

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD A. MCCOLLAM
(CRD No. 1419048),

Respondent.

Disciplinary Proceeding
No. 2012035284301

Hearing Officer—MJD

HEARING PANEL DECISION

May 17, 2017

For willfully failing to disclose two customer arbitrations and six customer complaints on his Form U4, Respondent is suspended from associating with any FINRA member firm in any capacity for nine months and fined \$10,000. His willful violation subjects him to statutory disqualification. Respondent is assessed the costs of the hearing.

Appearances

For the Complainant: Jennifer M. Sepic, Esq., Douglas M. Ramsey, Esq., and Christopher Perrin, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Paul W. Thomas, Esq., and Neda Ataie, Esq., Thomas Law Group, P.C.

I. Introduction

The Department of Enforcement charges Respondent Richard A. McCollam with willfully failing to disclose two customer arbitrations and seven customer complaints on a Uniform Application for Securities Industry Registration or Transfer (Form U4) he filed on January 22, 2014.

McCollam concedes that he knew of the two arbitrations and three of the seven customer complaints before filing the Form U4. However, he claims that his failure to make the disclosures was not willful because he delegated the responsibility to update his Form U4 to others who failed to make the disclosures.

The Hearing Panel finds that McCollam willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to disclose two arbitrations and six of the seven customer complaints on his Form U4. The Panel dismisses the allegations as to

one of the seven customer complaints because Enforcement failed to prove by a preponderance of the evidence that McCollam knew about it before he filed his Form U4.

The Hearing Panel suspends McCollam from associating with any FINRA member firm for nine months in any capacity and imposes a \$10,000 fine. Because he acted willfully when he failed to disclose the arbitrations and complaints on his Form U4, McCollam is also subject to statutory disqualification.¹

II. Findings of Fact

A. Respondent's Background

McCollam first associated with a FINRA member firm in 1985. He was registered at various times as a General Securities Principal, General Securities Representative, Direct Participation Programs Representative, and an Investment Company and Variable Contracts Products Representative. From 1994 to September 2010, McCollam was registered with Royal Alliance Associates, Inc. The arbitrations and complaints that McCollam failed to disclose arose from McCollam's dealings with customers while registered with Royal Alliance. Royal Alliance terminated McCollam for cause alleging that he failed to get firm approval for sales of variable annuities to customers.² After leaving Royal Alliance, McCollam was registered with SII Investments, Inc., from August 2010 to March 2012, and with National Planning Corporation from April 2012 to January 25, 2013.³

According to McCollam, National Planning discharged him in January 2013 after learning of customer complaints.⁴ He said his "U4 CRD [Central Registration Depository] got marked up," which made it difficult for him to register with another firm, and concluded that the "only way" he could "save [his] client base was to open up a broker-dealer."⁵

McCollam formed Ramcon Financial LLC ("Ramcon") as the entity to serve as his broker-dealer. In April 2013, McCollam retained a company that specialized in preparing FINRA broker-dealer membership applications to file an application with FINRA to register Ramcon as

¹ A hearing was held in Los Angeles, California, on November 30 and December 1, 2016.

² On the Uniform Termination Notice for Securities Industry Registration (Form U5) filed September 2, 2010, terminating McCollam's registrations, Royal Alliance stated that McCollam was "discharged" on August 26, 2010, for "failure to follow firm policy regarding the pre-approval of variable annuities." Complainant's Exhibit ("CX-") 1, at 4; CX-48, at 2; Respondent's Exhibit ("RX-") 5, at 25. McCollam claims he resigned voluntarily as soon as the firm told him it was going to terminate him and the firm "falsified" his CRD records to reflect he was discharged. Hearing Transcript ("Tr.") 352, 354-56.

³ Complaint ("Compl.") ¶ 4; Answer ("Ans.") ¶ 4; CX-1, at 3-5; CX-2, at 3-5. Since 1995, McCollam also has operated an insurance business called Retirement Strategies, which he operated from the branch office located at his residence. Tr. 47; CX-1, at 7; CX-4, at 9; CX-47, at 8.

⁴ Tr. 46.

⁵ Tr. 351.

a broker-dealer.⁶ As part of its services, the company also agreed to prepare a Form U4 for McCollam.⁷ In the application to register Ramcon that was filed in January 2014, McCollam stated that he intended to serve as Ramcon's Chief Executive Officer, Chief Compliance Officer, Anti-Money Laundering Compliance Officer, and General Securities Principal. He anticipated that he would be the only registered representative at Ramcon and the only person responsible for managing the operations of, and generating revenues for, the new firm.⁸

On October 3, 2014, FINRA's New Member Application group formally denied Ramcon's application for registration on the ground that it failed to meet the standards for membership.⁹ In the decision rejecting the registration application, FINRA noted that, since 2009, 23 customers had filed complaints against McCollam alleging improper sales of variable annuities and real estate investment trusts (REITs) while he was registered with Royal Alliance. Seven of the complaints predated the filing of Ramcon's registration application in January 2014, and McCollam failed to disclose them, according to the Membership Application Group.¹⁰

As part of the broker-dealer application, the company handling Ramcon's membership application filed a Form U4 on McCollam's behalf. McCollam knew that a Form U4 had to be filed with Ramcon's membership application.¹¹ It is this Form U4—filed on January 22, 2014—that Enforcement alleges failed to disclose the customer arbitrations and complaints.¹²

B. Jurisdiction

Although McCollam is no longer associated with a member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (i) Enforcement filed the Complaint on December 10, 2015, which is within two years after McCollam filed his Form U4 on January 22, 2014, and (ii) the Complaint charges him with misconduct in connection with his filing of the Form U4 on January 22, 2014.¹³

C. Origin of the Matter

FINRA began to investigate McCollam in approximately November 2013, after receiving copies of his customers' complaints from Royal Alliance.¹⁴ This led FINRA staff to also review

⁶ McCollam owned 100 percent of Ramcon through another entity that he also wholly owned. CX-48, at 1.

⁷ RX-1.

⁸ CX-48, at 1-2, 7.

⁹ CX-48. McCollam appealed the decision. RX-10. On May 4, 2015, the National Adjudicatory Council ("NAC") affirmed the decision to deny Ramcon's membership application. CX-49. On August 7, 2015, McCollam appealed FINRA's decision to the U.S. Securities and Exchange Commission ("SEC"). RX-17.

¹⁰ CX-48, at 2-3; CX-49, at 6-7.

¹¹ Tr. 55, 369.

¹² CX-4.

¹³ Compl. ¶ 6; Ans. ¶ 6.

¹⁴ CX-23; CX-42; CX-43, at 10-11; CX-44; Tr. 256-57.

McCollam's January 22, 2014 Form U4, which appeared to be missing disclosures of customer arbitrations and complaints.¹⁵

D. The Two Customer Arbitrations and Seven Customer Complaints

The Complaint alleges that McCollam failed to disclose two customer arbitration claims and seven written customer complaints on the amended Form U4 filed on January 22, 2014.

The nine customers made substantially similar allegations against McCollam and another registered representative, Kathleen Tarr ("Tarr"), whom he supervised at Royal Alliance.¹⁶ All of the customers were either retired AT&T employees or employees nearing retirement from AT&T. They each alleged that McCollam and Tarr solicited them to take lump sum distributions from their Individual Retirement Accounts ("IRA") and 401(k) plans and invest the funds in high-commission variable annuities and REITs. The investments in variable annuities and REITs constituted a considerable portion of the customers' retirement funds.¹⁷ The nine customers alleged damages between \$80,000 and \$700,000 and total losses exceeding \$2.4 million caused by McCollam's unsuitable recommendations.

McCollam disputed the merits of the customer complaints. He claimed that his former employers solicited customers to file complaints and engaged in a defamation campaign against him.¹⁸

1. Customer MP's Arbitration Claim

On July 30, 2013, customer MP filed an arbitration claim with FINRA Dispute Resolution naming McCollam and other persons and member firms as respondents.¹⁹ MP had retired from AT&T when, she alleged, McCollam recommended she take a lump sum payment from her AT&T retirement accounts and reinvest her money in variable annuities and REITs. She alleged losses of at least \$200,000. In addition to making unsuitable recommendations, MP claimed that McCollam made material omissions of fact and misrepresentations, breached his

¹⁵ Tr. 239, 257.

¹⁶ Tr. 358. McCollam described Tarr as the "point person" who met with most of the customers, while he "did the behind-the-scenes stuff as a general rule," although he "occasionally" met with customers. McCollam paid Tarr 10 percent of the commissions he earned. Tr. 366-71, 375; CX-48, at 4. After they both left Royal Alliance in 2010, Tarr worked with McCollam at SII Investments from 2010 to 2012. Tr. 352; CX-16, at 3; CX-32, at 3.

¹⁷ McCollam had approximately 500 customers at Royal Alliance, 90 percent of whom invested in variable annuities and REITs, according to FINRA's decision rejecting Ramcon's membership application. According to the NAC decision affirming the denial of Ramcon's application, McCollam did not receive pre-approval from Royal Alliance before submitting required variable annuity paperwork to product sponsor companies. After the firm required McCollam to get firm consent first, Royal Alliance did not approve any variable annuity sales because it found them unsuitable or an over-concentration in the investment for his customers. CX-49, at 4, 6; Tr. 360-62.

¹⁸ Tr. 48, 71, 267, 302-03, 352-53, 361; RX-17, at 3.

¹⁹ CX-16. MP's claim also named as respondents McCollam's former employers Royal Alliance and SII Investments, Tarr, and another broker who allegedly participated in making unsuitable recommendations, together with two of that broker's former employer firms.

fiduciary duty to her, engaged in unauthorized trading, and committed financial elder abuse.²⁰ On October 15, 2013, Royal Alliance amended McCollam's Form U5 to report the MP arbitration claim.²¹

McCollam learned that MP had filed an arbitration claim before he filed the Form U4.²² On November 1, 2013, McCollam filed an Answer to her claim.²³ In December 2013, McCollam responded to MP's discovery requests. On January 14, 2014, through his counsel, McCollam served MP with his discovery requests. On January 22, 2014 (the same day he filed his Form U4), McCollam's counsel wrote to MP's attorney to follow up on McCollam's discovery requests.²⁴

McCollam stated that the company he retained to file Ramcon's membership application "inadvertently left out" the MP arbitration when it submitted his Form U4 on January 22, 2014.²⁵ On April 6, 2015, McCollam disclosed the MP arbitration when he amended his Form U4.²⁶ At the hearing, McCollam admitted that he should have disclosed MP's arbitration claim on his January 22, 2014 Form U4.²⁷

2. Customer SL's Arbitration Claim

On May 23, 2013, customer SL filed an arbitration claim with FINRA Dispute Resolution naming Royal Alliance as the sole respondent. The claim alleged that the firm was responsible for McCollam and Tarr's unsuitable recommendations. On August 20, 2013, Royal Alliance filed an Answer to the claim.²⁸ On August 1, 2013, Royal Alliance amended McCollam's Form U5 to report SL's arbitration.²⁹

²⁰ CX-16.

²¹ CX-20, at 6-9. A month earlier, on September 17, 2013, SII Investments amended McCollam's Form U5 to report MP's arbitration. CX-19, at 6-9.

²² Tr. 69-70, 211, 222.

²³ CX-21. On November 6, 2013, McCollam also signed a Submission Agreement in which he consented to abide by any award rendered in the MP arbitration. CX-22, at 1-2; Tr. 69.

²⁴ CX-26; CX-27; CX-30; Tr. 227-28. McCollam continued to defend against MP's claim after he filed his Form U4. In June 2014, for example, his attorney filed a motion to compel discovery. CX-33.

²⁵ CX-51, at 3.

²⁶ CX-37, at 15-18. According to McCollam's amended Form U4, Royal Alliance and SII Investments settled MP's claim for \$175,000 in September 2014. CX-37, at 17-18. McCollam amended his Form U4 to disclose the MP and another arbitration a month after receiving a Wells letter dated March 5, 2015, in which FINRA told McCollam that it had made a preliminary determination to recommend disciplinary action for failing to make appropriate disclosures on his Form U4. CX-34. On April 2, 2015, McCollam amended his Form U4 to disclose the Wells letter. CX-35.

²⁷ Tr. 71.

²⁸ CX-14; CX-18.

²⁹ CX-17, at 6-10.

SL alleged \$325,000 in damages resulting from McCollam and Tarr's unsuitable recommendations. She claimed that After she had recently accepted an early retirement package from AT&T, McCollam and Tarr recommended that she move funds from her AT&T-sponsored retirement account and invest the proceeds in variable annuities and a REIT.³⁰

McCollam testified that he knew of SL's arbitration before he filed the Form U4 on January 22, 2014.³¹ He also admits that he was required to disclose the arbitration when he filed the Form U4, but failed to do so.³² He did not disclose SL's arbitration until he amended his Form U4 on April 6, 2015 (when he also disclosed MP's arbitration).³³

The Hearing Panel accordingly finds that McCollam knew about the SL arbitration before January 22, 2014, and failed to disclose it on his Form U4.

3. The Seven Customer Complaints

Seven customers filed written complaints with Royal Alliance during 2013. Five customers (RH, MG, ML, MB, and RL) complained to the firm in January 2013.³⁴ On January 24, 2013, the firm amended McCollam's Form U5 to report the five customers' complaints.³⁵

In February 2013, customer GS complained to Royal Alliance. On March 23, 2013, the firm amended McCollam's Form U5 to report GS's complaint.³⁶

In December 2013, the last customer, SB, complained to the firm. On January 16, 2014, Royal Alliance filed another amended Form U5 to report SB's complaint against McCollam.³⁷

McCollam never amended his Form U4 to disclose any of the seven customer complaints.

³⁰ CX-4, at 1-3.

³¹ Tr. 98-101, 212, 222, 265. McCollam testified that he provided Royal Alliance's attorneys with some of the information contained in the firm's Answer. Tr. 221.

³² Compl. ¶¶ 23, 26-27; Ans. ¶¶ 23, 26-27; CX-14; Tr. 96-97.

³³ Compl. ¶ 30; Ans. ¶ 30; CX-37, at 19-22. In the amended Form U4, McCollam states that Royal Alliance settled the matter with SL for \$30,000 in May 2014. CX-37, at 21-22.

³⁴ CX-5; CX-6; CX-7; CX-8; CX-9.

³⁵ CX-10, at 6-10 (ML), 11-14, (RL), 15-19 (MB), 20-23 (RH), 24-27 (MG). On February 5, 2013, National Planning Corporation also filed an amended Form U5 to report the same five customers' complaints against McCollam. CX-11, at 6-28.

³⁶ CX-12; CX-13, at 6-9.

³⁷ CX-25; CX-28, at 11-13. SB filed a complaint with Royal Alliance in July 2013 that mentioned Tarr but not McCollam. CX-15. SB supplemented her complaint in December 2013 and mentioned McCollam for the first time. This led Royal Alliance to amend McCollam's Form U5 on January 16, 2014, to disclose SB's complaint. CX-44, at 1.

a. Customers RL, RH, and GS

At the hearing, McCollam conceded that he knew of three of the seven complaints—from customers RL, RH, and GS—before January 22, 2014.³⁸ On November 13, 2013, as part of its investigation, FINRA wrote to McCollam asking for information about RL, RH, and GS (and three other customers). FINRA attached summaries of RH and RL's complaints to the letter.³⁹ On December 13, 2013, through an attorney, McCollam responded to FINRA's request with a letter providing details of his and Tarr's dealings with customers RL, RH, and GS.⁴⁰

Customer RL complained to Royal Alliance in January 2013. She was 58 years old when she retired from AT&T in 2008. RL stated that she started working with McCollam and Tarr on an investment strategy before she retired. RL had \$440,000 to invest that she had withdrawn from her AT&T 401(k). Based on McCollam's recommendations, RL placed \$280,000 in variable annuities and \$120,000 in a REIT. She claimed that she did not know the investments were annuities or a REIT and was not aware that she would incur additional expenses without the benefit of tax protection. RL claimed she lost \$145,000.⁴¹

RH complained to Royal Alliance in January 2013. RH claimed that, soon after retiring from AT&T in 2004, on McCollam's recommendation, he invested \$269,000 from his AT&T 401(k) in four variable annuities and a REIT. This money constituted 75 percent of RH's assets. RH claimed damages of \$175,000 resulting from McCollam's unsuitable recommendations.⁴²

GS complained to Royal Alliance in March 2013. She was 50 years old when she retired from AT&T. She claimed that she invested \$400,000 from a lump sum distribution from her AT&T 401(k) in four variable annuities and a REIT on McCollam's recommendations. GS claimed losses of \$212,500.⁴³

b. Customers MG, ML, and MB

Customers MG, ML, and MB filed written complaints with Royal Alliance in January 2013.

MG claimed she lost \$700,000 after investing \$800,000 (which she said was about 86 percent of her assets) in variable annuities after retiring from AT&T in 2001, based on McCollam and Tarr's unsuitable recommendations.⁴⁴

³⁸ Tr. 113, 211-12, 269.

³⁹ CX-23, at 1, 7-10; Tr. 250-52.

⁴⁰ CX-24, at 5-10, 13-21.

⁴¹ CX-9.

⁴² CX-5.

⁴³ CX-12.

⁴⁴ CX-6.

ML retired from AT&T in 2003. She claimed losses of \$215,000 after investing \$390,000 in variable annuities and a REIT in reliance on McCollam and Tarr's unsuitable recommendations.⁴⁵

MB retired from AT&T in 2008. She invested about \$320,000 in variable annuities and another \$300,000 in a REIT, which together constituted about 87 percent of her retirement assets. She claimed she lost \$365,000 from these investments, which she made on McCollam and Tarr's recommendations.⁴⁶

In contrast to the complaints from customers RL, RH, and GS, McCollam claims he was not aware of complaints from MG, ML, and MB before the Form U4 was filed on January 22, 2014.⁴⁷

One way a registered representative would learn that a customer had complained to a former employer is when a former employer amends a Form U5 to disclose it.⁴⁸ Firms are obligated to send a copy of an amended Form U5 to a person whose registration has been terminated.⁴⁹ Royal Alliance amended McCollam's Form U5 on January 24, 2013, to report MG, ML, and MB's complaints.⁵⁰ Royal Alliance, however, was unable to show that it had sent McCollam a copy of the Form U5. In June 2016, while this matter was pending, Enforcement asked Royal Alliance to produce documents evidencing that the firm had provided McCollam with notice that it had filed Forms U5 disclosing the nine customer arbitrations and complaints.⁵¹ Royal Alliance responded that it could not locate any such evidence.⁵² The Hearing Panel accordingly finds that there is insufficient evidence that McCollam received copies of any Forms U5 from Royal Alliance, which would have provided him notice that ML, MB, and MG had complained about him.⁵³

⁴⁵ CX-7.

⁴⁶ CX-8.

⁴⁷ Tr. 157, 211-13, 368.

⁴⁸ There is no evidence that McCollam received any of the complaint letters customers sent to Royal Alliance, and McCollam denies seeing any before January 22, 2014. Tr. 124.

⁴⁹ Regulatory Notice 10-39, 2010 FINRA LEXIS 74, at *2 (Sept. 2010). *See also* RX-34, at 1.

⁵⁰ Enf. Post-Hearing Br., at 9. CX-10. Royal Alliance also reported complaints it received from RH and RL on the January 24, 2013, amended Form U5.

⁵¹ CX-38.

⁵² CX-39; Tr. 244-49. McCollam testified that he did not see any of the customers' complaint letters until his on-the-record investigative interview on March 13, 2014. Tr. 124.

⁵³ National Planning amended McCollam's Form U5 on February 5, 2013, to disclose the complaints from ML, MB, and MG (as well as RH and RL). CX-11. Enforcement argues that National Planning's amended Form U5 gave McCollam notice of ML, MB, and MG's complaints. Enf. Post-Hearing Br., at 9. However, without documentation from National Planning evidencing that it sent McCollam the February 5, 2013 Form U5 amendment, the Hearing Panel declines to find that he received it.

Although McCollam did not receive direct notice that MG, ML, and MB had complained, their complaints were disclosed on McCollam's BrokerCheck report. McCollam testified that he sent a copy of his BrokerCheck report to the company handling Ramcon's application as early as April 2013 (after Royal Alliance had disclosed the complaints on his Form U5 on January 24, 2013).⁵⁴ Even though McCollam did not know the identities of the complaining customers, the report provided the customers' general allegations and the amount of damages sought.

McCollam also reviewed an updated version of his BrokerCheck report before filing his Form U4 on January 22, 2014. On January 15, 2014, the company handling Ramcon's application emailed McCollam a current version of his BrokerCheck report. The report contained 13 disclosures but did not identify the customers by name. The company asked McCollam to prepare a "narrative" addressing each of the 13 complaints in the BrokerCheck report,⁵⁵ and McCollam prepared the customer narratives using notes about customers he maintained electronically.⁵⁶

On February 14, 2014, as part of its review of Ramcon's membership application, FINRA asked the company handling the application for a description of the facts and circumstances surrounding the customer complaints that were in McCollam's CRD records as a result of the amendments to his Form U5.⁵⁷ On April 14, 2014, using the customer narratives provided by McCollam, the company responded by providing descriptions of McCollam and Tarr's dealings with SL, MP, and five of the seven customers, including MG, ML, and MB.⁵⁸

c. Customer SB

SB was the last customer to complain in writing about McCollam. She wrote to Royal Alliance in December 2013.⁵⁹ On January 16, 2014, the firm amended McCollam's Form U5 to disclose SB's complaint, six days before the Form U4 was filed. The BrokerCheck report dated January 15, 2014, therefore, did not contain a disclosure about SB's complaint. McCollam testified that he learned of SB's complaint from the attorney defending him in one of the arbitrations in February 2014.⁶⁰

⁵⁴ Tr. 72.

⁵⁵ CX-54, at 6-31; RX-5. The BrokerCheck report the company sent McCollam was dated January 15, 2014. Although not identified by name, MG, ML, and MB's complaints were recorded in the BrokerCheck report as disclosures numbered 4, 6, and 8.

⁵⁶ Tr. 209-10.

⁵⁷ CX-31, at 4; Tr. 188-90. FINRA's letter did not identify the customers.

⁵⁸ CX-32. Ramcon and McCollam did not provide descriptions of McCollam and Tarr's dealings with customers GS and SB. Tr. 198-201.

⁵⁹ CX-25. SB's letter was dated December 18, 2013.

⁶⁰ Tr. 157, 368-69. During his March 13, 2014 on-the-record interview, McCollam testified that he was aware that SB had complained but did not know what about. CX-47, at 17.

Enforcement argues that because Royal Alliance amended McCollam's Form U5 on January 16, 2014, and the company handling Ramcon's application had access to CRD, he had constructive knowledge of SB's complaint when he filed his Form U4 on January 22, 2014.⁶¹

The Hearing Panel disagrees. Because SB's complaint was not on the January 15, 2014, BrokerCheck report and there is no documentary evidence in the record showing that McCollam had actual knowledge of it, we decline to find that McCollam should have disclosed it on the Form U4 he filed on January 22, 2014.

III. Discussion

A. McCollam Failed to Disclose the Arbitrations and Complaints on Form U4

The sole cause of the Complaint charges McCollam with violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to disclose two customer arbitrations and seven complaints on the Form U4 filed on January 22, 2014.

Article V, Section 2 of FINRA's By-Laws requires that associated persons applying for registration with FINRA provide "such . . . reasonable information with respect to the applicant as [FINRA] may require" and further states that such applications "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." To implement this provision, FINRA Rule 1122 provides that no member or associated person "shall file with FINRA information 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." This provision is intended to ensure that the Forms U4 of registered persons contain accurate, up-to-date information so that regulators, employers, and members of the public "have all material, current information about the securities professional with whom they are dealing."⁶² Therefore, filing a false or incomplete Form U4, or failing to timely amend a Form U4, violates FINRA Rule 1122.⁶³ Violations of FINRA Rule 1122 also constitute violations of FINRA Rule 2010.⁶⁴

McCollam failed to comply with his obligation to disclose material information on his Form U4. "Every person submitting a Form U4 has the obligation to ensure that the information

⁶¹ Enf. Post-Hearing Br., at 9-10.

⁶² *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *18 (Oct. 20, 2011).

⁶³ See, e.g., *Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *16-17 (NAC Dec. 12, 2008), *aff'd*, *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff'd sub nom. Troszak v. SEC*, No. 15-3729 (6th Cir. June 29, 2016); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *36-37 (Nov. 9, 2012).

⁶⁴ *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *17 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 79913, 2015 SEC LEXIS 1867 (May 8, 2015), *aff'd sub nom. Troszak v. SEC*, No. 15-3729 (6th Cir. June 29, 2016); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *36-37 (Nov. 9, 2012).

provided on the form is true and accurate.”⁶⁵ FINRA uses a Form U4 “to screen applicants and monitor their fitness for registration within the securities industry.”⁶⁶ FINRA “cannot investigate the veracity of every detail in each document filed with it, [and] must depend on its members to report to it accurately and clearly in a manner that is not misleading.”⁶⁷ “[T]he candor and forthrightness of the individuals making these Forms U4 is critical to the effectiveness of this screening process.”⁶⁸

1. The Two Arbitrations

The Complaint charges McCollam with failing to disclose MP’s arbitration by failing to answer “yes” to Question 14I(1)(a), which asked:

“Have you ever been named as a respondent/defendant in an *investment-related*, consumer initiated arbitration or civil action which alleged that you were *involved* in one or more *sales practice violations*, and which: (a) is still pending, ...” (Italics in original.)⁶⁹

McCollam admitted that he should have answered “yes” to Question 14I(a)(1) to disclose the MP arbitration on his January 22, 2014 Form U4.⁷⁰ McCollam was named as a respondent, the matter was still pending when he filed the Form U4, and MP alleged that he made unsuitable recommendations, among other allegations.

McCollam is charged with failing to disclose SL’s arbitration claim by not truthfully answering two questions on his January 22, 2014 Form U4 amendment.⁷¹ Question 14I(5)(a) asked, with respect to arbitration claims filed on or after May 18, 2009:

⁶⁵ Neaton, 2011 SEC LEXIS 3719, at *16.

⁶⁶ McCune, 2016 SEC LEXIS 1026, at *10.

⁶⁷ Robert F. Kauffman, Exchange Act Release No. 33219, 51 S.E.C. 838, 839 (Nov. 18, 1993).

⁶⁸ Dep’t of Enforcement v. Kraemer, 2009 FINRA Discip. LEXIS 39, at 13 (NAC Dec. 18, 2009) (citing Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996)).

⁶⁹ In the explanation of terms in the instructions to Form U4, a matter is “investment related” if it “[p]ertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).” “Involved,” according to the explanation of terms, “[m]eans doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing to supervise another in doing an act.” A “sales practice violation” is defined as including “any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any self-regulatory organization; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice.” The explanation of terms is available at <https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf>.

⁷⁰ Tr. 65, 71.

⁷¹ Compl. ¶¶ 21-23.

Within the past twenty four (24) months have you been the subject of an *investment-related*, consumer-initiated arbitration claim or civil litigation not otherwise reported under questions 14I(4) above, which:

(a) alleged that you were involved in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the arbitration claim or civil litigation, must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000). (Italics in original.)

McCollam admitted he should have answered “yes” to this question.⁷² A “yes” answer was required to Question 14I(5)(a) because the SL arbitration was an investment-related, consumer-initiated arbitration claim filed after May 18, 2009 (and within the previous 24 months) that alleged \$325,000 in damages and because McCollam, even though he is not named as a respondent, is referred to in the statement of claim as one of the persons responsible for making the allegedly unsuitable recommendations.⁷³

The Complaint also charges McCollam with failing to disclose the SL arbitration in response to Question 14I(3)(a), which asked:⁷⁴

Within the past twenty four (24) months have you been the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under questions 14I(2) above, which:

(a) alleged that you were *involved* in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), ...?” (Italics in original.)

McCollam checked “yes” in response to Question 14I(3)(a) but it was in response to a 2009 customer arbitration claim that he had already disclosed.⁷⁵ McCollam admitted he should have disclosed SL’s arbitration in response to Question 14I(3)(a).⁷⁶

⁷² Tr. 96-97.

⁷³ The instructions to answering the disclosure questions in Form U4 provide that Question 14I(5) should be answered “yes” even when the person was not named as a respondent or defendant if the claim “specifically mentions the individual by name and alleges the individual was involved in one or more sales practice violations.” CX-3, at 11. See also Form U4 and U5 Interpretive Questions and Answer, available at <https://www.finra.org/sites/default/files/Interpretive-Guidance-final-03.05.15.pdf>.

⁷⁴ Compl. ¶¶ 24-27.

⁷⁵ CX-4, at 11, 16-17.

⁷⁶ Tr. 95-96.

2. The Customer Complaints

The Complaint charges McCollam with failing to disclose seven customer complaints on his Form U4 in response to Question 14I(3)(a). Each of the six written customer complaints was investment-related, was filed within the prior 24 months, alleged damages exceeding \$5,000, and claimed that McCollam was involved in sales practice violations.

McCollam admitted that he knew RH, RL, and GS had complained during 2013.⁷⁷ He had notice of additional complaints and therefore was aware that more reportable events existed. When National Planning discharged McCollam on January 25, 2013, it told him the reason was the number of customer complaints he received. McCollam also reviewed his BrokerCheck report as early as April 2013, and it disclosed that additional customers—including MB, ML, and MG—had already filed complaints. The Hearing Panel finds that, by January 22, 2014, McCollam knew from his BrokerCheck report that about a dozen customers had filed complaints, which placed him on notice that other persons besides SL, MP, RH, RL, and GS had complained. It was incumbent on McCollam to follow up with his former employers to investigate the complaints.⁷⁸ At the hearing, McCollam admitted he never contacted Royal Alliance or National Planning to inquire about the complaints.⁷⁹

The plain language of each of the three questions on the Form U4 required disclosure of the arbitrations and complaints. The Hearing Panel accordingly finds that McCollam failed to disclose the MP and SL arbitrations and the six customer complaints from RL, RH, GS, MG, ML, and MB on the Form U4 filed on January 22, 2014.

Enforcement failed to prove by a preponderance of the evidence that McCollam was obligated to disclose SB's complaint. Because there is no documentary evidence that McCollam knew of SB's complaint when he filed his Form U4 on January 22, 2014, the Panel declines to find that he should have disclosed it then.⁸⁰

⁷⁷ Tr. 130.

⁷⁸ *Mathis*, 2008 FINRA Discip. LEXIS 49, at *23 (respondent “had a duty to seek information from the proper authorities about his Form U4 disclosure obligation” and “was responsible for following up with [his former firm’s] compliance department”) (citing *James Allen Schneider*, 52 S.E.C. 840, 843 (1996) (finding that respondent should have checked with proper authorities if unsure how to accurately respond to a question on Form U4), *aff’d*, 118 F.3d 1577 (3d Cir. June 30, 1997) (table format)). See also *Dep’t of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *16 (NAC May 3, 2005) (finding that a registered representative “had an obligation to inquire about [a criminal] charge against him if he was unsure how to answer accurately any question on the Form U4.”).

⁷⁹ Tr. 110, 121-22, 147-48, 151. McCollam admitted that he talked to a Royal Alliance attorney about other customer complaints that are not the subject of this action. Tr. 109-10.

⁸⁰ The Complaint does not allege that McCollam’s misconduct includes possible failures to disclose reportable events that arose after January 22, 2014, or that he learned of after that date. See Compl. ¶¶ 6.b., 34. At the hearing, Enforcement’s counsel told the Panel, “We’re not seeking to charge Mr. McCollam with respect to knowledge or disclosure of customer complaints that were filed after January 22nd, 2014.” Tr. 203.

B. McCollam Is Subject to Statutory Disqualification

Under Article III, Section 3(b) of FINRA's By-Laws, a "statutorily disqualified" person cannot become or remain associated with a FINRA member firm unless FINRA has approved the association. A person is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 if, among other things, the person:

has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, . . . any material fact which is required to be stated therein.

Thus, a registered person is subject to statutory disqualification for failing to disclose material information on a Form U4 if the failure was willful.⁸¹

As discussed below, the Hearing Panel finds that McCollam acted willfully when he failed to disclose the two arbitrations and six customer complaints on his January 22, 2014 Form U4. The Hearing Panel also finds the arbitrations and customer complaints were material.

1. McCollam Acted Willfully

A willful violation of the securities laws means "intentionally committing the act which constitutes the violation."⁸² Stated differently, "it means . . . the person charged with the duty knows what he is doing."⁸³ A finding of willfulness does not require that the person acted with a culpable state of mind or that he was aware of the rule that he violated.⁸⁴ "A failure to disclose is willful . . . if the respondent of his own volition provides false answers on his Form U4."⁸⁵

McCollam acted willfully. The record demonstrates that McCollam was aware that arbitrations and complaints were reportable on Form U4.⁸⁶ He testified that he understood the responsibility to maintain an accurate Form U4 was "a hundred percent mine."⁸⁷ He understood

⁸¹ *Dep't of Enforcement v. The Dratel Grp., Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *18 (NAC May 6, 2015) (holding that individual respondent was statutorily disqualified because the NAC found that he willfully failed to disclose material information on his Form U4).

⁸² *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

⁸³ *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

⁸⁴ *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013).

⁸⁵ *Id.* at n.69 (citing *Mathis*, 2009 SEC LEXIS 4376, at *19).

⁸⁶ Tr. 40-42, 45. In July 2010, McCollam amended his Form U4 to disclose a customer complaint. Tr. 45.

⁸⁷ Tr. 374.

that he had to file an accurate Form U4 when he filed the broker-dealer application.⁸⁸ As a former supervisor, he had to ensure that subordinates amended their Forms U4 as events required.⁸⁹

McCollam admits that he had notice of the MP and SL arbitration claims and three complaints from customers RH, RL, and GS before filing the Form U4 on January 22, 2014. The Hearing Panel finds that he failed to inquire into other disclosures concerning customers ML, MG, and MB when he had notice of the existence of additional customer complaints. Thus, he failed to ensure that the Form U4 included these three additional reportable events.

McCollam acknowledged at the hearing that he was ultimately responsible for the missing disclosures on the Form U4, but denies that he acted willfully. The Hearing Panel disagrees, in large part because it did not find McCollam's explanations for the failures credible. He testified that he thought that BrokerCheck and a Form U4 were effectively the same so there was no need to file a Form U4. McCollam claimed that at the time it was not "clear" to him that "there was a difference between BrokerCheck and the U4. I thought they were kind of related."⁹⁰ He added that he knew BrokerCheck was not a Form U4, but "thought it corresponded to the U4."⁹¹ He said that he never told the company to disclose any of the complaints because he thought that their inclusion on his BrokerCheck report "meant my U4 was updated."⁹² The Panel does not find this explanation credible coming from a securities principal who at the time had over 25 years of experience in the industry. In any event, McCollam had the obligation to take steps to insure that he disclosed the arbitrations and complaints on his Form U4.

McCollam also repeatedly blamed the company—specifically, an attorney employed by the company—handling Ramcon's application for his failure. McCollam claims he delegated to the company responsibility to file an accurate Form U4.⁹³ A registered representative delegates such responsibility at his peril. A registered person has "an independent responsibility to understand his disclosure requirements" and has ultimate responsibility for filing an accurate Form U4.⁹⁴ He testified that he was "not really" aware that the company was preparing his Form U4 for filing or that it had been filed on January 22, 2014, and therefore did not see it before it

⁸⁸ Tr. 369.

⁸⁹ Tr. 39.

⁹⁰ Tr. 74.

⁹¹ Tr. 74.

⁹² Tr. 372. McCollam also claimed that he believed CRD, BrokerCheck, and his Form U4 were "all the same thing with different names." Tr. 295.

⁹³ See McCollam Post-Hearing Br., at 6-11.

⁹⁴ *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at * 26 (NAC Mar. 16, 2017) *appeal docketed*, No. 3-17925 (SEC Apr. 11, 2017) (rejecting respondent's defense that he delegated responsibility for amending his Form U4 to his firm's financial and operations principal) (citing *Tucker*, 2012 SEC LEXIS 3496, at *37 (holding that the "[respondent] ... was in the best position to provide accurate information about the judgments, bankruptcies, and liens covered by the questions in the Forms U4, demonstrating why it was appropriate that he bore 'primary responsibility' for maintaining their accuracy")).

was filed.⁹⁵ According to McCollam, if he had been given the chance to review the Form U4 beforehand and had seen it was missing disclosures, he would have told the company to make the disclosures.⁹⁶ But McCollam knew that he had to file a Form U4 as part of Ramcon's application. McCollam testified that he did not see his Form U4 until one week before the hearing of this matter, in November 2016. The Panel does not find this testimony credible.⁹⁷ The Panel does not find that McCollam's failures to make disclosures on the Form U4 was the result of confusion or mistake, as he would have the Panel believe. McCollam knew the facts surrounding the customer arbitrations and complaints and knew that they were not disclosed on the Form U4.

Enforcement sent McCollam a Wells letter in March 2015.⁹⁸ The company handling Ramcon's application submitted a response on McCollam's behalf a month later. In the submission, McCollam disputed the bases of the customers' allegations and claimed he did not know about the complaints when he filed his Form U4 on January 22, 2014. He also stated that he was in a "quasi-registered state, and arguably did not have a reporting requirement." He "was also relying on the fact that FINRA was well aware of the disclosable items," as a result of multiple amendments to his Form U5, so "further disclosure would be duplicative."⁹⁹ The Wells submission urged FINRA to consider that "these circumstances express human error" and that McCollam was acting pro se at the time, and accordingly the failure to disclose the complaints was not done willfully.¹⁰⁰ At the hearing, McCollam denied knowing that Enforcement had sent him a Wells letter and testified that he did not see the response submitted by his representatives.¹⁰¹ The Panel does not find this testimony credible. On April 2, 2015, McCollam emailed the company with an instruction to update his Form U4 to disclose that he had received

⁹⁵ Tr. 73-74.

⁹⁶ Tr. 337.

⁹⁷ Tr. 56. McCollam testified that the Form U4 contained an error about how long he had lived at his current address. Had he seen it in advance, McCollam said, he would have corrected the error. Tr. 218-19. The Form U4 stated that he had lived at his current residence since 1987, when, in fact, according to McCollam, he did not move to that residence until 1996. CX-4, at 8. McCollam also testified that he did not see the amended Form U4 filed on April 2 (disclosing receipt of Wells letter). He pointed out that the Form U4 contained the same address error. Tr. 234; CX-35, at 8. The Panel does not find McCollam's explanation concerning collateral information on a Form U4 credible evidence that he did not see his Form U4.

⁹⁸ CX-34. Enforcement addressed the Wells letter to an attorney working for the company handling Ramcon's membership application.

⁹⁹ CX-36, at 2.

¹⁰⁰ CX-36, at 3.

¹⁰¹ Tr. 88-89, 104. McCollam testified that he did not remember seeing the Wells response when it was sent to Enforcement. He described the Wells submission as an effort by the company to blame McCollam for its errors. He testified that he discussed a Wells response but thought it was only in connection with Ramcon's broker-dealer application. Tr. 85, 89. The Panel does not find these explanations credible. *See also* McCollam Post-Hearing Br., at 13-14.

a Wells notice from FINRA. The company emailed McCollam the same day confirming it did so.¹⁰² The company submitted the Wells statement to FINRA four days later—on April 6, 2015.

In blaming the company handling Ramcon's application for his failure to make disclosures, McCollam consistently denied seeing, or being aware of, documents the company filed with FINRA on his behalf. As a result, McCollam argues, he was unable to know what was disclosed on his Form U4. As with other of McCollam's assertions, the Panel does not find this credible. For example, McCollam testified that he was not aware that the company filed an amended Form U4 on April 6, 2015.¹⁰³ But McCollam had emailed the company the same day authorizing it to amend his Form U4 to disclose the MP and SL arbitrations, which it did.¹⁰⁴

McCollam also testified that he did not have direct access to the information contained in CRD even though the company had such access during the Ramcon application process. He understood that the company could view his CRD records to learn the identities of the complaining customers.¹⁰⁵ Nonetheless, McCollam testified that the company never gave him the identities of the complaining customers before it filed the Form U4 on January 22, 2014. The Panel does not find this testimony credible.

The Hearing Panel's finding of willfulness is reinforced by the fact that McCollam waited until April 2015 before disclosing the two arbitrations. He disclosed them only after receiving a Wells notice a month earlier. He also never disclosed any customer complaints. Some of these complaints were the subject of his March 2014 on-the-record interview.¹⁰⁶ Even then, he failed to disclose them on his Form U4. Six months later, FINRA determined he had failed to make the required disclosures. In October 2014, FINRA issued its decision rejecting Ramcon's application. One reason for the rejection cited in the decision was McCollam's failure to disclose customer arbitrations and complaints on his Form U4.¹⁰⁷ The decision also noted that McCollam answered "no" to the question on Ramcon's application asking whether he (or any other persons associated with Ramcon) was subject to a pending arbitration or a termination for cause.¹⁰⁸ Even after receiving the decision, McCollam took no steps to amend his Form U4 to disclose any of the complaints until April 2015, when he disclosed only the two arbitrations.

¹⁰² CX-35, at 18-19; CX-54, at 1.

¹⁰³ Tr. 81. McCollam testified he was not "involved" with amending the Form U4 on April 6, 2015 and did not "authorize" or "approve" its filing by the company handling Ramcon's application. Tr. 81.

¹⁰⁴ CX-37, at 15-22; CX-54, at 1. When confronted at the hearing with his email instruction, McCollam testified that he believed at the time that disclosures of the MP and SL arbitrations had already been made, and was therefore surprised to learn that they were not made. Tr. 84-85. The Panel does not find this testimony credible.

¹⁰⁵ Tr. 72, 143, 147, 153, 180, 213, 235-36.

¹⁰⁶ CX-47.

¹⁰⁷ CX-48, at 3.

¹⁰⁸ CX-48, at 4. McCollam testified that he "looked at" the decision when it was issued, but did not "review" it. He said that the application "was incorrectly filled out." Tr. 78. FINRA's decision rejecting Ramcon's application also noted that McCollam falsely asserted in his descriptions of customer complaints submitted with the application that he had no role in the actions that led them to complain, and that Tarr was solely responsible. CX-48, at 3, 9 and n.13.

2. The Two Arbitrations and Six Complaints Are Material

The failure to disclose the two customer arbitrations and six customer complaints constituted material omissions. 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.¹⁰⁹ The NAC has held that “essentially all of the information that is reportable on the Form U4 may be considered material.”¹¹⁰ Customer complaints specifically have been determined to be material information and must be reported on a Form U4. They are important because they raise concerns about whether a registered representative can be trusted to provide reliable financial advice to investors who count on the person to act as a professional in the securities industry. Here, the eight complainants made serious allegations against McCollam that could call into question his fitness to serve as a financial advisor.

McCollam asserts that the omissions were not material. He says the regulatory purpose of disclosure was not frustrated because BrokerCheck and multiple Forms U5 disclosed the customer complaints. Therefore, McCollam argues, FINRA and the investing public were not harmed. McCollam further claims that he was not registered with an operating member firm when the Form U4 was filed because he was still trying to register Ramcon, which FINRA later rejected.¹¹¹ Of course, McCollam had no way of knowing at the time he filed the Form U4 that FINRA would later reject Ramcon’s application.

McCollam’s argument has no merit. It is no defense that the missing information could have been found in the public domain. Nearly all reportable events on a Form U4—for example, bankruptcies, civil actions and judgments, criminal convictions, and tax liens—are publicly available. It is incumbent on a registered person to disclose the material information on a Form U4.

Because McCollam’s conduct was willful and the missing information was material, the Hearing Panel finds that McCollam willfully violated Article V, Section 2(c) of FINRA’s By-Laws¹¹² and FINRA Rules 1122 and 2010 by failing to disclose the two arbitrations and six of the seven complaints on his Form U4.

¹⁰⁹ *North Woodward Fin. Corp.*, 2014 FINRA Discip. LEXIS 32, at *17 n.13 (citing *Mathis*, 671 F.3d at 220).

¹¹⁰ *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 27, 2007).

¹¹¹ McCollam Post-Hearing Br., at 20; Tr. 410 (McCollam closing argument).

¹¹² *North Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *29 n.28 (finding that FINRA is authorized to impose sanctions for violations of its By-Laws pursuant to Article XIII, Section 1(b) of the By-Laws).

IV. Sanctions

In determining the appropriate sanctions, the Hearing Panel considered FINRA's Sanction Guidelines ("Guidelines"). For filing a false, misleading, or inaccurate Form U4, the Guidelines recommend fining an individual between \$2,500 and \$37,000. Where aggravating factors are present, the Hearing Panel should consider suspending an individual in any or all capacities for between 10 business days and six months. Where aggravating factors predominate, factfinders should consider a longer suspension of up to two years, or a bar when the respondent intended to conceal information or mislead.¹¹³

The relevant Principal Consideration in Determining Sanctions in this case is the nature and significance of the information at issue.¹¹⁴ The undisclosed information—two arbitrations and six customer complaints—was material. McCollam's failure to disclose these events significantly affected the mix of information available to regulators assessing whether to investigate his conduct and investors and clients assessing whether to trust McCollam's judgment.

The Hearing Panel also considered aggravating factors. McCollam did not amend his Form U4 to disclose the two arbitrations until April 2015, more than a year after filing the Form U4. He never disclosed the customer complaints.¹¹⁵ Each of the complainants made serious allegations that called into question McCollam's fitness to provide sound investment advice to customers.¹¹⁶ Because McCollam admits that he knew he was obligated to disclose the arbitrations and complaints on his Form U4, the Hearing Panel finds that McCollam acted intentionally.¹¹⁷

The SEC has explained that a broker's Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public."¹¹⁸ "Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor

¹¹³ FINRA Sanction Guidelines at 71 (2017), <http://www.finra.org/industry/sanctionguidelines>. FINRA amended its Sanction Guidelines on April 10, 2017, which became effective immediately. Amendments included changes to the guideline for violations of Article V of FINRA's By-Laws and FINRA Rule 1122. See Regulatory Notice 17-13 (<http://www.finra.org/industry/notices/17-13>).

¹¹⁴ Guidelines at 71.

¹¹⁵ Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 9) (directing adjudicators to consider whether the respondent engaged in misconduct over an extended period of time).

¹¹⁶ Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 8) (directing adjudicators to consider whether the respondent engaged in numerous acts and/or a pattern of misconduct).

¹¹⁷ Guidelines at 8 (Principal Considerations in Determining Sanctions, No. 13) (directing adjudicators to consider whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

¹¹⁸ *Amundsen*, 2013 SEC LEXIS 1148, at *24-25 n.44 (quoting *Tucker*, 2012 SEC LEXIS 3496, at *26), *petition for review denied*, 575 F. App'x 1 (D.C. Cir. 2014) (citations omitted).

the fitness of securities professionals who seek initial or continued registration with a member firm.”¹¹⁹

The Hearing Panel finds no mitigating circumstances warranting reduced sanctions.¹²⁰ Given the seriousness of his misconduct, and after weighing all the facts and circumstances, the Hearing Panel finds it appropriately remedial to suspend McCollam from associating with any FINRA member firm in any capacity for nine months and to impose a \$10,000 fine for willfully failing to timely amend his Form U4 to disclose two customer arbitrations and six customer complaints.

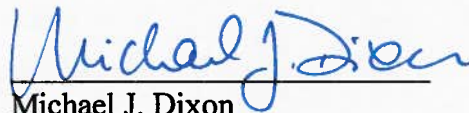
V. Order

Respondent Richard A. McCollam is suspended from associating with any FINRA member firm in any capacity for nine months and fined \$10,000 for failing to timely disclose two customer arbitrations and six customer complaints (from RH, RL, GS, MG, ML, and MB) on the Form U4 he filed on January 22, 2014, in willful violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. He is subject to statutory disqualification.

McCollam is also ordered to pay the costs of the hearing in the amount of \$3,789.69, which includes \$3,039.69, the cost of the hearing transcript, and a \$750 administrative fee.

The Panel determines that Enforcement failed to prove by a preponderance of the evidence that McCollam had notice of SB’s complaint before he filed his Form U4 on January 22, 2014, and therefore was not obligated to disclose it.

If this decision becomes FINRA’s final disciplinary action, McCollam’s suspension shall become effective with the opening of business on July 17, 2017. The fine and assessed 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 in this proceeding.¹²¹



Michael J. Dixon
Hearing Officer
For the Hearing Panel

¹¹⁹ *Id.* at *23 (quoting *Tucker*, 2012 SEC LEXIS 3496, at *26) (citations omitted).

¹²⁰ The Guidelines require that adjudicators consider whether a firm has taken corrective action against an individual respondent based on the same conduct at issue in a subsequent FINRA disciplinary proceeding. Guidelines at 5 (General Principles Applicable to All Sanction Determinations, No. 7). National Planning terminated McCollam in January 2013 because it had learned of customer complaints, not because he failed to make disclosures on his Form U4. Accordingly, the Panel does not consider that McCollam’s termination qualifies for any mitigative value.

¹²¹ The Hearing Panel considered and rejected without discussion all other arguments by the parties.

Copies to: Paul W. Thomas, Esq. (via electronic and first-class mail)
Neda Ataie, Esq. (via electronic mail)
Jennifer M. Sepic, Esq. (via electronic and first-class mail)
Christopher Perrin, Esq. (via electronic and first-class mail)
Douglas M. Ramsey, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)