

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES A. LAVERTY  
(CRD No. 4875386),

Respondent.

Disciplinary Proceeding  
No. 2016050205901

Hearing Officer—MJD

**HEARING PANEL DECISION**

November 13, 2018

**Respondent borrowed \$1.35 million from an elderly married couple who were customers over a four-year period without informing his employer firms. He submitted false compliance questionnaires to two employers to conceal his borrowing. He provided false testimony to FINRA during a prior investigation into his borrowing from other customers. Respondent also failed to disclose a judgment and a tax lien on his Form U4. Respondent is barred from associating with any member firm in any capacity. He is also ordered to pay costs.**

*Appearances*

For the Complainant: Joel Kornfeld, Esq., and Gregory Firehock, Esq., FINRA Department of Enforcement.

For the Respondent: Gary R. Wallace, Esq., Los Angeles, California.

**I. Introduction**

The Department of Enforcement filed a four-cause Complaint against Respondent Charles A. Laverty (“Laverty” or “Respondent”). Cause one charges Laverty with borrowing \$1,350,000 from customers RO and AO, an elderly married couple, while registered with four different member firms from 2010 to 2015, without disclosing the loans to his employers and obtaining their approval. Cause two charges him with submitting false compliance questionnaires to two firms to conceal the loans and a judgment and tax lien. Cause three charges Laverty with providing false testimony to FINRA during a prior investigation into his borrowing from other customers. Cause four alleges that Laverty willfully failed to update his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose a judgment and a tax lien. The

four causes of action charge Respondent with violations of FINRA Rules 2010, 1122, 3240, and 8210 and Article V, Section (c), of FINRA's By-Laws.

Laverty filed an Answer in which he admitted many of the factual allegations of the Complaint but denied that his conduct violated FINRA rules.

The Hearing Panel finds that Respondent committed each of the violations alleged and bars him from associating with any member firm in any capacity.<sup>1</sup> For his willful failure to update his Form U4, Laverty is suspended for nine months and fined \$15,000. He is also statutorily disqualified for his willful failure to update his Form U4. In light of the bars, the Panel does not impose a suspension and fine for the Form U4 violations.

## **II. Findings of Fact**

### **A. Respondent's Background**

Laverty entered the securities industry in 2004 when he associated with a member firm. In March 2005, he became registered as a general securities representative with FINRA through a member firm.<sup>2</sup> From 2008 to October 2015, Laverty was registered with four different member firms. He was registered with Oppenheimer & Co., Inc. ("Oppenheimer") from January 16, 2008, to May 13, 2010, and again from November 7, 2011, to March 17, 2014. He was registered with UBS Financial Services, Inc. ("UBS") from May 13, 2010, to November 22, 2011, and with Calton & Associates, Inc. ("Calton") from March 17, 2014, to February 26, 2015. From February 19, 2015, to October 15, 2015, Laverty was registered with TCFG Wealth Management, LLC ("TCFG").<sup>3</sup> He has not been registered with a FINRA member firm since October 15, 2015, when TCFG filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating his registration.<sup>4</sup>

Although Laverty is no longer registered or associated with a FINRA member, he is subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4, of FINRA's By-Laws. The Complaint charges Laverty with misconduct committed while he was registered with a FINRA member and the Complaint was filed within two years of the filing of

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<sup>1</sup> The hearing was held October 15, 2018, in Los Angeles, California. Enforcement called RO and AO's son, DO, and a FINRA examiner, Kevin Suh. On September 25, 2018, Laverty filed a motion seeking a continuance of the hearing, which Enforcement opposed. On October 4, 2018, after hearing oral argument from the parties, including statements from Laverty, during a pre-hearing conference, the Hearing Officer denied Laverty's motion because he failed to show good cause pursuant to FINRA Code of Procedure Rule 9222. Although Respondent did not attend the hearing, his counsel did. Respondent did not present a defense at the hearing; he filed no pre-hearing submissions, called no witnesses, and offered no exhibits into evidence. At the start of the hearing, Laverty's counsel renewed Laverty's motion for a continuance, which the Hearing Officer again denied.

<sup>2</sup> Complaint ("Compl.") ¶ 3; Answer ("Ans.") ¶ 3; Complainant's Exhibit ("CX-") 71, at 10, 19-20.

<sup>3</sup> Compl. ¶ 3; Ans. ¶ 3; CX-71, at 3-7.

<sup>4</sup> Compl. ¶ 3; Ans. ¶ 3; CX-71, at 3, 17.

an amendment to his Form U5. UBS filed the amendment on June 2, 2016, within two years of the original Form U5.<sup>5</sup>

Laverty borrowed from other customers besides RO and AO. In January 2014, FINRA began an investigation after Oppenheimer reported to FINRA that it had suspended Laverty for borrowing money from a customer in violation of the firm's policies.<sup>6</sup> As a result of the investigation, Laverty submitted a Letter of Acceptance, Waiver and Consent ("AWC") that FINRA accepted on December 9, 2015, in which Laverty agreed to an 18-month suspension and a \$5,000 fine without admitting or denying FINRA's findings.

Pursuant to the AWC, Laverty consented to FINRA's findings that he had borrowed \$1,205,000 between 2009 and 2013 from two married couples (HG and AG, and EL and LL) who were his customers, and \$32,500 in 2013 from another customer, JA.<sup>7</sup> This misconduct violated NASD Rule 2370<sup>8</sup> and FINRA Rules 3240 and 2010. The AWC also contained findings that Laverty submitted false annual compliance questionnaires to UBS in 2011 and Oppenheimer in 2012 and 2013, in violation of FINRA Rule 2010. On the questionnaires, Laverty falsely denied borrowing money from customers and falsely claimed that he had made all required disclosures of judgment and liens filed against him on his Form U4. In fact, according to the findings in the AWC, Laverty willfully failed to disclose two judgments totaling at least \$450,000 entered against him in 2010 and 2012 on his Form U4, in violation of FINRA Rules 1122 and 2010 and Article V, Section 2(c), of FINRA's By-Laws.<sup>9</sup>

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<sup>5</sup> FINRA commenced its investigation after UBS filed its amended Form U5 in June 2016, which was the first disclosure concerning Laverty's borrowing from RO and AO. The amendment reported the filing by RO and AO of a Statement of Claim with FINRA Dispute Resolution against Laverty and his former employers. The investigation led to the filing of this disciplinary action. Hearing Transcript ("Tr.") 90-92; CX-82, at 10. Within two weeks, Oppenheimer, Calton, and TCFG filed amended Forms U5 to report RO and AO's arbitration claims against Laverty and each of them. *See* CX-83; CX-84; CX-85.

<sup>6</sup> CX-52; CX-64; CX-65.

<sup>7</sup> In October 2014, HG, AG, and LL filed a single Statement of Claim with FINRA Dispute Resolution against Laverty, Oppenheimer, and UBS, alleging improper borrowing by Laverty, among other claims. (LL's husband, EL, died in 2013.) *See* CX-38; CX-57; CX-71, at 28-35.

<sup>8</sup> FINRA Rule 3240 superseded NASD Rule 2370 effective June 14, 2010. FINRA Regulatory Notice 10-21 (Apr. 2010), <http://www.finra.org/industry/notices/10-21>. FINRA Rule 3240 is applicable here because all of Laverty's loans from RO and AO occurred after the effective date of the rule change.

<sup>9</sup> Oppenheimer amended Laverty's Form U4 to report the judgments in August 2012 and January 2014, respectively. *See* Compl. ¶ 7; Ans. ¶ 7; CX-7, at 3-5; CX-71, at 56-58. Pursuant to the December 2015 AWC, Laverty's willful failure to disclose material facts on his Form U4 resulted in his statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") and Article III, Section 4, of FINRA's By-Laws. *See* CX-7, at 5. In December 2016, the California Department of Business Oversight issued a Notice of Intention to Issue an Order barring Laverty. Laverty failed to respond to the Notice, so in February 2017, the Department barred him from "any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser." CX-5; CX-6. California's action arose from the December 2015 AWC. Tr. 180; CX-6, at 2.

**B. Lavery Borrowed \$1.35 Million from RO and AO and Submitted False Compliance Questionnaires to Two Firms**

**1. Customers RO and AO**

HG and AG and EL and LL were friends of RO's. In 2008, EL introduced RO to Lavery.<sup>10</sup> At the time, Lavery was registered with Oppenheimer at a branch office in Indian Wells, California, a short distance from RO and AO's home. RO and his wife, AO, lived in Rancho Mirage, California. RO was a retired physician who had also obtained a law degree. AO was a retired nurse. RO and AO opened brokerage accounts at each of the firms that Lavery registered with.<sup>11</sup> In 2010, when they first loaned money to Lavery, RO was 90 years old and AO was 81 years old.<sup>12</sup> According to an application that RO and AO submitted to Oppenheimer in 2011 to open a securities account for a family trust, they had a net worth of \$10 million and annual income of \$500,000.<sup>13</sup>

Lavery established a close relationship with RO and AO. Lavery dined with them frequently and they attended holiday celebrations at each others' homes. Lavery and RO spoke almost daily.<sup>14</sup> According to Lavery, he visited RO and AO at their home "4 to 5 days per week over 5 years. They were like family."<sup>15</sup> Lavery even claimed that he offered to donate a kidney to RO,<sup>16</sup> who suffered from renal failure that required weekly dialysis treatments near the end of his life. RO also had failing eyesight as a result of macular degeneration. As a consequence, AO, who had a pacemaker, had to read documents to her husband.<sup>17</sup> AO died in September 2016 and RO died in April 2017.<sup>18</sup>

**2. Lavery Borrowed \$750,00 from RO and AO in 2010 and 2011 While Registered with UBS**

In May 2010, Lavery registered with UBS. Shortly thereafter, RO and AO opened an account at UBS and Lavery was the account representative.<sup>19</sup>

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<sup>10</sup> Tr. 36-37; Compl. ¶¶ 9-10; Ans. ¶¶ 9-10.

<sup>11</sup> Compl. ¶ 10; Ans. ¶ 10; CX-87; CX-88; CX-89; CX-90.

<sup>12</sup> Compl. ¶ 11; Ans. ¶ 11.

<sup>13</sup> CX-89, at 1. The family trust held over \$5 million in assets in the Oppenheimer account when RO and AO opened it in late 2011. *See* CX-90, at 1.

<sup>14</sup> Compl. ¶¶ 9-10; Ans. ¶¶ 9-10.

<sup>15</sup> CX-37, at 2.

<sup>16</sup> CX-37, at 2.

<sup>17</sup> Tr. 40, 43.

<sup>18</sup> Compl. ¶ 31; Ans. ¶ 31.

<sup>19</sup> Compl. ¶ 11; Ans. ¶ 11; CX-87; CX-88.

While he was registered with UBS, Lavery borrowed \$750,000 from RO and AO. On October 15, 2010, he borrowed \$550,000. During the investigation that led to the filing of the Complaint in this proceeding, Lavery testified that he needed the money to prevent foreclosure on his residence.<sup>20</sup> On February 11, 2011, he borrowed \$85,000; on July 20, 2011, \$50,000; and on November 3, 2011, \$65,000.<sup>21</sup>

UBS's written supervisory procedures prohibited its representatives from borrowing money from or lending money to any client, except in instances involving immediate family members or financial institutions in the business of lending money.<sup>22</sup> On January 14, 2011, three months after borrowing \$550,000 from RO and AO, Lavery submitted an annual compliance questionnaire to UBS. He answered "No" to the question "Have you borrowed money from, loaned money to, put up collateral for, or guaranteed a loan from any client or employee of [UBS] (NOT including an immediate family member)?"<sup>23</sup> Lavery's answer was false because in October 2010, he had borrowed \$550,000 from RO and AO. Less than a month after submitting the false compliance questionnaire, Lavery borrowed another \$85,000 from RO and AO.

Lavery never disclosed to UBS any of the four loans he obtained from RO and AO while he was registered with the firm, and never received UBS's approval to borrow money from them.<sup>24</sup>

### **3. Lavery Borrowed \$155,000 from RO and AO in December 2011 and October 2013 and Submitted False Compliance Questionnaires While Registered with Oppenheimer**

On November 3, 2011, Lavery left UBS, and on November 11, 2011, he registered with Oppenheimer. RO and AO opened accounts at Oppenheimer about a week later.<sup>25</sup>

On December 13, 2011, and October 4, 2013, respectively, Lavery borrowed \$75,000 and \$80,000 from RO and AO.<sup>26</sup> In August 2012, Lavery submitted an annual compliance questionnaire to Oppenheimer. He answered "No" to the question that asked, "Have you made

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<sup>20</sup> Tr. 132; CX-102, at 87-88. DO testified that his mother told him that Lavery intended to use the money to "start a firm" or "some sort of venture." Tr. 85.

<sup>21</sup> Compl. ¶ 12; Ans. ¶ 12; CX-12; CX-15; CX-16. On November 3, 2011, RO and AO wrote two checks to Lavery for \$30,000 and \$35,000. *See* Tr. 96; CX-50, at 1.

<sup>22</sup> UBS's procedures "prohibited financial relationships" with customers, including "Borrowing money from, or lending money to any client (except where the client is a member of your immediate family or the client is a financial institution that regularly provides credit, financing or loans in the ordinary course of business . . .)." CX-1, at 5.

<sup>23</sup> CX-14, at 1 (emphasis in original).

<sup>24</sup> Compl. ¶ 14; Ans. ¶ 14.

<sup>25</sup> Compl. ¶ 15; Ans. ¶ 15; CX-89; CX-90.

<sup>26</sup> Compl. ¶ 16; Ans. ¶ 16; CX-17.

loans to or borrowed from any customer?”<sup>27</sup> Laverty’s answer was false because in December 2011, a month after registering with Oppenheimer, he had borrowed \$75,000 from RO and AO.

A year later, in August 2013, Laverty repeated the “No” answer to the same question on the compliance questionnaire.<sup>28</sup> Laverty had not repaid any part of the \$75,000 loan from RO and AO.<sup>29</sup> Laverty never disclosed the loans to Oppenheimer and never received the firm’s approval.<sup>30</sup>

In about December 2013, Oppenheimer learned that Laverty twice had borrowed money from customer JA. In January 2014, the firm placed Laverty on heightened supervision and suspended him for seven days.<sup>31</sup> Under Oppenheimer’s plan of heightened supervision, Laverty was required, among other things, to attest monthly that he had not borrowed any money from customers.<sup>32</sup> During Oppenheimer’s investigation into Laverty’s borrowing from JA, Laverty wrote his supervisor that he would “never borrow a nickel from anyone for the rest of my life.”<sup>33</sup>

On February 6, 2014, Laverty submitted his first monthly attestation under Oppenheimer’s plan of heightened supervision. He stated that he had “not borrowed nor [sic] loaned any monies to or from any of my clients nor any other Oppenheimer clients to the best of my knowledge.”<sup>34</sup> The attestation was false because four months earlier, in October 2013, Laverty had borrowed \$80,000 from RO and AO.<sup>35</sup>

#### **4. Laverty Borrowed \$45,000 from RO and AO in May 2014 and Submitted a False Compliance Questionnaire While Registered with Calton**

On March 17, 2014, Laverty terminated his registration with Oppenheimer. He registered with Calton the same day. A few days later, RO and AO opened accounts at Calton and transferred their holdings from Oppenheimer. Laverty was the registered representative on the accounts.<sup>36</sup>

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<sup>27</sup> Compl. ¶ 17; Ans. ¶ 17; CX-22, at 3.

<sup>28</sup> Compl. ¶ 18; Ans. ¶ 18; CX-23, at 3.

<sup>29</sup> Compl. ¶ 18; Ans. ¶ 18.

<sup>30</sup> Compl. ¶ 19; Ans. ¶ 19.

<sup>31</sup> Tr. 144-45; Compl. ¶ 20; Ans. ¶ 20; CX-24; CX-52.

<sup>32</sup> CX-24, at 3.

<sup>33</sup> Tr. 171-72; CX-10, at 2.

<sup>34</sup> CX-25.

<sup>35</sup> The Complaint alleges, and Laverty admitted in his Answer, that his heightened supervision attestation was false. Compl. ¶ 21; Ans. ¶ 21.

<sup>36</sup> Compl. ¶ 22; Ans. ¶ 22; CX-71, at 4-5, 18; CX-91; CX-92; CX-93.

On May 19, 2014, Lavery borrowed another \$45,000 from RO and AO.<sup>37</sup> In October 2014, Lavery completed a Calton annual compliance questionnaire. He falsely answered “No” to the question “Since your last report, have you solicited or accepted a loan from or made a loan to a client for any reason?”<sup>38</sup>

Calton prohibited its registered representatives from borrowing money from customers unless the customer was an immediate family member or a financial institution in the business of loaning money, and only with the firm’s Chief Compliance Officer’s written approval. Lavery never received Calton’s written approval for the loan from from RO and AO and he never disclosed that he borrowed money from them.<sup>39</sup>

## **5. Lavery Borrowed \$400,000 from RO and AO in February 2015 While Registered with TCFG**

On February 19, 2015, Lavery registered with TCFG. RO and AO opened accounts at TCFG a few days later and Lavery was the registered representative on the accounts.<sup>40</sup>

On February 27, 2015, the same day that TCFG accepted RO and AO’s accounts, Lavery borrowed \$400,000 from them. At the time of the loan, RO and AO were 94 and 85 years old, respectively. TCFG prohibited its representatives from borrowing money from customers.<sup>41</sup>

## **6. Lavery Failed to Repay RO and AO**

On February 25, 2015, Lavery signed a \$1.4 million promissory note for the money he had borrowed from RO and AO since October 2010.<sup>42</sup> The note required that Lavery pay 6 percent annual interest on the unpaid balance, make 12 monthly payments of \$100,000 beginning April 30, 2015, and make a final payment by June 30, 2016, on the remaining amount owed. Lavery made none of the required payments.<sup>43</sup>

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<sup>37</sup> Compl. ¶ 23; Ans. ¶ 23.

<sup>38</sup> Compl. ¶ 25; Ans. ¶ 25; CX-26, at 7.

<sup>39</sup> Compl. ¶ 24; Ans. ¶ 24. At the time, Calton’s procedures referred to former NASD Rule 2370, instead of FINRA Rule 3240. Nonetheless, they instructed registered representatives who wanted to engage in a lending arrangement with a customer who was not an immediate family member or a financial institution to submit a written request that had to be approved in writing by the firm’s Chief Compliance Officer. *See* CX-3, at 102.

<sup>40</sup> Compl. ¶ 27; Ans. ¶ 27; CX-94, at 10; CX-95, at 10.

<sup>41</sup> Compl. ¶ 28; Ans. ¶ 28. TCFG’s written supervisory procedures stated, “Registered representatives are prohibited from entering into lending arrangements with customers.” CX-4, at 53.

<sup>42</sup> Although the promissory note was dated February 25, 2015, it included the \$400,000 loan that RO and AO extended to Lavery two days later, on February 27, 2015. RO drafted the promissory note, according to Lavery’s investigative testimony. The record is not clear why the promissory note is for \$1.4 million instead of \$1.35 million. *See* Tr. 150-53.

<sup>43</sup> Compl. ¶¶ 29-30; Ans. ¶¶ 29-30; CX-28. In March 2016, Lavery sent RO and AO two checks, for \$150,000 and \$200,000. The \$150,000 check bounced. Lavery told RO and AO not to deposit the \$200,000 because he did not have the money to honor the check. Tr. 62-64, 158; CX-27; CX-30; CX-103, at 88-89. On May 2, 2016, Lavery

In early 2015, RO and AO's son, DO, and his wife found a copy of the promissory note which revealed to DO for the first time that his parents had repeatedly loaned money to Laverty.<sup>44</sup> By this time, DO had already grown suspicious of Laverty because Laverty visited his parents so often. DO thought Laverty's behavior towards his parents was "odd" and "not normal" because "nobody is this nice." According to DO, Laverty's "name was always around, or he'd be physically around, coming and going, visiting."<sup>45</sup> Laverty never told DO that he had borrowed money from his parents.<sup>46</sup> DO learned from AO that Laverty had also borrowed money from EL and LL, and HG and AG, and that they had retained an attorney and had initiated an action against Laverty. DO then helped RO and AO to hire an attorney to help recover their money.<sup>47</sup>

Even after failing to make any payments under the promissory note, Laverty told RO and AO that he would repay them in full. In April 2016, Laverty wrote to them, saying they would be repaid by late June 2016.<sup>48</sup> Shortly afterwards, Laverty again wrote to RO and AO, saying he would soon pay them in full even though "you both know I didn't do anything wrong."<sup>49</sup>

In May 2016, RO and AO filed a Statement of Claim with FINRA Dispute Resolution against Laverty, UBS, Oppenheimer, Calton, and TCFG, seeking damages of \$1.5 million.<sup>50</sup> On June 2, 2016, UBS filed a Form U5 amendment disclosing the claim and informing FINRA for the first time that Laverty had improperly borrowed from RO and AO.<sup>51</sup> By July 2017, Laverty's former firms settled RO and AO's claims and collectively agreed to pay \$1 million.<sup>52</sup>

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paid RO and AO \$10,000 with a certified check. Tr. 71-72, 153; CX-33. RO and AO's son, DO, testified that Laverty may have paid his parents another \$8,000 sometime in 2016, before they filed the Statement of Claim. Tr. 80.

<sup>44</sup> Tr. 43-46. DO's wife also saw RO and AO's expense ledger showing that they had written large checks to Laverty. Tr. 51-53; CX-50.

<sup>45</sup> Tr. 42, 50.

<sup>46</sup> Tr. 50.

<sup>47</sup> Tr. 45-46, 64-65.

<sup>48</sup> CX-31.

<sup>49</sup> CX-32; CX-103, at 93-95.

<sup>50</sup> The Statement of Claim for damages of \$1.5 million included a \$150,000 loan from RO and AO in February 2016, when Laverty was no longer registered with a member firm. Accordingly, this loan was not included in the allegations of the Complaint. Tr. 96; CX-11, at 14. Laverty borrowed the \$150,000 from RO and AO in February 2016 even though he had made no payments on the February 2015 promissory note.

<sup>51</sup> Compl. ¶ 31; Ans. ¶ 31; CX-11.

<sup>52</sup> UBS agreed to pay RO and AO \$405,000; Oppenheimer \$95,000; Calton \$125,000; and TCFG \$375,000. *See* CX-58; CX-59; CX-60.



In late July 2017, a few days before a scheduled arbitration hearing, RO and AO, through their son, DO, their successor in interest, settled the claim against Laverty. Laverty agreed to pay \$677,500. Laverty breached the agreement by failing to make any required payments.<sup>53</sup>

### **C. Laverty’s False Testimony to FINRA During 2015 On-the-Record Interview**

The Complaint charges Laverty with giving false testimony in two instances during the earlier investigation that led to his consenting to the December 2015 AWC.

#### **1. In July 2015, Laverty Falsely Testified That He Borrowed Money Only from Customers HG and AG, EL and LL, and JA**

In January 2014, FINRA began to investigate Laverty’s borrowing from customers after Oppenheimer reported that it had disciplined him for borrowing from JA. The investigation eventually included other customers of Laverty’s—two married couples, HG and AG, and EL and LL. The investigation did not include RO and AO because neither Laverty nor his employers informed the staff that he had also borrowed from them.

As part of the investigation, on July 16, 2015, Laverty appeared for an on-the-record interview (“OTR”) pursuant to Rule 8210.<sup>54</sup> At the OTR, FINRA staff asked Laverty about loans from HG and AG, EL and LL, and JA. The staff also specifically asked Laverty if he had borrowed from other customers. He denied that he had:

*Q: Mr. Laverty, did you borrow from any other customers?*

*A: No.*

*Q: Just the three customers [HG/AG, EL/LL, and JA] we’ve gone over today?*

*A: Yes.*<sup>55</sup>

Laverty’s answers that he had not borrowed from anyone else besides HG and AG, EL and LL, and JA were false because at the time of the July 2015 OTR he had already borrowed \$1.35 million from RO and AO and even signed a \$1.4 million promissory note.<sup>56</sup>

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<sup>53</sup> Compl. ¶ 32; Ans. ¶ 32; CX-61; CX-62. On December 12, 2017, FINRA suspended Laverty indefinitely for failing to comply with the terms of the arbitration agreement. CX-71, at 53-56.

<sup>54</sup> Compl. ¶ 34; Ans. ¶ 34; CX-19.

<sup>55</sup> CX-19, at 161.

<sup>56</sup> The Complaint alleges that Laverty’s answers during the July 2015 OTR that he did not borrow money from anyone else were “false.” In his Answer, Laverty admitted the allegation. Compl. ¶ 35; Ans. ¶ 35.

**2. Lavery Falsely Denied Knowing That a Reference to “Bob” Concerned RO to Whom He Had Already Loaned \$1.35 Million**

During the July 2015 OTR, FINRA staff also asked Lavery about an August 2013 note he received from EL from whom he had borrowed money. The note references overdue loans from EL, HG, and “Bob.” In the note, EL proposed an extension of time to repay the money owed to him and requested that Lavery prioritize the repayment of loans he received from HG and “Bob.”<sup>57</sup> During the OTR, Lavery falsely testified that he did not know who “Bob” was when in fact he knew it was a reference to RO:

*Q: Do you recall seeing Exhibit 18 [EL’s August 2013 note to Lavery] before?*

*A: I think [EL] read this to me, but I don’t remember getting this. I remember the discussions about this. But I know he always said to me, Oh, don’t worry about it. I know what’s going on. And I think it’s evident that, you know, these were going to be short-terms loans because of the lawsuit with Credit Suisse.*

*Q: Okay. Well, in the note that’s been marked as Exhibit 18, there is no reference to Credit Suisse, but—first of all, it’s a note from [EL], is that [EL]?*

*A: Yes.*

*Q: And to Charlie, is that you?*

*A: Yes.*

*Q: In the note, [EL] does say that: “These were to be short-term loans which have now extended two years.” Do you know what loans he was talking about?*

*A: Yes, the loans to [HG] and him.*

*Q: He also makes reference in here to a Bob.*

*A: I don’t know what that is.*

*Q: So you don’t know who Bob is?*

*A: No. I don’t—no, I don’t.*

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<sup>57</sup> Compl. ¶ 36; Ans. ¶ 36; Tr. 131; CX-18; CX-21, at 4.

*Q: Okay. Because he does mention “other two friends” as well.*

*A: I think Bob should have been me. I mean, I think this was—I don’t know, you know, meaning me, him.<sup>58</sup>*

On May 3, 2017, Laverty gave testimony at an OTR pursuant to Rule 8210 during the investigation that gave rise to this disciplinary proceeding. FINRA staff questioned him about the testimony he provided two years earlier, during the July 2015 OTR. Laverty admitted that he knew “Bob” was RO. He testified as follows during the May 2017 OTR:

*Q: I want to direct you to the second paragraph on Exhibit 18, which reads, “as you know, both HL and Bob are dear friends of many years. It has been hard for you to separate the loans because of the overdue nature of the loans. Friends do talk to each other. As you know, these were to be short-term loans which have now extended to years. I value you as a friend and can only defend to some extent with my other two friends. Please understand.”*

*“Harvey and Bob,” is that [HG] and [RO] that he’s referencing here?*

*A: Yes.*

*Q: Was there ever any question in your mind that “Bob” was [RO]?*

*A: No.<sup>59</sup>*

Laverty’s testimony in July 2015 about the identity of “Bob” was false because, as he later admitted, he knew at the time that EL was referring to RO from whom Laverty had by then already borrowed \$1.35 million.

Laverty’s false and deceptive answers during his July 2015 OTR prevented FINRA from investigating his loans from RO and AO for at least a year.

#### **D. Laverty’s Judgment and Tax Lien**

The Complaint charges Laverty with failing to disclose a May 2014 judgment and a February 2015 tax lien on his Form U4.

##### **1. Laverty Failed to Disclose a May 2014 Judgment for \$114,456.24**

On May 22, 2014, the Superior Court of California for Riverside County entered a judgment against Laverty for \$114,456.24 in a suit brought by Security Bank of California

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<sup>58</sup> CX-19, at 121-22.

<sup>59</sup> CX-102, at 130-31.

(“Security Bank”) for his failure to repay a \$100,000 loan. On June 3 and July 1, 2014, Security Bank subpoenaed Laverty to appear in court on July 16, 2014, to provide information to aid in the collection of the judgment.<sup>60</sup> On October 29, 2014, Security Bank filed an acknowledgment of satisfaction of judgment reporting that Laverty had paid the judgment in full.<sup>61</sup>

From March 17, 2014, to February 26, 2015, Laverty was registered with Calton. He never updated his Form U4 to disclose the Security Bank judgment.<sup>62</sup> In fact, Laverty hid the existence of the judgment from Calton. On October 8, 2014, he submitted an annual compliance questionnaire to Calton. He answered “No” to the question “Since your last report, have any judgments been entered against you?” This answer was false because in May 2014 Security Bank had recorded its judgment against Laverty. Laverty admitted in his Answer that his response was “false.”<sup>63</sup>

## **2. Laverty Failed to Disclose a Tax Lien for \$63,410.90 Recorded in February 2015**

From February 19 to October 15, 2015, Laverty was registered with TCFG. On February 26, 2015, the Internal Revenue Service (“IRS”) recorded a \$63,410.90 federal tax lien against Laverty in Orange County, California.<sup>64</sup> Laverty admitted in his Answer to the Complaint that he knew about the tax lien.<sup>65</sup> Laverty never amended his Form U4 to disclose it.<sup>66</sup>

Laverty acknowledged to FINRA before entry of the judgment and lien that he understood he had an obligation to disclose them on Form U4. In April 2014, Laverty responded in writing to a FINRA request for information made pursuant to Rule 8210 about judgments and liens that he had not disclosed on his Form U4. Laverty explained the circumstances of each judgment and lien and told the staff that he “now understands and recognizes the disclosure obligations imposed on him as a FINRA registered representative.”<sup>67</sup> Despite this statement to FINRA, Laverty failed to disclose the judgment entered against him a month later and the IRS lien recorded in February 2015.

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<sup>60</sup> Compl. ¶¶ 38-39; Ans. ¶¶ 38-39; CX-39; CX-40, at 2; CX-41; CX-42; CX-43; CX-44; CX-45.

<sup>61</sup> Compl. ¶ 40; Ans. ¶ 40; CX-46.

<sup>62</sup> Compl. ¶ 41; Ans. ¶ 41.

<sup>63</sup> Compl. ¶¶ 26, 41; Ans. ¶¶ 26, 41; CX-26 at 1. This is the same Calton annual questionnaire in which Laverty falsely stated that he had not borrowed from any customers.

<sup>64</sup> Compl. ¶ 42; Ans. ¶ 42; CX-49.

<sup>65</sup> Compl. ¶ 42; Ans. ¶ 42.

<sup>66</sup> Compl. ¶ 43; Ans. ¶ 43.

<sup>67</sup> CX-101, at 3.

### III. Conclusions of Law

#### A. Lavery Violated FINRA Rules 3240 and 2010 by Borrowing from RO and AO (Cause One)

FINRA Rule 3240 imposes conditions on the circumstances under which a person associated with a member firm in any registered capacity may borrow money from a customer. The Rule provides that a registered representative may not borrow money from a customer unless (i) the member has written procedures allowing the borrowing; (ii) the borrowing meets one of five conditions set forth in the Rule; and (iii) the associated or registered person notifies the member before entering into the borrowing arrangement.<sup>68</sup>

UBS, Oppenheimer, and TCFG prohibited registered representatives from borrowing from any client. Calton permitted loans under limited circumstances but only with its Chief Compliance Officer's written permission, which he never provided to Lavery. Lavery never disclosed any of his loans from RO and AO to any of the firms he was associated with. Thus, none of the firms approved of the loans.

None of Lavery's eight loans from RO and AO met the five conditions set forth in Rule 3240(a)(2). First, RO and AO were not members of Lavery's immediate family. They were not a financial institution engaged in the business of loaning money. Neither RO nor AO was registered with Lavery's firms. The loans were not based on a personal relationship between Lavery and RO and AO outside the broker-customer relationship. Finally, the loans were not based on a business relationship with RO and AO outside the broker-customer relationship.<sup>69</sup>

In his Answer, Lavery claimed that his conduct did not violate Rule 3240 because the loans from RO and AO were "strictly personal in nature and had nothing whatsoever to do with [his] employment status with any member firms. The fact that the sources of those loans were clients of member firms was purely coincidental."<sup>70</sup> During the investigation, Lavery defended his practice of borrowing from RO and AO, saying "They didn't have to lend me the money. They didn't—I didn't force them to lend me the money. They were friends of mine."<sup>71</sup> The Panel does not find that the loans were based on a personal relationship but instead resulted from RO and AO's status as brokerage customers. But even if the loans were based on a personal relationship, pursuant to Rule 3240(b)(1), Lavery was still obligated to notify his employers of

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<sup>68</sup> See *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at \*43 (Feb. 10, 2012) (finding that NASD Rule 2370, the predecessor to FINRA Rule 3240, "prohibited associated persons from borrowing funds from a customer unless that person's firm has a written procedure allowing such borrowing and the arrangement meets certain conditions").

<sup>69</sup> See FINRA Rule 3240(a)(2)(A) through (E).

<sup>70</sup> Ans., at 5 (Third Affirmative Defense).

<sup>71</sup> CX-102, at 100-01.

the loans and obtain the firms' written approval before entering into the arrangements. He never did this with any of his employers.<sup>72</sup>

FINRA has explained the purposes behind establishing conditions on associated persons' borrowing from customers. "Loans between registered persons and their customers are of legitimate interest to [FINRA] and member firms because of the potential for misconduct."<sup>73</sup> In this case, the risk of misconduct was great. RO and AO were elderly. RO suffered from a degenerative eye disease and kidney failure. Laverty had clearly insinuated himself into their lives and extracted from them eight separate loans totaling \$1.35 million over a four-year period. Laverty's firms did not know about his borrowing activity until more than five years after Laverty first borrowed money from RO and AO in October 2010. Had he sought his firms' written approval for the loans, as required by the Rule, Laverty likely would have been prevented from borrowing any money from RO and AO and they would not have suffered any losses at his hands.

The Panel accordingly concludes that Laverty violated FINRA Rules 3240 and 2010<sup>74</sup> by borrowing \$1.35 million from RO and AO from 2010 to 2015.

#### **B. Laverty Provided False Answers on Two Compliance Questionnaires to Oppenheimer and Calton (Cause Two)**

The Complaint charges Laverty with lying to Oppenheimer about borrowing from customers on the firm's heightened supervision attestation in February 2014 and to Calton on its

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<sup>72</sup> In his Answer, Laverty also asserted that his decision not to disclose the loans from RO and AO "was based upon the advice of counsel." Ans., at 5 (Second Affirmative Defense). Laverty testified at his May 2017 OTR that RO told him that did not have to inform anyone about the loans. Laverty said he relied on RO's advice because RO was an attorney. See CX-102, at 97, 104. Laverty also asserted this defense in written responses in November 2016 and March 2017 to Rule 8210 requests for information from the staff. CX-35, at 2; CX-37, at 2. The Panel does not find this claim credible and rejects his purported reliance on counsel. Laverty presented no evidence to corroborate his advice of counsel defense. Furthermore, Laverty was on notice that there were restrictions on borrowing from customers. He had been disciplined by his employers for this very conduct during the period he borrowed money from RO and AO. In November 2011, Oppenheimer initiated an investigation into his borrowing practices, which caused FINRA to send Laverty a Cautionary Action Letter in May 2012 for improperly borrowing money from a customer, in violation of FINRA Rule 3240. CX-51; CX-71, at 26-27. In January 2014, Oppenheimer suspended him for improperly borrowing money from customer JA. CX-52. For us to find that Laverty relied on the advice of counsel, he would have to prove that he made full and complete disclosure to competent legal counsel familiar with FINRA Rules and then reasonably relied on the advice. See *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at \*52 (Sept. 13, 2010) ("The advice must be based on a full and complete disclosure, and the respondent asserting reliance must produce 'actual advice from an actual lawyer.'") (citing *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*40 (Nov. 14, 2008)). In light of Laverty's prior disciplinary history, his reliance on counsel would not be reasonable. Also, RO had not been licensed to practice law in California since 1993. CX-63.

<sup>73</sup> NASD Notice to Members 03-62, at 1 (Oct. 2003), <http://www.finra.org/industry/notices/03-62>.

<sup>74</sup> A violation of Rule 3240 also constitutes a violation of FINRA Rule 2010. See *Mullins*, 2012 SEC LEXIS 464, at \*44 n.45.

October 2014 annual compliance certification about borrowing from customers and having no judgments entered against him. Laverty admitted that his answers were false.<sup>75</sup>

A false statement on a compliance questionnaire violates the ethical standards of FINRA Rule 2010. “A registered representative’s failure to disclose material information to his firm violates [Rule 2010], and calls into question the registered representative’s ‘ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.’”<sup>76</sup> Making false statements to employers about borrowing from customers violates Rule 2010.<sup>77</sup>

The Panel accordingly finds that Laverty violated FINRA Rule 2010 by making false statements and a false attestation on two compliance certifications while on heightened supervision.

### **C. Laverty Provided False Testimony (Cause Three)**

FINRA Rule 8210 empowers FINRA, in the conduct of an investigation, to require a member or an associated person to provide information in writing or orally and requires members and registered persons to respond fully and truthfully. Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information from its members. “The rule is at the heart of the self-regulatory system for the securities industry.”<sup>78</sup> An associated person’s obligation to comply with Rule 8210 requests for information is unequivocal.<sup>79</sup>

Providing false information to FINRA in response to a Rule 8210 request violates both Rule 8210 and Rule 2010. Providing false and misleading information to FINRA staff during an investigation “mislead[s] [FINRA] and can conceal wrongdoing” and therefore “subvert[s]

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<sup>75</sup> Compl. ¶¶ 26, 41, 51; Ans. ¶¶ 26, 41, 51. As noted above, although Laverty provided false answers on compliance questionnaires to UBS in 2011 and Oppenheimer in 2012 and 2013 by failing to disclose loans from RO and AO, Enforcement elected to not charge those violations because the December 2015 AWC cited these false statements—concerning loans from HG and AG, EL and LL, and JA—as violations. *See* Enforcement Pre-Hearing Brief, at 17 n.89.

<sup>76</sup> *Dep’t of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at \*26 (NAC May 21, 2018) (quoting *Dep’t of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at \*30 (NAC Feb. 24, 2011), *aff’d in relevant part*, 2012 SEC LEXIS 464). *See also Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at \*16 (NAC Mar. 9, 2015) (providing false information to firm violates FINRA Rule 2010) (citing *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at \*16-17 (Feb. 24, 2012)); *James A. Goetz*, 53 S.E.C. 472, 477-78 (1998) (finding that a registered representative’s false statements on firm’s forms “reflect[] directly” on his ability to comply with regulatory requirements fundamental to the securities industry and to fulfill his fiduciary responsibilities in handling other people’s money).

<sup>77</sup> *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at \*10 (NAC May 7, 2003) (finding the respondent violated NASD Rule 2110, the predecessor to FINRA Rule 2010, by misrepresenting to his firm that he had not borrowed from customers).

<sup>78</sup> *Berger*, 2008 SEC LEXIS 3141, at \*13.

<sup>79</sup> *Id.*

[FINRA's] ability to perform its regulatory function and protect the public interest."<sup>80</sup> Providing false or misleading information—including false and misleading testimony at an OTR<sup>81</sup>—in response to requests issued under the Rule therefore violates FINRA Rules 8210 and 2010.<sup>82</sup>

Because of his false answers during the July 2015 OTR denying that he had borrowed from other persons, Enforcement could not investigate the loans RO and AO extended to Laverty. Based on his admissions during his testimony in May 2017, Laverty provided false testimony about the identity of “Bob” during his July 2015 OTR. The Hearing Panel accordingly finds that Laverty violated FINRA Rules 8210 and 2010.

#### **D. Laverty Failed to Disclose Judgment and Tax Lien (Cause Four)**

Cause four of the Complaint charges Laverty with violating Article V, Section 2(c), of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to disclose the May 2014 civil judgment for \$114,456.14 and the February 2015 IRS tax lien in the amount of \$63,410.90 on his Form U4. Although in his Answer Laverty admitted not disclosing the judgment and tax lien, he denies that he acted willfully when he did not update his Form U4.<sup>83</sup>

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 a registered person's Form U4 contains 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.”<sup>84</sup> Therefore, filing a false or incomplete Form U4, or

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<sup>80</sup> *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at \*32 (Aug. 22, 2008) (internal quotations omitted) (quoting *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006)).

<sup>81</sup> *John Montelbano*, 56 S.E.C. 76, 97-99 (2003) (sustaining NASD's finding that respondents violated Rule 8210 by giving false testimony during an on-the-record interview); *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at \*36 (NAC Dec. 18, 2006) (“It is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to [FINRA] in connection with an examination or investigation.”).

<sup>82</sup> A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010. *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*30 (Jan. 30, 2009). Providing false or misleading information to FINRA during an investigation constitutes an independent violation of FINRA Rule 2010, separate from a violation of Rule 8210. *Dep't of Enforcement v. The Keystone Equities Group, LP*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at \*41 (NAC Dec. 17, 2015) (citing *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at \*33 n.26 (NAC Oct. 10, 2007)).

<sup>83</sup> Compl. ¶¶ 61-62; Ans. ¶¶ 61-62.

<sup>84</sup> *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at \*18 (Oct. 20, 2011).



failing to timely amend a Form U4, violates FINRA Rule 1122.<sup>85</sup> Violations of FINRA Rule 1122 also constitute violations of FINRA Rule 2010.<sup>86</sup>

Laverty was obligated to provide a truthful answer to Question 14M on Form U4, which asks, “Do you have any unsatisfied judgments or liens against you?” If a registered person is subject to a judgment or a lien, he must answer Question 14M affirmatively and provide details about it on a “Judgment Lien DRP” form. The additional information he must provide includes the amount of the judgment or lien, the identity of the judgment or lienholder, the date the associated person learned of the judgment or lien, and whether the judgment or lien is outstanding.

Laverty breached his obligation to disclose material information on his Form U4. “Every person submitting a Form U4 has the obligation to ensure that the information provided on the form is true and accurate.”<sup>87</sup> FINRA uses Form U4 “to screen applicants and monitor their fitness for registration within the securities industry.”<sup>88</sup> 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.”<sup>89</sup> “[T]he candor and forthrightness of the individuals making these Forms U4 is critical to the effectiveness of this screening process.”<sup>90</sup>

### **1. Laverty Acted Willfully**

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 Exchange Act 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

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<sup>85</sup> 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*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff’d*, 671 F.3d 210 (2d Cir. 2012) (applying IM-1000-1, the predecessor to FINRA Rule 1122).

<sup>86</sup> *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, 2016 U.S. App. LEXIS 24259 (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).

<sup>87</sup> *Neaton*, 2011 SEC LEXIS 3719, at \*16.

<sup>88</sup> *McCune*, 2016 SEC LEXIS 1026, at \*10.

<sup>89</sup> *Robert F. Kauffman*, 51 S.E.C. 838, 839 (1993).

<sup>90</sup> *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at \*13 (NAC Dec. 18, 2009) (citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996)).

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 is willful.<sup>91</sup>

Willfully violating the securities laws means “intentionally committing the act which constitutes the violation.”<sup>92</sup> Stated differently, “it means . . . the person charged with the duty knows what he is doing.”<sup>93</sup> 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.<sup>94</sup> “A failure to disclose is willful . . . if the respondent of his own volition provides false answers on his Form U4.”<sup>95</sup>

The Hearing Panel finds that Laverty acted willfully when he failed to disclose the judgment and tax lien on his Form U4. The record amply demonstrates that Laverty knew that judgments and liens were reportable on Form U4. At least twice during the investigation that led to the December 2015 AWC—in February and April 2014—Laverty told FINRA that he understood he had to disclose judgments and liens.<sup>96</sup> Nonetheless, he took no steps to amend his Form U4 to make the required disclosures even though, as Laverty admitted in his Answer, he had notice of the judgment and lien.<sup>97</sup>

## **2. The Judgment and Tax Lien Are Material**

The failure to disclose the judgment and tax lien 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.<sup>98</sup> The National Adjudicatory Council has held that “essentially all of the information that is reportable on the Form U4 may be considered material.”<sup>99</sup> Judgments and liens are material information because they raise concerns about whether a registered representative can be trusted to provide

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<sup>91</sup> *Dep’t of Enforcement v. The Dratel Group, 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 he willfully failed to disclose material information on his Form U4).

<sup>92</sup> *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

<sup>93</sup> *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)).

<sup>94</sup> *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*38 (Apr. 18, 2013).

<sup>95</sup> *Id.* at n.69 (citing *Mathis*, 2009 SEC LEXIS 4376, at \*19).

<sup>96</sup> CX-65, at 2; CX-101, at 3.

<sup>97</sup> Compl. ¶¶ 39-43; Ans. ¶¶ 39-43.

<sup>98</sup> *North Woodward*, 2014 FINRA Discip. LEXIS 32, at \*17 n.13 (citing *Mathis*, 671 F.3d at 220).

<sup>99</sup> *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*34 (NAC July 27, 2007).

reliable financial advice to investors who count on the person to act as a professional in the securities industry.<sup>100</sup>

For the reasons discussed above, the Hearing Panel finds that Laverty willfully violated Article V, Section 2(c), of FINRA's By-Laws<sup>101</sup> and FINRA Rules 1122 and 2010 by failing to disclose the judgment and lien on his Form U4.

#### **IV. Sanctions**

In determining the appropriate sanctions for Laverty's misconduct, the Panel considered FINRA's Sanction Guidelines ("Guidelines"), including the General Principles Applicable to All Sanction Determinations ("General Principles") and the Principal Considerations in Determining Sanctions ("Principal Considerations").<sup>102</sup> We also considered all relevant facts and circumstances, including the seriousness of the misconduct, any aggravating and mitigating factors, and the risk of future harm Laverty poses to the investing public.

##### **A. Borrowing Money from Customers RO and AO and Submitting False Compliance Questionnaires (Causes One and Two)**

The Panel finds that it is appropriate to assess a unitary sanction for the misconduct alleged in causes one and two, both of which relate to Laverty's failure to disclose loans from RO and AO to his employers.<sup>103</sup>

For borrowing money from customers in violation of Rule 3240, the Guidelines instruct adjudicators to consider imposing a fine between \$2,500 and \$73,000 and suspending a

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<sup>100</sup> *Richard Allen Riemer, Jr.*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at \*26 (Oct. 31, 2018) (finding undisclosed tax liens totaling over \$33,000 material); *David Adam Elgart*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097, at \*21 (Sept. 29, 2017) (finding that five undisclosed tax liens were material), *petition denied*, No. 17-15283, 2018 U.S. App. LEXIS 26627 (11th Cir. Sept. 19, 2018); *The Dratel Group, Inc.*, 2015 FINRA Discip. LEXIS 10, at \*17-18 (holding that judgment and liens are material information because they are "critical to evaluating" a broker's fitness to work in the securities industry).

<sup>101</sup> *North Woodward*, 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).

<sup>102</sup> See FINRA Sanction Guidelines (May 2018), <http://www.finra.org/industry/sanction-guidelines>. In May 2018, FINRA revised its Guidelines by amending General Principle No. 2 to instruct adjudicators in disciplinary proceedings to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when assessing sanctions. These revisions apply only to complaints filed in FINRA's disciplinary system beginning June 1, 2018. See Guidelines at 2-3. Enforcement filed the Complaint against Laverty on April 25, 2018. Accordingly, the Panel did not consider Laverty's customer complaints in determining sanctions. No other revisions were made to the Guidelines. See FINRA Regulatory Notice 18-17 (May 2, 2018), <http://www.finra.org/industry/notices/18-17>.

<sup>103</sup> See *Department of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at \*67 (NAC July 20, 2017) (applying a single sanction for fraudulent misrepresentations and unsuitable recommendations based on same facts) (citing *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*59 (Sept. 24, 2015) (affirming FINRA's imposition of a single sanction for violations that are based on the same facts)). See also *Dep't of Enforcement v. Davidofsky*, No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at \*37-40 (NAC Apr. 26, 2013) (applying a single sanction for respondent's churning and excessive trading).

respondent for between 10 business days and three months. Where aggravating factors predominate, adjudicators should consider a suspension of up to two years or a bar.<sup>104</sup> The most relevant considerations in determining sanctions for violations of Rule 3240 are (i) the number of loans at issue; (ii) the dollar amount, duration, interest rate, repayment schedule, and other terms of the loan and whether they are reasonable; (iii) whether respondent made payments in conformance with the loan agreement and has repaid, or attempted to repay, the loan; (iv) the age, financial condition, and financial sophistication of the customers; and (v) whether the respondent misled his employer about the existence of loans or otherwise concealed the activity from the firm.<sup>105</sup>

We find that Laverty's misconduct is egregious and involves multiple aggravating factors. No mitigating circumstances exist that would warrant any sanction less than a bar. He repeatedly borrowed large sums of money from RO and AO for over four years. At most, he repaid RO and AO \$18,000 out of the \$1.35 million he borrowed. RO and AO were elderly and in ill health—and thus attractive targets for Laverty. It is evident to the Panel that Laverty had no intention of ever voluntarily repaying RO and AO in full. Under these circumstances, the Panel finds that Laverty held undue influence over RO and AO. Laverty engaged in the misconduct for his own personal gain.<sup>106</sup> He actively concealed the loans from four different employers. As a result of his efforts, the four firms were prevented from exercising reasonable supervision over Laverty's activities.<sup>107</sup> The Panel finds that it is likely that Laverty calculated he could get away with his borrowing from RO and AO without anyone ever learning about it—and he would have been successful had DO and his wife not discovered the promissory note by accident.

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<sup>104</sup> Guidelines at 77.

<sup>105</sup> Guidelines at 77.

<sup>106</sup> In addition to the specific principal considerations for misconduct related to borrowing money from customers, *see* Guidelines at 7-8 (Principal Considerations Nos. 8, 9, 13, 17, 19) (whether the respondent engaged in numerous acts and/or a pattern of misconduct; whether respondent engaged in the misconduct over an extended period of time; whether respondent's misconduct was the result of an intentional act, recklessness, or negligence; the number, size, and character of the transactions at issue; whether respondent exercised undue influence over the customer).

<sup>107</sup> *See* Guidelines at 7 (Principal Consideration No. 10) (whether the respondent attempted to conceal his misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities, or a member firm).

There are no specific Guidelines for failing to disclose information on an employer’s compliance questionnaire, as alleged in cause two. For this violation, we consulted the Guidelines for recordkeeping violations and for falsification of records.<sup>108</sup>

The Guidelines for recordkeeping violations recommend a suspension in any or all capacities for between 10 business days and three months. When aggravating circumstances predominate, a longer suspension of up to two years or a bar is appropriate. The Guidelines also recommends a fine between \$1,000 and \$15,000, but states that when aggravating factors predominate, adjudicators should consider a fine between \$10,000 and \$146,000. An even higher fine should be considered where significant aggravating factors predominate.<sup>109</sup>

The Guidelines for forgery or falsification of records recommend a suspension of 10 business days to two years, depending on whether the falsification was authorized, there was customer harm, and the misconduct involved other violations. When a respondent falsifies a document in furtherance of another violation, causing customer harm or accompanied by significant aggravating factors—as the Panel finds here—a bar should be considered standard.<sup>110</sup>

The Guidelines for recordkeeping violations and falsification of records recommend that the Panel consider the nature and materiality of the inaccurate or missing information and the nature of documents falsified.<sup>111</sup> Other relevant considerations include the nature, proportion, and size of the firm records at issue, and whether the inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence. The Panel finds that Laverty acted intentionally when he falsely answered the compliance questionnaire. We also find that Laverty’s misconduct was part of a pattern and allowed other misconduct to escape detection.<sup>112</sup>

The Guidelines also instruct adjudicators to consider a respondent’s relevant disciplinary history and impose escalating sanctions on a recidivist, particularly in instances involving “significant past misconduct that is similar to the misconduct at issue,” or “a pattern of causing

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<sup>108</sup> See Guidelines at 1 (Overview) (“For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.”); Guidelines at 29, 37. See *Dep’t of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at \*86-87 (NAC July 18, 2016), *aff’d*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017), *petition denied*, 733 F. App’x 571 (2d Cir. 2018) (applying guidelines for recordkeeping violations and falsification of records for respondent’s misrepresentations on annual compliance questionnaire); *Dep’t of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at \*69-70 (NAC July 18, 2014) (applying guidelines for falsification of records for respondents’ misstatements on compliance questionnaires concerning their outside business activities), *aff’d*, 2015 SEC LEXIS 3927; *Dep’t of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at \*26-27 (NAC May 13, 2011) (applying guidelines related to the falsification of records for respondent’s false statements on compliance questionnaires about outside brokerage accounts), *aff’d*, 2012 SEC LEXIS 620.

<sup>109</sup> Guidelines at 29.

<sup>110</sup> Guidelines at 37.

<sup>111</sup> Guidelines at 29, 37.

<sup>112</sup> Guidelines at 29.

investor harm, damaging market integrity, or disregarding regulatory requirements.”<sup>113</sup> Laverty’s December 2015 disciplinary action was for borrowing large sums of money from five other customers and misleading his employers on compliance questionnaires—misconduct identical to the misconduct in this proceeding.<sup>114</sup>

We find no mitigating circumstances—only aggravating factors—surrounding Laverty’s borrowing from RO and AO and concealing the loans from his employers on compliance questionnaires. Laverty has amply demonstrated that he is unfit to continue in the securities industry. A bar is needed to protect investors from his egregious and predatory misconduct. Accordingly, the Hearing Panel bars Laverty from associating with any member firm in any capacity for his violations of FINRA Rules 3240 and 2010, as alleged in causes one and two.

### **B. Providing False Testimony to FINRA (Cause Three)**

For failing to respond or to respond truthfully to requests for information under Rule 8210, the Guidelines recommend a fine of \$25,000 to \$73,000 and state that a bar is the standard sanction. The Guidelines do not specify the appropriate sanctions for providing false testimony or documents, but the case law establishes that a bar is appropriate for such violations in the absence of mitigating circumstances.<sup>115</sup> “The failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate.”<sup>116</sup>

In determining the appropriate sanction, the Guidelines identify as a principal consideration the importance of the information requested viewed from FINRA’s perspective.<sup>117</sup> In this case, Laverty intentionally provided false testimony during the 2015 OTR to conceal impermissible and sizable loans from RO and AO. The existence of the loans was important because FINRA was investigating Laverty’s extensive borrowing practices. His false testimony impeded FINRA’s investigation.

Laverty’s lack of veracity in his testimony warrants a bar. The Panel therefore imposes a bar from associating with any member firm in any capacity for Laverty’s violations of FINRA Rules 8210 and 2010, as alleged in cause three.

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<sup>113</sup> Guidelines at 2-3 (General Principle No. 2). The Panel finds that Laverty’s misconduct with respect to RO and AO was so egregious that a bar in all capacities would have been appropriate even if he had no relevant disciplinary history.

<sup>114</sup> In May 2012, FINRA issued Laverty a Cautionary Action Letter for borrowing \$20,000 in 2010 from a customer while he was registered with UBS. Compl. ¶ 5; Ans. ¶ 5; CX-51. Because a Cautionary Action Letter is an informal action, the Hearing Panel did not consider it for the purposes of determining sanctions. *See* Guidelines at 9.

<sup>115</sup> Guidelines at 33. *See, e.g., Ortiz*, 2008 SEC LEXIS 2401, at \*32-33 (citing *Rooms*, 58 S.E.C. at 229 (“[T]he failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry. . . . [A] bar is an appropriate remedy.”)).

<sup>116</sup> *Harari*, 2015 FINRA Discip. LEXIS 2, at \*31.

<sup>117</sup> Guidelines at 33.

### C. Willfully Failing to Update Form U4 (Cause Four)

For filing a false, misleading, or inaccurate Form U4, the Guidelines recommend fining an individual between \$2,500 and \$37,000. When aggravating factors are present, the Hearing Panel should consider suspending an individual in any or all capacities for 10 business days to six months. When 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.<sup>118</sup>

The relevant Principal Consideration in this case is the nature and significance of the information at issue.<sup>119</sup> The undisclosed information—the judgment and tax lien—was material. Laverty’s failure to disclose these events significantly affected the mix of information available to regulators assessing whether to investigate his conduct, and to investors and clients assessing whether to trust Laverty’s judgment.

The Hearing Panel also considered aggravating factors. The December 2015 AWC constitutes a prior disciplinary action because it included misconduct involving Laverty’s failure to disclose information on his Form U4. Even before the judgment and lien were recorded against him, Laverty told FINRA that he knew he had to disclose the information on his Form U4. The Hearing Panel therefore finds that Laverty acted intentionally.<sup>120</sup>

The Securities and Exchange Commission 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.”<sup>121</sup> FINRA, other regulators, and broker-dealers rely on a Form U4 “to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm.”<sup>122</sup>

The Hearing Panel finds no mitigating circumstances warranting reduced sanctions. Given the seriousness of his misconduct, and after weighing all the facts and circumstances, the Hearing Panel finds it appropriately remedial to suspend Laverty from associating with any FINRA member firm in any capacity for nine months and to impose a \$15,000 fine for willfully failing to amend his Form U4. In light of the bars, however, the Panel does not impose the

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<sup>118</sup> Guidelines at 71.

<sup>119</sup> Guidelines at 71.

<sup>120</sup> Guidelines at 8 (Principal Consideration No. 13) (directing adjudicators to consider whether the respondent’s misconduct was the result of an intentional act, recklessness, or negligence).

<sup>121</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*24-25 n.44 (quoting *Tucker*, 2012 SEC LEXIS 3496, at \*26), *petition denied*, 575 F. App’x 1 (D.C. Cir. 2014) (citations omitted).

<sup>122</sup> *Id.* at \*23 (quoting *Tucker*, 2012 SEC LEXIS 3496, at \*26).

suspension and fine. Because his misconduct was willful, and the information about the judgment and tax lien is material, Laverty is subject to statutory disqualification.<sup>123</sup>

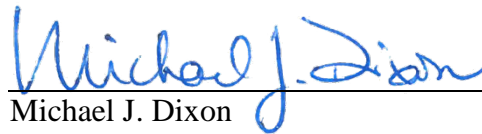
## V. Order

Respondent Charles A. Laverty is barred from associating with any FINRA member firm in any capacity for borrowing money from customers RO and AO and for his false statements on his compliance questionnaires, in violation of FINRA Rules 3240 and 2010, as alleged in causes one and two. The Panel also bars Laverty from associating with any FINRA member firm in any capacity for giving false testimony during his July 2015 OTR, in violation of Rules 8210 and 2010, as alleged in cause three.

For his willful failure to disclose material information on his Form U4, in violation of FINRA Rules 1122 and 2010 and Article V, Section 2(c), of FINRA's By-Laws, Laverty would be suspended for nine months and fined \$15,000. In light of the bars, the Panel does not impose the suspension and fine.

Laverty is ordered to pay the hearing costs of \$2,483.22, consisting of a \$750 administrative fee and \$1,733.22 for the cost of the transcript. The assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

The bars shall become effective immediately if this Decision becomes FINRA's final action in this disciplinary proceeding.<sup>124</sup>



Michael J. Dixon  
Hearing Officer  
For the Hearing Panel

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<sup>123</sup> A panel does not impose a statutory disqualification as a sanction. Instead, it is a collateral consequence arising from the operation of Section 3(a)(39)(F) of the Exchange Act when there is a determination that a person willfully failed to disclose material information on his Form U4. See *Riemer*, 2018 SEC LEXIS 3022, at \*15-17; *McCune*, 2016 SEC LEXIS 1026, at \*36-37.

<sup>124</sup> The Hearing Panel considered and rejected without discussion all other arguments by the parties.