

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM MORGAN DITTY, JR.  
(CRD No. 2143553),

Respondent.

Disciplinary Proceeding  
No. 2014042156101

Hearing Officer—KBW

**HEARING PANEL DECISION**

July 14, 2017

**Respondent willfully failed to timely amend his Form U4 to disclose a tax lien. Respondent also misled his firm by falsely representing that his Form U4 was accurate and complete. For these violations, Respondent is fined \$5,000 and suspended from associating with any FINRA member firm in any capacity for nine months.**

**Appearances**

For the Complainant: Kathryn S. Gostinger, Esq., Penelope Brobst Blackwell, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Robert L. Maddox, Esq., Dinsmore & Shohl, LLP

**DECISION**

The facts are largely undisputed. In March 2012, Respondent William Morgan Ditty, Jr., received notice of an Internal Revenue Service tax lien (the “IRS Lien”). FINRA rules required that he update his Uniform Application for Securities Industry Registration or Transfer (Form U4) within thirty days of learning of the IRS Lien. However, Ditty did not do so until October 2014, after FINRA staff asked Ditty why the IRS Lien did not appear on his Form U4. On three occasions, between March 2012 and October 2014, Ditty falsely represented to his firm in an annual compliance attestation that his Form U4 was accurate and complete.

The Complaint alleges two causes of action against Ditty. In the first cause, FINRA’s Department of Enforcement charges that Respondent willfully violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose the IRS Lien. In the second cause, Enforcement charges that Ditty violated FINRA

Rule 2010 by falsely representing in annual compliance attestations that his Form U4 was accurate and complete.<sup>1</sup>

In defense of the charge that he willfully failed to timely update his Form U4, Ditty's primary argument is that he did not willfully fail to timely update his Form U4 because: (1) he made an offer in compromise to the IRS immediately after receiving notice of the IRS Lien; (2) he believed that the submission of his offer of compromise made the IRS Lien unenforceable; and (3) he believed that he did not have to report an unenforceable tax lien. He also denies that he made any false representations on his annual compliance attestation.

The Hearing Panel finds Ditty liable on both charges.<sup>2</sup>

## **I. Findings of Fact and Conclusions of Law**

### **A. Ditty's Background**

Ditty entered the securities industry in 1991. At all relevant times, he was associated with H.D. Vest Investment Services, Inc. ("Vest"), a FINRA member firm.<sup>3</sup> He is no longer associated with any member firm.<sup>4</sup>

In addition, Ditty is a certified public accountant and is certified in forensic accounting, fraud examinations, and business valuations.<sup>5</sup>

### **B. FINRA's Jurisdiction**

FINRA retains jurisdiction over Ditty pursuant to Article V, Section 4(a) of FINRA's By-Laws. The Complaint was filed while he was registered and associated with a FINRA member firm, and the Complaint charges him with misconduct that commenced while he was registered and associated with a FINRA member firm.

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<sup>1</sup> Enforcement amended its initial Complaint to remove certain allegations. Because Enforcement did not add to the allegations that remained, in granting Enforcement leave to file its Amended Complaint, I ordered that Ditty was not required to file an answer to the Amended Complaint and that Respondent's Answer to Enforcement's initial Complaint shall continue to serve as his Answer.

<sup>2</sup> At the final pre-hearing conference, Respondent withdrew his request for a hearing and the parties submitted exhibits in lieu of a hearing.

<sup>3</sup> Complainant's Exhibit ("CX")-1, at 4; Amended Complaint ("Compl.") ¶¶ 2-3; Answer ("Ans.") ¶¶ 2-3; Joint Stipulations ("Stip.") ¶ 1.

<sup>4</sup> The Registrations Summary from Respondent's Central Registration Depository record indicates that Respondent's registration with Vest ended in February 2017 and he is no longer associated with any FINRA member firm. Pursuant to Rule 9145(b), the Hearing Panel takes official notice of this information.

<sup>5</sup> CX-53, at 15.

### C. Ditty's Failure to Update His Form U4

Registered representatives like Ditty must complete and file with FINRA a Form U4 to become registered through a FINRA member firm. Form U4 "is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm."<sup>6</sup> The form "ultimately serves as a means of protecting the investing public."<sup>7</sup>

Question 14M of Form U4 asked, "Do you have any unsatisfied judgments or liens against you?"<sup>8</sup> Form U4 required Ditty to disclose specific information about any judgments or liens, including the date he learned of the judgment or lien and whether that date is "exact."<sup>9</sup> Ditty understood he needed to report any changes in the information he was required to report by updating his Form U4 within 30 days of the event.<sup>10</sup>

#### 1. The IRS Lien

On or about March 15, 2012, the IRS filed the IRS Lien against Ditty.<sup>11</sup> The IRS Lien was in the amount of \$107,519.01 and covered unpaid taxes from 2005 through 2010.<sup>12</sup> Ditty concedes that he received notice of the IRS Lien in March 2012.<sup>13</sup>

Shortly thereafter, Ditty began negotiating with the IRS regarding the back taxes covered by the IRS Lien and filed an offer in compromise with the IRS.<sup>14</sup> By letter dated May 27, 2014, the IRS accepted Ditty's offer in compromise dated September 4, 2013. In this letter, the IRS

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<sup>6</sup> *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*23-24 (Apr. 18, 2013) (citing *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*26 (Nov. 9, 2012)) ("Members of the public can also access the information reported in the form, via BrokerCheck, and can use that information when deciding to whom they want to entrust their money."), *aff'd*, 575 F. App'x 1 (D.C. Cir. 2014); *Id.* at \*24 n.42 (citing FINRA's website, which describes BrokerCheck as "a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers, as well as investment adviser firms and representatives. It should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.").

<sup>7</sup> *Id.* at \*24.

<sup>8</sup> CX-8, at 19; CX-10, at 19; CX-12, at 19; CX-14, at 19; CX-16, at 19; CX-18, at 19; CX-20, at 19; CX-22, at 20; CX-24, at 20.

<sup>9</sup> *See, e.g.*, CX-13, at 26-29.

<sup>10</sup> CX-53, at 107-12, 114-17, 125.

<sup>11</sup> Compl. ¶ 6; Ans. ¶ 6.

<sup>12</sup> Compl. ¶ 6; Ans. ¶ 6; Stip. ¶ 3; CX-2.

<sup>13</sup> Compl. ¶¶ 7, 9; Ans. ¶¶ 7, 12; CX-24, at 22; CX-53, at 88-90, 117-18.

<sup>14</sup> CX-53, at 82-83. Although Ditty's responses to the FINRA Rule 8210 requests and his on-the-record testimony indicate that he filed an offer in compromise immediately after receiving notice of the IRS Lien, there are only two offers in the record: (1) a "second amended" offer in compromise dated August 10, 2013, and (2) an offer in compromise dated September 4, 2013. CX-3, at 6; CX-44, at 2, 47-50; CX-53, at 82-83. However, because Enforcement does not argue that Ditty did not file an offer in compromise immediately after receiving notice of the IRS Lien, the Panel assumes that Ditty filed an offer in compromise immediately after receiving notice of the IRS Lien.

stated, “If a Notice of Federal Tax Lien was filed on your account, it will be released when the offer amount is paid in full.”<sup>15</sup> Ditty understood that if a taxpayer files an offer in compromise with the IRS with respect to a tax lien and the IRS accepts the offer, the IRS will not enforce the lien unless the tax payer fails to meet his payment obligations.<sup>16</sup>

During a branch office examination in April 2012, Vest informed Ditty that the State of Ohio had filed four tax liens against him, which totaled about \$30,000.<sup>17</sup> After obtaining confirmation of these liens from the State of Ohio, Ditty amended his Form U4 on April 30, 2012 to reflect the state liens but not the IRS Lien.<sup>18</sup>

Between April 2012 and August 2014, Ditty amended his Form U4 at least six additional times, without disclosing the IRS Lien.<sup>19</sup> According to Ditty, he thought he did not need to disclose it because the unpaid taxes it covered were included in his offer in compromise, he understood that the IRS would not enforce the IRS Lien, and he believed that he therefore did not have to disclose it on his Form U4.<sup>20</sup> Ditty concedes, however, that he did not discuss with anyone whether he should disclose the IRS Lien in response to Question 14M.<sup>21</sup>

In July 2012, in connection with an examination of Ditty’s branch, Vest conducted a search for tax liens. During the investigation that resulted in this proceeding, Vest was unable to locate one page of the resulting report and the evidence is therefore inconclusive as to whether Ditty’s IRS Lien appeared on the report.<sup>22</sup>

In connection with a May 28, 2013, examination of his branch by Vest, Ditty completed a branch examination questionnaire which asked, “Have you had any liens, judgments, or warrants filed against you?” Ditty checked the “Yes” box and responded, “IRS liens stemming from divorce, in settlement \$129,000 and Ohio stemming from divorce \$22,000.”<sup>23</sup> Ditty divorced his wife in 1997.<sup>24</sup> The dollar amount set forth in his response (\$129,000) does not match the dollar amount of the IRS Lien (\$107,519.01).<sup>25</sup> The Panel makes no finding as to whether Ditty was

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<sup>15</sup> CX-3, at 1.

<sup>16</sup> CX-53, at 85. The Internal Revenue Code provides that no levy may be made on the property of any person with respect to any unpaid tax while an offer in compromise is pending with the IRS. 26 U.S.C. § 6331(k).

<sup>17</sup> CX-9, at 1, 26-29; CX-53, at 29-30.

<sup>18</sup> CX-9, at 26-32.

<sup>19</sup> CX-10; CX-12; CX-14; CX-16; CX-18; CX-20.

<sup>20</sup> CX-53, at 109-10.

<sup>21</sup> CX-46; CX-47; CX-53, at 83.

<sup>22</sup> RX-1, at 2.

<sup>23</sup> RX-1, at 2.

<sup>24</sup> CX-44, at 1.

<sup>25</sup> Compl. ¶ 6; Ans. ¶ 6; CX-2; RX-1, at 2.

referring in his response to the IRS Lien or to a federal tax lien in the amount of \$127,278.14, which the IRS had filed in September 2007.<sup>26</sup>

By letter dated August 7, 2014, FINRA asked Vest to provide a signed statement from Ditty explaining why he had not disclosed the IRS Lien.<sup>27</sup> In response, Ditty provided a signed statement dated September 3, 2014, acknowledging that he had received notice of the IRS Lien in March 2012 and had not disclosed it on his Form U4.<sup>28</sup> In that statement, Ditty explained, “I did not believe the lien was one that needed to be disclosed because the IRS could not collect against it while we were negotiating.”<sup>29</sup>

On October 10, 2014, more than two and a half years after initially learning of the IRS Lien and more than 30 days after signing his September 3 statement, Ditty gave a form to Vest that disclosed the IRS Lien.<sup>30</sup> On October 21, 2014, at Vest’s instruction, Ditty amended his Form U4 to disclose the IRS Lien.<sup>31</sup> At this time, Ditty also disclosed his 2007 federal tax lien.<sup>32</sup>

## **2. Violations of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010**

Article V of FINRA’s By-Laws protects the investing public by requiring associated persons to update crucial information in the Form U4.<sup>33</sup> Specifically, Article V, Section 2(c) of FINRA’s By-Laws requires that “every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment.”<sup>34</sup> As the Securities and Exchange Commission has stated, “The duty to maintain an accurate Form U4 lies primarily with an associated person who is in the best position to provide information about the questions presented in the form.”<sup>35</sup>

FINRA Rule 1122 states that “[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.” Failing to timely amend a Form U4 to disclose an unsatisfied

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<sup>26</sup> CX-25, at 27. Ditty did not amend his Form U4 to disclose his 2007 federal tax lien until October 2014. CX-25, at 27. Ditty claims that he did not learn of the 2007 federal tax lien until August 2014, CX-25, at 27, and Enforcement did not charge Ditty with failing to timely update his Form U4 to reflect this tax lien.

<sup>27</sup> Compl. ¶ 9; Ans. ¶ 12; CX-43.

<sup>28</sup> Compl. ¶ 9; Ans. ¶ 12; CX-44, at 2.

<sup>29</sup> Compl. ¶ 9; Ans. ¶ 12; CX-44, at 2.

<sup>30</sup> Compl. ¶ 10; Ans. ¶ 13; CX-6.

<sup>31</sup> Compl. ¶ 11; Ans. ¶ 14; CX-24, at 22-23; CX-25, at 22-23; CX-53, at 83-86.

<sup>32</sup> CX-25, at 27.

<sup>33</sup> *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at \*35 (May 8, 2015).

<sup>34</sup> *See also Amundsen*, 2013 SEC LEXIS 1148, at \*25.

<sup>35</sup> *N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at \*28.

lien and filing a misleading Form U4 violate FINRA Rules 1122 and 2010, which requires FINRA member firms and their associated persons to observe high standards of commercial honor and just and equitable principles of trade.<sup>36</sup>

Ditty argues that he should not be found to have violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010 because “FINRA has not provided any express guidance addressing the issue of when or how to report an unenforceable IRS tax liens [sic] that are the subject of an offer-in-compromise.”<sup>37</sup> The Panel rejects this argument. Question 14M is written in plain language; there is no basis for interpreting Question 14M as not covering an IRS tax lien merely because the taxpayer has submitted, and the IRS has accepted, an offer in compromise. If Ditty was nonetheless unsure whether he should disclose the IRS Lien in response to the question, “it was incumbent on him to find out.”<sup>38</sup> However, Ditty did not discuss with Vest, counsel, or FINRA whether he should disclose the IRS Lien.<sup>39</sup>

Ditty attempts to shift responsibility for updating his Form U4 to Vest. Ditty argues that because he reported the IRS Lien to Vest in May 2013 as part of a branch examination, he did not violate his obligation to timely update his Form U4.<sup>40</sup> Ditty also argues that since Vest performed a tax lien search in 2012, it knew or should have known about the IRS Lien and the need to disclose it on his Form U4.<sup>41</sup> However, the responsibility for ensuring that his Form U4 is accurate was Ditty’s, not Vest’s.<sup>42</sup> A registered representative “cannot shift his responsibility to comply with [SRO] rules to his firm.”<sup>43</sup> In addition, both Ditty’s disclosure to Vest and Vest’s tax lien search occurred months after the April 2012 deadline for updating his Form U4.

Ditty further argues that he should not be found to have violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010 because he did not have a sum certain to report. The Panel rejects this argument. Form U4 asked the “Judgment/Lien Amount.” The Notice for the IRS Lien stated that the IRS was “giving notice that taxes (including interest and

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<sup>36</sup> *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*12 (Mar. 15, 2016), *aff’d*, 672 F. App’x 865 (10th Cir. 2016).

<sup>37</sup> Respondent’s Pre-Hearing Br. at 3.

<sup>38</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*31.

<sup>39</sup> CX-53, at 83.

<sup>40</sup> Affirmative Defense ¶ 1

<sup>41</sup> Affirmative Defensive ¶ 1.

<sup>42</sup> *Douglas J. Toth*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520, at \*25 (July 1, 2008). *See also Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at \*22-23 (Oct. 20, 2011) (rejecting a respondent’s argument that his firm’s “failure to advise” him of the need to amend his Form U4 “should vitiate Enforcement’s claim of willfulness”).

<sup>43</sup> *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at \*15 (Dec. 22, 2008) (rejecting Respondent’s argument that he relied on his firm to disclose his criminal history).

penalties) have been assessed against” Ditty and the total “[u]npaid [b]alance of [a]ssessment” covered by the lien was \$107,519.01.<sup>44</sup>

Accordingly, Ditty was obligated to amend his Form U4 to reflect the IRS Lien. By failing to do so, Ditty violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.<sup>45</sup>

#### **D. Statutory Disqualification**

A person is subject to statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”) if the person:

*willfully* made or caused to be made in any application . . . 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 . . . any *material* fact which is required to be stated therein.<sup>46</sup>

As set forth below, Ditty is subject to statutory disqualification because his failure to timely update his Form U4 was willful and the omitted information was material.<sup>47</sup>

##### **1. Ditty’s Failures to Amend His Form U4 were Willful**

In the context of this case, “willfully” means “merely intentionally committing the act which constitutes the violation.”<sup>48</sup> Ditty was aware of his obligation to amend his Form U4 to reflect liens.<sup>49</sup> He had notice of the IRS Lien in March 2012, yet failed to disclose it on his Form U4 until October 2014, when Vest instructed him to do so.

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<sup>44</sup> CX-2.

<sup>45</sup> *Dep’t of Enforcement v. Ottimo*, No. 2009017440201, 2017 FINRA Discip. LEXIS 10, at \*25-26, \*42 (NAC Mar. 15, 2017), *appeal docketed*, SEC Admin Proc. No. 3-17930 (Apr. 14, 2017).

<sup>46</sup> 15 U.S.C. § 78c(a)(39)(F) (emphasis added).

<sup>47</sup> *Dep’t of Enforcement v. The Dratel Grp., Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at \*18 (NAC May 6, 2015) (holding that an individual respondent was statutorily disqualified because he willfully failed to disclose material information on his Form U4), *aff’d*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2016). Ditty argues that a finding that his failure to amend his Form U4 was “willful” would constitute an excessive sanction. Respondent’s Pre-Hearing Br. at 3-4. “FINRA, however, ‘does not subject a person to statutory disqualification as a penalty or remedial sanction . . . . Instead, a person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)(F) whenever there has been, among other things, a determination that a person willfully failed to disclose material information on a Form U4.’” *Dep’t of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at 31 n.12 (NAC Mar. 16, 2017) (quoting *McCune*, 2016 SEC LEXIS 1026, at \*37), *appeal docketed*, SEC Admin. Proc. No. 3-17925 (Apr. 11, 2017).

<sup>48</sup> *McCune v. SEC*, 672 F. App’x 865, 7 (10th Cir. 2016).

<sup>49</sup> Ditty testified on the record during the investigation that Vest informed its registered representatives on an almost annual basis about the importance of disclosures and updating a Form U4. CX-53, at 18.

Ditty argues that he believed—based on advice of counsel—that the IRS Lien was unenforceable and claims that he misinterpreted Question 14M as asking only about liens that were enforceable.<sup>50</sup> Ditty argues that since he believed he was not required to disclose the IRS Lien, his failure was not willful. However, Question 14M is “unambiguous, straightforward, and clear.”<sup>51</sup> The SEC and the National Adjudicatory Council (“NAC”) have rejected defenses relying on claimed misunderstandings or misinterpretations of Form U4 disclosure questions that are contrary to the plain language of the questions.<sup>52</sup> In addition, Ditty concedes that he did not ask for or receive advice on whether he should disclose the IRS Lien in response to Question 14M.<sup>53</sup>

Ditty intentionally did not update his Form U4 to reflect the IRS Lien within thirty days of learning of the lien. The Panel therefore finds that Ditty’s failure to timely file accurate and complete Forms U4 was willful.

## 2. The Omitted Information was Material

In the present context, “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.”<sup>54</sup> “[B]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material.”<sup>55</sup> Here, the omitted information regarding the IRS Lien would have alerted Ditty’s firm and regulators that he was subject to substantial economic pressures and could cause customers to question his judgment in advising them on investments.<sup>56</sup> The Panel therefore finds that the omitted information was material.

## II. Sanctions

FINRA’s Sanction Guidelines (“Guidelines”) provide that “[a]ggregation or ‘batching’ of violations may be appropriate for purposes of determining sanctions . . . .”<sup>57</sup> Batching is

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<sup>50</sup> Respondent’s Pre-Hearing Br. at 2.

<sup>51</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*22.

<sup>52</sup> *Id.* at \*23 (citing *Neaton*, 2011 LEXIS 3719, at \*29-30).

<sup>53</sup> CX-46; CX-47; CX-53, at 83.

<sup>54</sup> *McCune*, 2016 SEC LEXIS 1026, at \*21-22.

<sup>55</sup> *Dep’t of Enforcement v. McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at \*12 (NAC July 27, 2015) (citations omitted), *aff’d*, 2016 SEC LEXIS 1026.

<sup>56</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*30-31 (Disclosure of respondent’s “tax liens would have ‘alerted his firm to the outside financial pressures he was facing,’ ‘allowed customers to assess whether the . . . liens had a bearing on his ability to provide them with appropriate financial advice, and ‘provided his regulators with early notice about his financial difficulties and ability to manage his financial obligations’”) (quoting *McCune*, 2016 SEC LEXIS 1026, at \*21-22).

<sup>57</sup> FINRA Sanction Guidelines at 4 (2017), <http://www.finra.org/industry/sanction-guidelines>.



appropriate here because the violations charged in both causes of action resulted from Ditty's failure to maintain an accurate and complete Form U4.

In assessing the appropriate sanction, the Panel considered the Guidelines that apply to the conduct charged in the first cause of action—late filing of forms or amendments. For failing to file forms or amendments, the Guidelines recommend a fine of \$2,500 to \$37,000. Where aggravating factors are present, the Guidelines call for consideration of a suspension in any or all capacities for ten business days to six months. Where aggravating factors predominate, the Guidelines call for consideration of a longer suspension, in any or all capacities (of up to two years) or, where respondent intended to conceal information or mislead, a bar.<sup>58</sup>

Because no Guidelines specifically apply to the conduct charged in the second cause of action, the Panel considered a Guideline that the NAC has found to be most helpful when assessing false representations by a registered representative to a firm—falsification of records.<sup>59</sup> For falsifying a document without authorization, the Guidelines recommend, in the absence of other violations or customer harm, a fine of \$5,000 to \$146,000 and consideration of a suspension for a period of two months to two years, where respondent falsified a document without authorization or ratification.<sup>60</sup> The Guidelines identify one principal consideration specific to falsification of records that is relevant to this matter, the nature of the document(s) falsified.<sup>61</sup>

The Panel considered several aggravating factors. The IRS Lien was in the amount of \$107,519.01. The information about the IRS Lien was material; Ditty's failure to disclose the required information significantly altered the mix of information available to regulators, member firms, and investors. Ditty's failure to disclose persisted for years despite the filing of numerous amendments to his Form U4. On three occasions, Ditty falsely represented to Vest that his Form U4 was accurate and complete. Additionally, Ditty did not disclose the IRS tax lien until FINRA questioned him about it. Annual compliance attestations are a significant tool for ensuring compliance.

The Panel also considered whether Ditty “demonstrated reasonable reliance on competent legal or accounting advice.”<sup>62</sup> To establish reliance on counsel as a mitigating factor, Ditty must “demonstrate that he: (1) made complete disclosure of the relevant facts of the intended conduct to counsel; (2) sought advice on the legality of the intended conduct; (3) received advice that the intended conduct was legal; and (4) relied in good faith on counsel's advice.”<sup>63</sup> Although Ditty

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<sup>58</sup> Guidelines at 71.

<sup>59</sup> *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at \*70-71 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

<sup>60</sup> Guidelines at 37.

<sup>61</sup> Guidelines at 37.

<sup>62</sup> Guidelines at 7 (Principal Considerations in Determining Sanctions No. 7).

<sup>63</sup> *Ottimo*, 2017 FINRA Discip. LEXIS 10, at \*38.

argues that he received advice from counsel that the IRS Lien was unenforceable because of the pending offer in compromise, the record indicates that he never asked for or received advice on whether he should disclose the IRS Lien in response to Question 14M. Accordingly, the record does not support this mitigating factor.

The Panel concluded that the absence of any FINRA guidance specifically addressing unenforceable liens was not a mitigating factor. The NAC has stated that the “absence of prior warnings from a regulator . . . is not mitigating.”<sup>64</sup>

The Panel also concluded that Ditty’s failures to amend his Form U4 were egregious and that a \$5,000 fine and a suspension of nine months are reasonable and appropriate sanctions that will serve the remedial purposes of the Guidelines.<sup>65</sup>

### III. Order

Respondent William Morgan Ditty, Jr. is fined \$5,000, suspended from associating with any FINRA member firm in any capacity for nine months, and subject to statutory disqualification for willfully violating Article V, Section 2(c) of the FINRA By-Laws, and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 and for violating FINRA Rule 2010 by making false representations on three annual compliance attestations.<sup>66</sup>

If this decision becomes FINRA’s final disciplinary action, Respondent’s suspension shall become effective on September 5, 2017. The fine shall be due and payable if and when Respondent re-enters the securities industry.



Kenneth B. Winer  
Hearing Officer  
For the Hearing Panel

#### Copies to:

William Morgan Ditty, Jr. (via overnight courier and first-class mail)  
Robert L. Maddox, Esq. (via electronic and first-class mail)  
Penelope Brobst Blackwell, Esq. (via electronic mail and first-class mail)  
David B. Klafter, Esq. (via electronic mail)  
Kathryn Gostinger, Esq. (via electronic mail)  
Jeffrey D. Pariser, Esq. (via electronic mail)

<sup>64</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*40.

<sup>65</sup> In reaching this conclusion, the Panel considered Ditty’s disclosure of a federal tax lien in the May 2013 annual compliance questionnaire.

<sup>66</sup> The Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.