

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HARVEY B. VAUGHN, JR.,  
(CRD No. 500700),

Respondent.

Disciplinary Proceeding  
No. 2015045409001

Hearing Officer--KBW

**DEFAULT DECISION**

June 7, 2016

**Respondent willfully violated Article V, Section 2(c) of the NASD and FINRA By-Laws, NASD Rule 2110, NASD IM-1000-1, and FINRA Rules 1122 and 2010, by failing to timely amend his Form U4 to disclose information relating to his financial condition. Respondent also violated FINRA Rule 2010 by providing to his employer member firm a false attestation that no changes were necessary to his Form U4. For these violations, Respondent is fined \$10,000, suspended from associating in any capacity with any FINRA member firm for nine months.**

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

For the Respondent: No Appearance by Harvey B. Vaughn, Jr.

**DECISION**

**I. Introduction**

The Complaint alleges two causes of action against Respondent Harvey B. Vaughn, Jr. The first cause alleges that Respondent willfully violated Article V, Section 2(c) of the NASD and FINRA By-Laws, NASD Rule 2110, NASD IM-1000-1, and FINRA Rules 1122 and 2010 by failing to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose information relating to his financial condition. The second cause alleges that Respondent violated FINRA Rule 2010 by falsely completing an employee attestation while he was associated with FINRA member firm, Transcend Capital.

Respondent did not answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a motion for entry of default decision ("Default Motion"), together with

counsel's declaration ("Decl.") in support of the motion and supporting exhibits. Respondent did not respond to the motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement's Default Motion.

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

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

Respondent entered the securities industry in 1987. He was associated with a number of FINRA member firms from 1987 to 2015, including WFG Investments, Inc. (December 2002 to June 2014), Transcend Capital (July 2014 to May 2015), and Odeon Capital Group LLC (May 2015 to June 2015). Respondent is not currently associated with a FINRA member firm.<sup>1</sup>

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

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

### **C. Origin of the Investigation**

FINRA's staff initiated an investigation in response to a customer complaint against Respondent.<sup>2</sup>

### **D. Respondent's Default**

On January 22, 2016, Enforcement served Respondent with the Notice of Complaint and Complaint by certified mail, return receipt requested, to his last known residential address recorded in the Central Registration Depository (the "CRD Address").<sup>3</sup> The Notice of Complaint set forth February 18, 2016, as the deadline for the Respondent's response to the Complaint.<sup>4</sup>

Respondent did not respond to the Complaint by the February 18 deadline. On February 23, 2016, Enforcement served the Second Notice of Complaint and Complaint on Respondent by certified mail, return receipt requested, to his CRD Address.<sup>5</sup>

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<sup>1</sup> CX-1, at 8-9; Complaint ("Compl.") ¶¶ 3, 5, 7.

<sup>2</sup> Decl. ¶ 4.

<sup>3</sup> Decl. ¶¶ 14-19; CX-2.

<sup>4</sup> Decl. ¶ 20.

<sup>5</sup> Decl. ¶¶ 20-24.

Respondent did not file an answer or otherwise respond to the Complaint. Accordingly, I find that Respondent defaulted.<sup>6</sup>

### **E. Respondent's Failure to Update Form U4**

Registered representatives like Respondent must complete and file with FINRA a Form U4 to become registered through a FINRA member firm. Article V, Section 2 of the NASD and FINRA 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." Filing a false Form U4, or failing to timely amend a Form U4, violates Article V, Section 2 of the NASD and FINRA By-Laws, FINRA Rule 1122, NASD IM-1000-1, and the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under NASD Rule 2110 and FINRA Rule 2010.<sup>7</sup> Respondent failed to timely disclose a bankruptcy petition and a federal tax lien on his Form U4.

#### **1. Failure to Disclose Bankruptcy Petition**

In May 2005, Respondent filed a Chapter 7 bankruptcy petition in the U.S. Bankruptcy Court for the Western District of Texas. Question 14K(1) of Form U4 asked whether Respondent had filed a bankruptcy petition within the past ten years. Respondent's Form U4 was amended 11 times during the period of June 27, 2005, to June 26, 2014, but he did not disclose his bankruptcy petition until July 1, 2014, when he was in the process of becoming registered with Transcend Capital.<sup>8</sup>

#### **2. Failure to Disclose Unsatisfied Federal Tax Lien**

In October 2014, Respondent received notice of a federal tax lien against him in the amount of \$60,756. The lien has not yet been satisfied.<sup>9</sup>

Respondent filed a Form U4 on May 7, 2015, in connection with becoming associated with Odeon. Question 14M of Form U4 asked, "Do you have any unsatisfied judgments or liens

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<sup>6</sup> Decl. ¶ 25. Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>7</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); *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at \*25 n.10, \*29-30 (NAC Mar. 9, 2015). FINRA Rule 1122 replaced NASD IM-1000-1 effective August 17, 2009. See FINRA Regulatory Notice 09-33 (June 2009). FINRA Rule 2010 replaced NASD Rule 2110 effective December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008).

<sup>8</sup> Compl. ¶¶ 9-16; CX-4, at 12-13.

<sup>9</sup> Compl. ¶¶ 18-19.

against you?” Respondent answered, “No.” Respondent did not disclose the federal tax lien until May 22, 2015, after Odeon discovered the lien and required Respondent to disclose it on his Form U4.<sup>10</sup>

**3. Violations of Article V, Section 2(c) of NASD’s By-Laws, Article V, Section 2(c) of FINRA’s By-Laws, NASD Rule 2110, NASD IM-1000-1, and FINRA Rules 1122 and 2010**

Respondent was obligated to amend his Form U4 to reflect his bankruptcy petition and the federal tax lien. By failing to do so, Respondent violated Article V, Section 2(c) of the NASD and FINRA By-Laws, NASD Rule 2110, NASD IM-1000-1, and FINRA Rules 1122 and 2010.

**F. Respondent’s False Employee Attestation**

Respondent falsely represented to his employer that no changes were necessary to his Form U4, as alleged in the second cause of action. Specifically, in December 2014, Respondent completed an employee attestation required by Transcend Capital. Under a section of the attestation entitled, “U-4 Update,” Respondent attested that he had reviewed a copy of his Form U4 and “[n]o changes are necessary.” Respondent did not disclose the federal tax lien to Transcend Capital’s Compliance Department.<sup>11</sup>

FINRA Rule 2010 requires that associated persons observe high standards of commercial honor and just and equitable principles of trade. By submitting the false employee attestation to Transcend Capital, Respondent violated Rule 2010.<sup>12</sup>

**G. Respondent is Subject to Statutory Disqualification**

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

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<sup>10</sup> Compl. ¶¶ 21-24; Decl. ¶ 26; CX-1, at 13.

<sup>11</sup> Compl. ¶ 25.

<sup>12</sup> *Dep’t of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at \*39-41 (NAC July 18, 2014) (Respondent violated FINRA Rule 2010 by providing a false response to an employee questionnaire), *aff’d*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015), *appeal docketed*, No. 15-15199E (11th Cir. Nov. 19, 2015).

misleading with respect to any *material* fact, or has omitted to state ... any *material* fact which is required to be stated therein.<sup>13</sup>

As set forth below, Respondent is subject to statutory disqualification because his failure to timely update his Form U4 was willful and the omitted information was material.<sup>14</sup>

## 1. Respondent's Failures were Willful

"A willful violation under the federal securities laws simply means 'that the person charged with the duty knows what he is doing.'"<sup>15</sup> A finding of willfulness does not require intent to violate the law, but merely intent to do the act that constitutes a violation of the law.<sup>16</sup> Respondent's failures were willful because he had notice of the filing of his bankruptcy petition and the federal tax lien, yet failed to disclose them.

## 2. The Omitted Information was Material

In the present context, "[i]nformation is material if it would have 'significantly altered the total mix of information made available.'"<sup>17</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>18</sup> The information that Respondent omitted was material because it "raise[s] concerns about whether [Respondent] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional."<sup>19</sup>

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<sup>13</sup> 15 U.S.C. § 78c(a)(39)(F)(emphasis added).

<sup>14</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 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).

<sup>15</sup> *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*41 (Nov. 9, 2012) (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)) (quotation omitted).

<sup>16</sup> *Scott Mathis v. SEC*, 671 F.3d 210, 216-19 (2d Cir. 2012).

<sup>17</sup> *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at \*17 n.13 (NAC July 21, 2014) (quoting *Mathis v. SEC*, 671 F.3d 210, 220 (2d Cir. 2012)), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *appeal docketed*, No. 15-3729 (6th Cir. July 7, 2015).

<sup>18</sup> *Dep't of Enforcement v. McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at \*12 (NAC July 27, 2015) (citations omitted), *aff'd*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026 (Mar. 15, 2016), *appeal docketed*, No. 16-9527 (10th Cir. May 12, 2016).

<sup>19</sup> *Tucker*, 2012 SEC LEXIS 3496, at \*32.

### III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") provide that "[a]ggregation or 'batching' of violations may be appropriate for the purpose of determining sanctions...."<sup>20</sup> I find that batching is appropriate here because the misrepresentation that forms the basis for the second cause of action is closely related to Respondent's failures to timely amend his Form U4.

In assessing the appropriate sanction, I 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 and consideration of a suspension in any or all capacities for five to 30 business days.<sup>21</sup> For egregious cases (such as those involving repeated failures to file), the Guidelines call for consideration of a longer suspension in any and all capacities, for up to two years, or a bar.<sup>22</sup>

I considered several aggravating factors and concluded that Respondent's failures to amend his Form U4 were egregious. Respondent's failure to disclose the required information significantly altered the mix of information available to regulators assessing whether to scrutinize Respondent's conduct, member firms assessing whether to hire Respondent, and investors assessing whether to trust Respondent's competence and integrity. Respondent's failure to disclose persisted for years despite the filing of numerous amendments to Respondent's Form U4. Respondent falsely represented to Transcend Capital that his Form U4 required no changes. Additionally, Respondent did not disclose his bankruptcy until he was in the process of becoming registered with another member firm, and he failed to disclose the federal tax lien until Odeon discovered it and required Respondent to disclose.

I also considered the Guidelines that apply to conduct analogous to the conduct charged in the second cause of action – falsification of records.<sup>23</sup> The Guidelines for forgery or falsification of records call for consideration of a suspension in any and all capacities for up to two years where mitigating factors exist and for a bar in egregious cases. The Guidelines identify two principal considerations specific to falsification of records: (1) the nature of the document(s) falsified, and (2) whether the respondent had a good faith, but mistaken, belief of express or implied authority. The employee attestation was a significant tool for ensuring compliance and there is no indication that Respondent had a good faith belief that he was authorized to provide a false attestation.

After considering all these factors, I conclude that a \$10,000 fine and a suspension of nine months are reasonable and appropriate sanctions that will serve the remedial purposes of the Guidelines.

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<sup>20</sup> FINRA Sanction Guidelines at 4 (2015), <http://www.finra.org/industry/sanction-guidelines>.

<sup>21</sup> Guidelines at 69.

<sup>22</sup> Guidelines at 70.

<sup>23</sup> *Mielke*, 2014 FINRA Discip. LEXIS 24, at \*70.

#### **IV. Order**

Respondent Harvey B. Vaughn, Jr. is fined \$10,000, suspended from associating in any capacity with any FINRA member firm for nine months, and is subject to statutory disqualification for willfully violating Article V, Section 2(c) of the NASD and FINRA By-Laws, NASD Rule 2110, NASD IM-1001-1, and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 and for violating FINRA Rule 2010 by submitting a false attestation to his employer member firm.

If this decision becomes FINRA's final disciplinary action, Respondent's suspension shall become effective on July 18, 2016. The fine shall be due and payable if and when Respondent re-enters the securities industry.



**Kenneth Winer**  
Hearing Officer

#### **Copies to:**

Harvey B. Vaughn, Jr. (via overnight courier, email and first-class mail)  
Karen E. Whitaker, Esq. (via email and first-class mail)  
Penelope Brobst Blackwell, Esq. (via email)  
David B. Klafter, Esq. (via email and first-class mail)  
Jeffrey D. Pariser, Esq. (via email)