, Enforcement again served him with the Complaint and a Second Notice of Complaint in accordance with the requirements. He still failed to file an Answer, either by the due date or at any time after.

Subsequently, pursuant to FINRA Rules 9215(f) and 9269, Enforcement filed a motion for entry of default decision (“Default Motion”), together with counsel’s declaration (in text, “Declaration”; in footnote, “Decl.”) in support of the motion, and supporting exhibits. Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement’s Default Motion. As authorized by FINRA Rule 9269(a)(2), I deem the factual allegations in the Complaint against Respondent admitted. Based on the facts deemed admitted and the additional information provided under penalty of perjury in the Declaration, along with the exhibits accompanying the Declaration, I find that Respondent committed the violations alleged in the Complaint and, as set forth below, impose sanctions consistent with FINRA’s Sanction Guidelines.

II. Findings of Fact and Conclusions of Law

A. Respondent’s Background

Respondent entered the securities industry in March 1993. From then until he left the industry in December 2016, he was associated with five FINRA-regulated broker-dealers. He obtained his Series 63 (State Agent) in June 1993; his Series 6 (Investment Company Products/Variable Contracts Representative) in October 1993; his Series 26 (Investment

Company Products/Variable Contracts Principal) in February 1997; and his Series 65 (Investment Advisor) in September 1998.¹

Respondent's last firm was AXA Advisors, LLC ("AXA" or the "Firm"). He was associated with the Firm from June 1, 2005, to December 20, 2016.² Respondent is not currently associated with a FINRA member firm.³

B. FINRA's Jurisdiction

Although Respondent is no longer in the securities industry, FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of his registration.⁴

C. Origin of the Investigation

The Firm reported on a Form U5 dated December 21, 2016, that it had terminated Respondent's employment for failure to amend his Form U4 in a timely manner.⁵ After reviewing the Form U5, FINRA staff opened the investigation that led to the filing of the Complaint.⁶

D. Respondent's Default

Enforcement served the Complaint and the First and Second Notices of Complaint in accordance with FINRA Rules 9131 and 9134, which is sufficient for constructive notice. Moreover, there is evidence that Respondent actually received service. Nevertheless, Respondent did not file an Answer.

Enforcement directed service to the appropriate address. It served the documents on Respondent at his residential address, as reflected in the Central Registration Depository (his "CRD address"), which has been his CRD address from June 2010 to the present. To the best of Enforcement's knowledge, the CRD address is Respondent's current address, although a July 5, 2018 search on the LexisNexis database revealed a similar address for Respondent, with the same street number and name, and same city and state, but with a more precise zip code and the

¹ Complainant's Exhibit ("CX") -1 (excerpts from Respondent's Central Registration Depository ("CRD") records); Decl. ¶ 4; Complaint ("Compl.") ¶¶ 5-6.

² CX-1 (excerpts from Respondent's CRD records); Decl. ¶ 5; Compl. ¶ 7.

³ CX-1 (excerpts from Respondent's CRD records); Decl. ¶ 7; Compl. ¶ 9.

⁴ Decl. ¶ 7; Compl. ¶ 10.

⁵ CX-2 (the Form U5); Decl. ¶ 6; Compl. ¶ 8.

⁶ Decl. ¶ 8.

added indication “W” to the street name (the “alternate address”). The two addresses appear to be the same location. However, in an abundance of caution, Enforcement sent the documents to both Respondent’s CRD address and the alternate address. Enforcement additionally sent the documents to a personal email address that the staff had used to communicate with Respondent during the investigation, which the staff continued to use to communicate with him through at least August 14, 2018.⁷

Enforcement also served the Complaint and the First and Second Notices to Respondent by the appropriate means. It sent the hard-copy documents to both the CRD address and the alternate address by certified mail, return receipt requested. In addition, it sent hard-copy documents by first-class mail and electronic copies to Respondent’s personal email address. The two return receipts for the First Notice indicate that the documents were signed for and received by “S Hartman.” The return receipts for the Second Notice also were signed for, but the signatures are illegible.⁸

The Second Notice advised Respondent that, in accordance with FINRA Rule 9215, his failure to file an Answer by the specified deadline would allow the Hearing Officer to treat the allegations in the Complaint as admitted by Respondent and to enter a default decision against him pursuant to FINRA Rule 9269.⁹

On August 9, 2018, Respondent acknowledged receipt of the Second Notice sent to his personal email address, replying in an email to FINRA staff, “I still have no idea why you send me anything. I have resigned from [the] industry and you continue to harass me. If I continue to receive emails of threats or mail I will file my own legal actions against FINRA.” The staff responded to Respondent by email on August 13, 2018, and explained its processes. The staff again noted that a failure to file an Answer could result in the allegations being treated as admitted and the entry of a default decision. The staff told him that he could be sanctioned as a result. Respondent replied with another email on August 14, 2018, saying, “I do not work in [the] industry.”¹⁰

Respondent’s failure to file an Answer, even after being cautioned that such a failure could lead to a default decision and sanctions, indicates that he does not intend to participate in this disciplinary proceeding. His insistence that he is out of the industry—implying that FINRA has no more authority over him—bolsters that conclusion.

⁷ Decl. ¶¶ 15-18.

⁸ Decl. ¶¶ 19-24; CX-3; CX-4; CX-5; CX-6; CX-7.

⁹ CX-5.

¹⁰ Decl. ¶ 25; CX-7.

To date, Respondent has not filed an Answer. Accordingly, I find that Respondent has defaulted,¹¹ and, pursuant to FINRA Rule 9269, I deem the factual allegations in the Complaint to be true.

E. Respondent's Violations

1. Respondent's Failure to Disclose Federal Tax Liens on His Form U4

a. Legal Framework

Enforcement charges that for months Respondent willfully failed to disclose two federal tax liens on his Form U4, and that he willfully failed to disclose two additional federal tax liens for more than two years. FINRA's By-Laws impose a continuing obligation on every registered person to update information on his or her registration application. Article V, Section 2(c) of the By-Laws requires that such information "shall be kept current at all times by supplementary amendments ... filed ... not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

The mechanism for complying with the By-Laws provision is the amendment of the registered person's Form U4. FINRA Rule 1122 implements the By-Laws provision by prohibiting a registered person from filing registration information on the Form U4 that is so incomplete or inaccurate as to be misleading. Rule 1122 even prohibits the filing of information that could "in any way tend to mislead." It further prohibits a failure to correct a filing once on notice of its incomplete, inaccurate, or misleading quality. Filing a false or incomplete Form U4 or failing to timely amend a Form U4 therefore violates Rule 1122.

Under the By-Laws and Rule 1122, every Form U4 must be accurate and must be kept current through supplemental amendments. The amendments must be filed within 30 days of learning of the facts and circumstances giving rise to the amendments.¹²

One who violates the By-Laws and Rule 1122 also violates FINRA Rule 2010, which requires registered representatives to "observe high standards of commercial honor and just and equitable principles of trade."¹³ The SEC has explained that Rule 2010 encompasses any

¹¹ Respondent is hereby notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

¹² *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26-29 (Nov. 9, 2012).

¹³ Compl. ¶¶ 12-14. It is well established that a violation of another FINRA Rule is also a violation of Rule 2010. See *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2010027666902, 2017 FINRA Discip. LEXIS 16, at *11 & n.7 (NAC May 26, 2017) (violation of Rule 8210 violates Rule 2010), *appeal docketed*, No. 3-1805 (SEC June 26, 2017). See also *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999) (violation of an SEC or FINRA rule, including FINRA rule against selling away, violates FINRA Rule 2010).

unethical business-related misconduct, even where the activity does not involve a security.¹⁴

The requirement to timely amend one's Form U4 is important. The Securities and Exchange Commission ("SEC") has said that the importance of the Form U4 "cannot be overstated."¹⁵ FINRA and other regulators, as well as broker-dealer firms, use the Form U4 to determine and monitor the fitness of securities professionals. A Form U4, which is publicly available, also provides investors important information in deciding whom they trust to handle their investments and to advise them.¹⁶ "Truthful answers ... can serve as an early warning mechanism, identifying individuals with troubled pasts or suspect financial histories. Untruthful answers call into question an associated person's ability to comply with regulatory requirements."¹⁷ The timely updating of information on the Form U4 is critical to the screening process used to determine who may enter and remain in the industry, and it is a vital means of protecting the investing public.¹⁸

b. Respondent's Misconduct

During the period of June 2012 through December 2012, the Department of the Treasury, Internal Revenue Service ("IRS") recorded four federal tax liens in Kane County, Illinois, against Respondent, in a total amount of \$206,409.54 (the "Federal Tax Liens"). Each Federal Tax Lien was sent to Respondent at his CRD address.¹⁹

The IRS recorded a Notice of Federal Tax Lien in Kane County, Illinois, against Respondent on June 22, 2012, in the amount of \$596.26 (the "First Tax Lien"). A second such Notice of Federal Tax Lien was recorded on the same day in a larger amount—\$99,197.73 (the "Second Tax Lien"). Both Notices were sent to Respondent at his CRD address on or about the

¹⁴ *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2011 FINRA Discip. LEXIS 40, at *17-18 & n.46 (OHO June 13, 2011) ("[FINRA] Rule [2010] is an ethical rule ... [.] FINRA's authority to pursue disciplinary action for violations of Rule [2010] is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security."), *aff'd*, 2012 FINRA Discip. LEXIS 61 (NAC Dec. 12, 2012) (respondent barred for acting as unregistered principal); *Dep't of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *22 (NAC Feb. 24, 2011) ("FINRA's disciplinary authority under [FINRA] Rule [2010] is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.") (internal citations and quotations omitted), *aff'd in relevant part*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

¹⁵ *Tucker*, 2012 SEC LEXIS 3496, at *26.

¹⁶ *Id.* See also *North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *30 (May 8, 2015).

¹⁷ *Tucker*, 2012 SEC LEXIS 3496, at *26. See also *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *16 & n.12 (Oct. 20, 2011) (candor and forthrightness of individuals making U4 filings critical to process of screening the fitness of individuals to be in the securities industry).

¹⁸ See *David Adam Elgart*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097, at *10 (Sept. 29, 2017), *petition for review denied*, 2018 U.S. App. LEXIS 26627 (11th Cir. Sept. 19, 2018).

¹⁹ Decl. ¶ 9.

same date.²⁰ Although Respondent was required to amend his Form U4 within 30 days of receiving the First and Second Tax Liens, which would have been July 23, 2012, he failed to file an amended Form U4 disclosing the two Liens until November 20, 2012, approximately four months late.²¹

The IRS recorded yet another Notice of Federal Tax Lien in Kane County, Illinois, against Respondent on November 6, 2012, in the amount of \$47,239.29 (the “Third Tax Lien”). The IRS sent the Third Tax Lien to Respondent on or about the same day to his CRD address.²² Respondent was required to amend his Form U4 to disclose the Third Tax Lien by December 5, 2012, but he did not. He disclosed it about two-and-a-half years late, on July 27, 2015.²³

On December 26, 2012, the IRS recorded an additional Notice of Federal Tax Lien in Kane County, Illinois, against Respondent in the amount of \$59,376.26 (the “Fourth Tax Lien”). The IRS sent the Fourth Tax Lien to Respondent on or about the same day to his CRD address.²⁴ Respondent was required to amend his Form U4 to disclose the Fourth Tax Lien by January 24, 2013, but he did not. He only disclosed it at the same time that he disclosed the Third Tax Lien, on July 27, 2015.²⁵

The record supports the conclusion that Respondent received the Federal Tax Liens within a few days of the time they were sent. They were sent to his CRD address, and, in the context of the investigation by FINRA staff, there was evidence that Respondent received documents sent to his CRD address. The First and Second Notices of Complaint, which were sent to Respondent’s CRD address, were signed for as received, and at least two of the return receipts were clearly signed for by “S Hartman.”

Subsequent to filing the amended Forms U4, Respondent satisfied the Federal Tax Liens. The First Tax Lien was satisfied and released on February 1, 2016, and the Second Tax Lien was satisfied and released on February 16, 2016. The Third and Fourth Tax Liens were both satisfied and released on May 26, 2017.²⁶

Respondent failed to timely disclose the Federal Tax Liens despite a clear duty to do so. I find that he engaged in the misconduct alleged—he violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.

²⁰ Compl. ¶¶ 16-17.

²¹ Compl. ¶ 18.

²² Compl. ¶ 19.

²³ Compl. ¶ 21.

²⁴ Compl. ¶ 20.

²⁵ Compl. ¶ 21. The record does not contain an explanation for why Respondent disclosed the first two Federal Tax Liens in November 2012 or for why he disclosed the second two Federal Tax Liens in July 2015.

²⁶ Compl. ¶ 22.

c. Statutory Disqualification

Enforcement also alleges in the First Cause of Action that the information that Respondent violated the By-Laws and Rules willfully. Regardless of any sanctions that might be imposed, the Exchange Act automatically imposes statutory disqualification from continued association with a member firm, a consequence upon a finding that certain misconduct was willful.

A person is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act if, among other things, the person has “willfully” made a false or misleading statement with respect to any material fact in his application to be associated with a FINRA member firm—his Form U4—or the person has omitted from the application a material fact that is required to be stated.²⁷ Thus, both willfulness and materiality bear on statutory disqualification.

Misconduct is willful in the context of the securities laws if the person “intentionally commit[ed] the act” that constitutes the violation, regardless of whether he understood that he was violating a particular rule.²⁸ Willful acts are voluntary, in contrast to acts that are inadvertent or coerced. All that is necessary is that the person intentionally commits the act that constitutes the violation.²⁹

In the context of Form U4 disclosures, the SEC has defined materiality in the following way: “[A] fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available.”³⁰ The National Adjudicatory Council (“NAC”) has held that “essentially all of the information that is reportable on the Form U4 may be considered material.”³¹ Unsatisfied liens and judgments in particular are significant because they raise concerns about whether a registered representative can responsibly manage his own financial affairs. Ultimately, they cast

²⁷See 15 U.S.C. § 78c(a)(39)(F) and 15 U.S.C. § 78o(b)(4)(D), which are Sections 3(a)(39)(F) and 15(b)(4)(D) of the Exchange Act. See also *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *14 (Mar. 15, 2016).

²⁸ Misconduct is willful in the context of the securities laws if the person “intentionally commit[ted] the act [that] constitutes the violation,” regardless of whether he understood that he was violating a particular rule. *Mathis v. SEC*, 671 F.3d 210, 215 (2d Cir. 2012). See also *Dep’t of Enforcement v. Riemer*, No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at *13-16 (NAC Oct. 5, 2017), *aff’d*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *13 (Oct. 31, 2018).

²⁹ *McCune*, 2016 SEC LEXIS 1026, at *15, *19-20 & nn.22-23. See also *Riemer*, 2017 FINRA Discip. LEXIS 38, at *13-16; *Dep’t of Enforcement v. Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at *25 & n.16 (June 28, 2018), *appeal docketed*, No. 18-2534 (2d Cir. Aug. 24, 2018).

³⁰ *McCune*, 2016 SEC LEXIS 1026, at *21-22; *Mathis*, 671 F.3d at 219 (There “must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”) (citation omitted).

³¹ *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 27, 2007), *aff’d*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008).

doubt on a person's ability to provide trustworthy financial advice and services to investors who rely on that person to act on their behalf as a securities industry professional.³²

Respondent's misconduct was willful because he "intentionally commit[ted] the act which constitutes the violation."³³ The information he failed to disclose was material because a reasonable investor would have viewed it as raising concerns about Respondent's trustworthiness and ability to provide sound financial advice. He was subject to multiple Federal Tax Liens, the total amount he owed was substantial, and the length of time during which he failed to disclose the Federal Tax Liens, particularly the last two, was also substantial.

Respondent's failure to comply with his duty to disclose such liens within 30 days cannot be viewed as simply a bureaucratic oversight of minor importance. It is critical that a registered person make full and accurate required disclosures to regulators, employers, and investors so that regulators can appropriately evaluate the person's fitness to be in the securities industry; employers can determine whether and how to hire, retain, and supervise the person; and investors can make a reasoned assessment of the person's trustworthiness and the soundness of that person's advice.³⁴

2. False Statements to Member Firm Employer

a. Legal Framework

Enforcement alleges in the Second Cause of Action that Respondent violated FINRA Rule 2010 by twice making false statements to his Firm about the Third and Fourth Tax Liens. Rule 2010 can itself be violated without the violation of another FINRA Rule. It encompasses unethical business conduct of all sorts, even if not the subject of a specific prohibition.³⁵ Rule 2010 applies to the obligation of members and associated persons to provide accurate information to FINRA.³⁶

³² *Tucker*, 2012 SEC LEXIS 3496, at *32-33.

³³ *Elgart*, 2017 SEC LEXIS 3097, at *13 (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)); *see also Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013) (noting, in making findings of willfulness, that respondent's conduct was neither "involuntary nor inadvertent"); *Tucker*, 2012 SEC LEXIS 3496, at *42 (same).

³⁴ The importance of accurate disclosure of a registered representative's serious financial problems on a Form U4 is "inarguable." *Mathis*, 671 F.3d at 220; *Ottimo*, 2018 SEC LEXIS 1588, at *26.

³⁵ *See Heath v. SEC*, 586 F.3d 122, 134 (2d Cir. 2009) (Rule 2010, like its predecessor, is "something of a catch-all" that "preserves power to discipline members for a wide variety of misconduct, including merely unethical behavior."); *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) ("[FINRA]'s disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.").

³⁶ *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *22-23 (Dec. 4, 2015) ("Providing false or misleading information to FINRA constitutes conduct inconsistent with just and equitable

b. Respondent's Misconduct

The Third Tax Lien was sent to Respondent on November 6, 2012, and the Fourth Tax Lien was sent on December 26, 2012. On May 9, 2013, about four to five months later, Respondent attested in writing to his Firm that the information contained in his Form U4 was accurate. At the time he so attested, his Form U4 did not disclose the Third and Fourth Tax Liens. Then, nearly a year later, Respondent attested for a second time in writing to his Firm that his Form U4 was accurate. However, he still had not disclosed on his Form U4 the Third and Fourth Tax Liens. In fact, his Form U4 was not accurate. Both attestations were false, and, since the record supports the conclusion he received the tax liens around the same time they were recorded, Respondent knew his attestations were false. This was unethical conduct in violation of Rule 2010.

3. Failure to Timely Respond to FINRA Rule 8210 Requests

a. Legal Framework

Enforcement charges in the Third Cause of Action that Respondent failed to timely provide information and documents requested pursuant to FINRA Rule 8210. Rule 8210(a) requires a “person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation.” Rule 8210(c) makes clear that the obligation to provide information is mandatory. It provides that “[n]o member or person shall fail to provide information or testimony ... pursuant to this Rule.” Critically, Rule 8210(d) provides that “notice under this Rule shall be deemed received by the ... formerly associated person” if it is mailed or otherwise transmitted to “the last known residential address of the person as reflected in the [CRD].” As discussed above, a violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.³⁷

Rule 8210 is an important investigatory tool that is critical to FINRA’s ability to carry out its regulatory mandate. This is because FINRA lacks subpoena power. Thus, FINRA’s ability to gather information from its members and associated persons is limited to its ability to obtain documents, information, and testimony pursuant to Rule 8210.³⁸ Courts, the SEC, and FINRA have emphasized the key role that Rule 8210 plays in FINRA’s discharge of its regulatory

principles of trade and violates FINRA Rule 2010.”), *petition for review denied*, 663 F. App’x 353 (5th Cir. 2016); *Dep’t of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 (NAC Dec. 18, 2006).

³⁷ Compl. ¶ 32.

³⁸ *E.g.*, *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010), *petition for review denied*, 436 F. App’x 31 (2d Cir. 2011); *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, Exchange Act Release No. 49255, 2004 SEC LEXIS 330 (Feb. 13, 2004).

responsibilities, calling it “indispensable,”³⁹ “essential,”⁴⁰ and “at the heart of the self-regulatory system for the securities industry.”⁴¹

b. Respondent’s Misconduct

On January 5, 2017, FINRA staff sent a request for documents and information pursuant to FINRA Rule 8210 to Respondent at his CRD address by certified mail, return receipt requested, and first-class mail. Under the Rule, this was sufficient for the Rule 8210 request to be deemed received. Respondent failed to respond by the due date, which was January 19, 2017. The staff sent a second Rule 8210 request to Respondent at his CRD address on February 21, 2017. This request also was sent by certified mail, return receipt requested, and first-class mail. Again, Respondent failed to produce the requested documents and information on the due date, which was March 7, 2017.⁴²

On April 5, 2017, Enforcement sent Respondent a Notice of Suspension informing him that he would be suspended from association with any FINRA member on May 1, 2017, if he failed to respond to the Rule 8210 requests by May 1, 2017. The Notice of Suspension was sent to Respondent’s CRD address by certified mail, return receipt requested, and first-class mail.⁴³

On April 26, 2017, Respondent sent a response via email from his personal email address. His response demonstrates that he received actual notice of the Rule 8210 requests, since they were sent to the same address as the Notice of Suspension, Respondent’s CRD address.

On April 27, 2017, Enforcement informed Respondent that his response was insufficient. Enforcement advised Respondent that he had until May 8, 2017, to comply with the Rule 8210 requests.⁴⁴

Finally, on May 11, 2017, Respondent provided a complete response to the Rule 8210 requests made in January and February. His response was several months late, and it came only after he was threatened with suspension.⁴⁵ Accordingly, Respondent failed to timely respond to the staff’s Rule 8210 requests in violation of FINRA Rules 8210 and 2010.

³⁹ *Merrimac Corp. Sec.*, 2017 FINRA Discip. LEXIS 16, at *10-11.

⁴⁰ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008).

⁴¹ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

⁴² Compl. ¶¶ 33-38.

⁴³ Compl. ¶ 39.

⁴⁴ Compl. ¶¶ 41-42.

⁴⁵ Compl. ¶ 42.

4. Failure to Testify Pursuant to FINRA Rule 8210

a. Legal Framework

As discussed above, FINRA Rule 8210(c) mandates that an associated person provide testimony if it is requested pursuant to Rule 8210. As also discussed above, Rule 8210 is critical to FINRA's ability to carry out its regulatory mission, because FINRA has no subpoena power.

b. Respondent's Misconduct

On January 11, 2018, Enforcement sent Respondent its first request pursuant to Rule 8210 for Respondent to appear and provide on-the-record testimony (the "First OTR Request"). It was sent to Respondent's CRD address by certified mail, return receipt requested, and first class mail. It was also sent electronically to Respondent's personal email address. The return receipt for the copy sent by certified mail was returned to Enforcement marked "Return to Sender, Unclaimed, Unable to Forward." The copies sent by first-class mail and email were not returned.⁴⁶

On January 18, 2018, Enforcement sent another copy of the First OTR Request by the same three means. The return receipt for the copy sent by certified mail showed that the document was delivered on January 22, 2018, but the signature on the return receipt is illegible. The copies sent by other means were not returned.⁴⁷

The First OTR Request required Respondent to appear and provide testimony on January 24, 2018. He did not appear.⁴⁸

On March 20, 2018, Enforcement sent Respondent another request for testimony pursuant to FINRA Rule 8210 (the "Second OTR Request"). As before, Enforcement sent the Second OTR Request by three means: certified mail, first-class mail, and email. The hard copies were sent to his CRD address, the electronic copy to his personal email address. The return receipt for the copy sent by certified mail showed that it was delivered on March 26, 2018. The "received by" name states Respondent's name—Hartman—but the signature is illegible. The other copies were not returned to Enforcement.⁴⁹

The Second OTR Request required Respondent to appear and provide testimony on April 4, 2018. He did not appear.⁵⁰

⁴⁶ Compl. ¶¶ 46-47.

⁴⁷ Compl. ¶ 47.

⁴⁸ Compl. ¶ 48.

⁴⁹ Compl. ¶¶ 49-50.

⁵⁰ Compl. ¶ 51.

Respondent's refusal to appear and provide on-the-record testimony violated FINRA Rule 8210 and thereby also violated 2010.

III. Sanctions

A. Article V, Section 2(c) of FINRA By-Laws and FINRA Rules 1122 and 2010: Filing Forms U4 Untimely

For the untimely filing of amendments to a Form U4, FINRA's Sanction Guidelines ("Guidelines") recommend that an individual be fined between \$2,500 and \$37,000. Where aggravating factors are present, the Guidelines suggest suspending the individual in any or all capacities for ten business days to six months. If aggravating factors predominate, a longer suspension for up to two years may be appropriate.⁵¹

The Guidelines specifically identify a number of Principal Considerations that should be examined in determining the sanctions for this kind of violation. They include the nature and significance of the information not disclosed; the duration of the delinquency; and whether the lien not timely disclosed has been satisfied.⁵² In this case, as discussed above, the information not disclosed was material, which is an aggravating factor. The duration of the delinquency was only a few months with respect to the first two Federal Tax Liens, but the duration was long—more than two years—with respect to the last two Federal Tax Liens. The longer period of delinquency is an aggravating factor. The record shows that all of the Federal Tax Liens have now been satisfied.

Here, it would be sufficiently remedial to fine Respondent \$5,000 and suspend him for four months. In light of the bar imposed for another violation, however, these sanctions are not imposed.

B. FINRA Rule 2010: False Statements to the Firm

Twice Respondent made false statements to his employer regarding his Form U4. There is no Guideline that specifically addresses making false statements to an employer. In lieu of such specific Guidelines, I consider the nature of the misconduct and the Principal Considerations applicable to sanctions in all cases.⁵³ I also consider as analogous the Guidelines' recommendations for recordkeeping violations and falsification of records. The recommendations have been applied in cases such as this one because a respondent's failure to disclose liens, judgments, and bankruptcy filings causes his or her firm to maintain inaccurate books and records.⁵⁴

⁵¹ Guidelines at 71 (2018), <http://www.finra.org/Industry/Sanction-Guidelines>.

⁵² *Id.*

⁵³ *Dep't of Enforcement v. Langweiler*, No. 2011029549201, 2017 FINRA Discip. LEXIS 13, at *46 & n.110 (OHO Mar. 17, 2017).

⁵⁴ *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 at *25 (Oct. 31, 2018).

For recordkeeping violations, the Guidelines recommend a fine of \$1,000 to \$15,000 and a suspension of ten business days to three months.⁵⁵ Where aggravating factors predominate, the Guidelines recommend a fine of \$10,000 to \$146,000 and a suspension of up to two years or a bar.⁵⁶ For falsification of records, the Guidelines recommend a fine of \$5,000 to \$146,000 and a suspension of up to two years.⁵⁷ In egregious cases, the Guidelines recommend consideration of a bar.⁵⁸

This case involves serious misconduct. “By supplying false information to his Firm, Respondent concealed his failure to comply with regulatory requirements and subverted the ability of the Firm to perform oversight and protect the public interest.”⁵⁹

It is aggravating that Respondent has been in the securities industry a long time and should have been aware of his responsibility to be truthful and accurate when attesting to his Firm that his Form U4 was accurate. The regulatory system depends on the truth and completeness of information provided by regulated persons to their firms, which are responsible for oversight. Furthermore, such false statements, when uncovered, corrode public confidence in the markets.⁶⁰ It is further aggravating that this misconduct was intentional and not inadvertent.⁶¹

For this misconduct, I find it appropriately remedial to fine Respondent \$10,000 and suspend him for one year. In light of the bar imposed for another violation, however, these sanctions are not imposed.

C. FINRA Rules 8210 and 2010: Failure to Timely Provide Documents and Information

The Guidelines provide specific recommendations for an untimely response to a Rule 8210 request. They suggest a fine of \$2,500 to \$37,000 and a suspension in any or all capacities for up to two years. The Guidelines focus on three specific Principal Considerations: (i) the importance of the information requested as viewed from FINRA’s perspective; (ii) the number of requests made and the degree of regulatory pressure required to obtain a response; and (iii) the length of time to respond.⁶²

As discussed above, Respondent failed to respond to two Rule 8210 requests for documents and information, one request in early January 2017 and another in late February 2017.

⁵⁵ Guidelines at 29.

⁵⁶ *Id.*

⁵⁷ *Id.* at 37.

⁵⁸ *Id.*

⁵⁹ *Id.* See also Guidelines at 6, Principal Consideration 10.

⁶⁰ Part of FINRA’s regulatory mission is to build public confidence in the markets. Guidelines at 1, Overview.

⁶¹ Guidelines at 7, Principal Consideration 13.

⁶² Guidelines at 33.

It was only after receiving a Notice of Suspension, to take effect on May 1, 2017, that Respondent contacted Enforcement staff. Enforcement viewed his response as insufficient but gave him an extension of time to comply. Finally, on May 11, 2017, approximately four months after the initial Rule 8210 request, Respondent made a complete response.

The main aggravating factor is that Respondent failed to respond at all until a high degree of regulatory pressure was exerted, in the form of the Notice of Suspension. The four-month delay in obtaining a complete response is a moderately aggravating factor.

For this misconduct, I find it appropriately remedial to fine Respondent \$5,000 and suspend him four months. In light of the bar imposed for another violation, however, these sanctions are not imposed.

D. FINRA Rules 8210 and 2010: Failure to Comply with Two OTR Requests

The Guidelines recommend that, if an individual does not respond in any manner to a Rule 8210 request, a bar in all capacities should be standard.⁶³ The reason a bar is standard for this type of violation is the importance of Rule 8210 to FINRA's ability to fulfill its mission. Rule 8210 enables FINRA to conduct meaningful examinations and investigations in order to detect misconduct and protect the public interest. FINRA relies heavily on Rule 8210, and the SEC has "repeatedly stressed the importance of cooperation in NASD investigations ... [and] emphasized that the failure to provide information undermines NASD's ability to carry out its self-regulatory functions." A failure to provide information requested pursuant to Rule 8210 is regarded as "a serious violation because it subverts [FINRA's] ability to execute its regulatory responsibilities."⁶⁴ FINRA is therefore entitled to the "full and prompt cooperation" of all persons subject to its jurisdiction when investigative requests are made by its staff.⁶⁵

By failing twice to appear and give testimony when asked pursuant to Rule 8210, Respondent has essentially refused to cooperate with FINRA in the conduct of its investigation. There is nothing in the record that would suggest that the standard sanction should not apply. For this misconduct, Respondent is barred from associating with any FINRA member in any capacity.

IV. Order

Enforcement's Default Motion is granted and the allegations of the Complaint are deemed to be true.

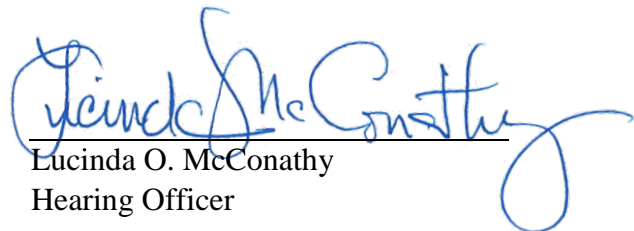
⁶³ Guidelines at 33.

⁶⁴ *Ricupero*, 2010 SEC LEXIS 2988, at *20-21 ("Without subpoena power, [FINRA] must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate.") *petition for review denied*, 436 F. App'x 31 (2d Cir. 2011).

⁶⁵ *Michael David Borth*, Exchange Act Release No. 31602, 1992 SEC LEXIS 3248, at *7 (Dec. 16, 1992).

- For violating Article V, Section 2(c) of FINRA By-Laws and FINRA Rules 1122 and 2010 by filing Forms U4 untimely, Respondent would be fined \$5,000 and suspended four months. In light of the bar imposed for another violation, however, these sanctions are not imposed.
- For violating FINRA Rule 2010 by making false statements to the Firm regarding the accuracy of his Form U4, Respondent would be fined \$10,000 and suspended for one year. In light of the bar imposed for another violation, however, these sanctions are not imposed.
- For violating FINRA Rules 8210 and 2010 by failing to timely provide documents and information, Respondent would be fined \$5,000 and suspended four months. In light of the bar imposed for another violation, however, these sanctions are not imposed.
- For violating FINRA Rules 8210 and 2010 by failing to appear and provide testimony in response to two OTR requests, Respondent is barred from associating with any member firm in any capacity.

The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy
Hearing Officer

Copies to:

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