

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID WOLK  
(CRD No. 2945630),

Respondent.

Disciplinary Proceeding  
No. 2012033981601

Hearing Officer—MAD

**AMENDED DEFAULT DECISION<sup>1</sup>**

January 14, 2016

**For willfully failing to timely amend his Form U4, in violation of Article V, Section 2(c) of the NASD and FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Rule 2110, and NASD IM-1000-1, Respondent is suspended from associating with any FINRA member firm in any capacity for one year and fined \$10,000. For his false attestation on the firm's annual compliance questionnaire, in violation of FINRA Rule 2010, Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined an additional \$5,000. The suspensions shall run consecutively.**

For the Complainant: Rebecca L. Segrest, Esq. and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: no appearance.

**DECISION**

**I. Introduction**

Respondent David Wolk ("Wolk") was registered with Woodstock Financial Group, Inc. ("Woodstock"), a FINRA member firm, between February 2003 and September 2014. While registered with Woodstock, Wolk failed to timely update his Uniform Application for Securities Industry Registration (Form U4) to disclose that multiple tax liens had been filed against him and that he had entered into an Offer in Compromise with the Internal Revenue Service ("IRS"). Wolk also submitted a false annual compliance form to Woodstock in which he denied that any tax liens had been filed against him.

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<sup>1</sup> This Default Decision is amended to reflect a typographical error on page 8.

Enforcement filed a Complaint with the Office of Hearing Officers on August 19, 2015. The Complaint charges Wolk with (1) willfully failing to timely update his Form U4, in violation of Article V, Section 2(c) of the NASD and FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Rule 2110, and NASD IM-1000-1; and (2) submitting a false annual compliance questionnaire to Woodstock, in violation of FINRA Rule 2010.

Wolk 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. Wolk did not respond to the Default Motion.

For the reasons discussed below, the Hearing Officer finds Wolk in default and grants Enforcement’s Default Motion.<sup>2</sup>

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

### **A. Respondent’s Background**

Wolk was first employed in the securities industry in February 1997.<sup>3</sup> From February 2003 until September 2014, Wolk was registered with FINRA as a General Securities Representative through his association with Woodstock.<sup>4</sup>

On September 26, 2014, Woodstock filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on behalf of Wolk, reflecting that he voluntarily terminated his association with Woodstock on September 25, 2014.<sup>5</sup> Wolk has not been registered or associated with any FINRA member since September 2014.<sup>6</sup>

### **B. FINRA’s Jurisdiction**

FINRA retains jurisdiction over Wolk pursuant to Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint within two years after September 25, 2014, the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he was associated with Woodstock.

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<sup>2</sup> Respondent is notified that he may move to set aside the default pursuant to Rule 9269(c) upon a showing of good cause.

<sup>3</sup> CX-1, at 14.

<sup>4</sup> CX-1, at 6.

<sup>5</sup> CX-1, at 23.

<sup>6</sup> CX-1, at 6. On October 28, 2014, FINRA revoked Wolk’s registration for failure to pay fines assessed in another FINRA action. Decl. ¶ 10.

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

During a routine cycle examination of Woodstock in 2012, FINRA Staff reviewed whether associated persons at Woodstock had disclosed material events such as liens, judgments, and compromises with creditors on their Forms U4.<sup>7</sup> The FINRA Staff learned of a tax levy against Wolk that had not been timely disclosed on his Form U4. They also discovered federal tax liens, state tax warrants, and an Offer in Compromise with the IRS that had not been timely disclosed on Wolk's Form U4.<sup>8</sup> This disciplinary proceeding followed.

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

Enforcement served Wolk with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on August 19, 2015, and the Complaint and Second Notice of Complaint on September 17, 2015.<sup>9</sup> In each case, Enforcement served Wolk by first-class certified mail addressed to his residential address recorded in FINRA's Central Registration Depository ("CRD").<sup>10</sup> Enforcement also served Wolk with the Complaint, First Notice of Complaint, and Second Notice of Complaint via email.<sup>11</sup> Thus, the Hearing Officer finds that Wolk received constructive notice of the Complaint in this proceeding.<sup>12</sup>

Wolk did not file an Answer to the Complaint or the Second Notice of Complaint. Thus, the Hearing Officers finds Wolk in default and deems the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a).

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

Article V, Section 2(c) of FINRA's By-Laws requires an associated person to report certain disclosable events on a Form U4 and to keep the form updated and accurate. The By-Laws require associated persons to make a supplementary amendment to the Form U4 within 30 days of learning of a fact or circumstance requiring an amendment. FINRA Rule 1122 prohibits the filing of incomplete or inaccurate information so as to be misleading and requires associated persons to correct filed information when they learn that what they have filed is incomplete or inaccurate. These provisions give rise to a duty to provide accurate and current information so as

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<sup>7</sup> Decl. ¶ 4.

<sup>8</sup> Decl. ¶ 5.

<sup>9</sup> Decl. ¶¶ 15, 21.

<sup>10</sup> Decl. ¶ 6.

<sup>11</sup> Decl. ¶¶ 19, 24; CX-3; CX-5.

<sup>12</sup> See *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at \*21 (NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in the CRD, by first-class and certified mail).

to “assure[] regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing.”<sup>13</sup>

If an associated person willfully makes a false or misleading statement with respect to any material fact on a Form U4 or fails to report a material fact, he becomes subject to a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA’s By-Laws. Information is material if it “significantly alter[s] the ‘total mix’ of information made available,” such that there is a “substantial likelihood that a reasonable investor would consider it important in deciding whether to buy or sell shares.”<sup>14</sup> The existence of unsatisfied judgments and liens, as well as any compromise with creditors, must be disclosed on a Form U4.<sup>15</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>16</sup>

In February 2003, Wolk signed and submitted an initial Form U4 when he registered with Woodstock. He thereafter failed to timely update the Form U4 to reflect his federal tax liens and state tax levy.<sup>17</sup>

### 1. Federal Tax Liens

After submitting his initial Form U4, Wolk became the subject of the following six federal tax liens, which were recorded between November 2003 and February 2012.<sup>18</sup>

November 12, 2003 lien	\$439,410.60
May 26, 2006 lien	\$9,178.45
October 3, 2007 lien	\$98,572.97
March 13, 2008 lien	\$161,760.87
November 25, 2009 lien	\$86,937.42
February 12, 2012 lien	\$14,439.33
<b>Total</b>	<b>\$810,209.64</b>

Despite having notice of the liens on or about the time that each was recorded, Wolk

<sup>13</sup> *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at \*17-18 (Oct. 20, 2011).

<sup>14</sup> *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

<sup>15</sup> During the relevant period, the Form U4 included the questions, “Do you have any unsatisfied judgments or liens against you?” and “Within the past 10 years: (1) have you made a compromise with creditors...?” Complaint (Compl.) ¶ 6.

<sup>16</sup> *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*34-35 (NAC July 7, 2007).

<sup>17</sup> Compl. ¶ 6.

<sup>18</sup> Compl. ¶ 7.

failed to update his Form U4 until January 29, 2014.<sup>19</sup>

## 2. State Tax Levy

On January 11, 2010, the State of New York issued a tax compliance levy in the amount of \$106,871.02 to Woodstock as garnishee for Wolk, the judgment debtor.<sup>20</sup> The levy amount included two debts that had been the subject of tax warrants previously issued to Wolk for tax years 2004, 2005, 2006, and 2007.<sup>21</sup> Woodstock updated Wolk's Form U4 to reflect the judgment on March 9, 2010.<sup>22</sup>

By failing to timely amend his Form U4 to report the tax liens, Wolk violated Article V, Section 2(c) of the NASD and FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Rule 2110, and NASD IM-1000-1. The Hearing Officer also finds that Wolk's failure to amend his Form U4 was willful.<sup>23</sup>

## 3. Offer in Compromise with the IRS

Enforcement also alleged that Wolk violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to amend his Form U4 so that his response to Question 14K reflected an Offer in Compromise he submitted to the IRS in October 2011. The Offer in Compromise covered tax years 2000, 2003, 2004, 2005, 2006, 2007, 2008, and 2009.<sup>24</sup> Pursuant to the Offer in Compromise, Wolk began making payments to the IRS under a payment plan beginning in December 2012.<sup>25</sup> To date, Wolk has failed to update his Form U4 to disclose the Offer in Compromise with the IRS.<sup>26</sup>

This allegation raises the question of whether Wolk's settlement with a single creditor (the IRS) is a "compromise with creditors" within the meaning of Question 14K on the

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<sup>19</sup> Compl. ¶ 9.

<sup>20</sup> Compl. ¶ 11.

<sup>21</sup> Compl. ¶ 11.

<sup>22</sup> Compl. ¶ 12.

<sup>23</sup> An associated person willfully violates federal securities laws so long as the "person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). It is not necessary to find that Wolk intentionally violated FINRA rules, only that he knew what he was doing when he did not timely amend his Form U4 to disclose the six federal tax liens. *See Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified when he voluntarily failed to amend Form U4 to disclose tax liens). The record demonstrates that Wolk knew about the tax liens but failed to amend his Form U4 for several months.

<sup>24</sup> Compl. ¶ 8.

<sup>25</sup> Compl. ¶ 8.

<sup>26</sup> Compl. ¶ 10.



Form U4.<sup>27</sup> Under the limited record here, the Hearing Officer declines to address this issue. As noted above, Wolk should have reported the underlying tax liens that were the subject of the IRS compromise and settlement. Accordingly, whether Wolk should also have amended his Form U4 to reflect the settlement with the IRS does not affect the sanctions that the Hearing Officer considers appropriate under the facts and circumstances of this case.

#### **F. False Attestation or Compliance Question**

On January 14, 2013, Wolk completed an annual compliance questionnaire for 2012. The Questionnaire stated:

FINRA Rules require you to update your Form U4 when certain events occur. Events or occurrences which may require the amending of your Form U4 include . . . judgments or liens against you, bankruptcy, regulatory investigations, sanctions or fines, and criminal misdemeanor or felony charges. Has any event or occurrence happened to you which would have required the filing of an amendment to your Form U4 during the review period?

Wolk responded “No.”<sup>28</sup>

By failing to honestly and accurately complete his compliance questionnaire, Wolk violated FINRA Rule 2010, which requires registered persons to observe high standards of commercial honor and just and equitable principles of trade.

### **III. Sanctions**

#### **A. Willful Failure to Timely Update Form U4 (Article V, Section 2(c) of the NASD and FINRA By-Laws, FINRA Rule 1122 and 2010, NASD Rule 2110, and NASD IM-1000-1)**

The Guidelines recommend a fine ranging from \$2,500 to \$37,000, and a suspension in any or all capacities of between 5 and 30 business days for an associated person’s failure to timely amend a Form U4.<sup>29</sup> For egregious cases, like those involving repeated failures to file, the Guidelines recommend a longer suspension of up to two years or a bar. Among the principal

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<sup>27</sup> *Accord, Dep’t of Enforcement v. Reuven*, 2014040651301, 2015 FINRA Discip. LEXIS 59, \*8 n.17 (OHO Nov. 18, 2015); *see also Dep’t of Enforcement v. Cody*, No. 2005003188901, 2009 FINRA Discip. LEXIS 17, at \*35-36 (OHO Jan. 29, 2009) (holding that Question 14K(1) did not require disclosure of a settlement of an arbitration award with a single creditor), *aff’d in part, rev’d in part*, 2010 FINRA Discip. LEXIS 8 (NAC May 10, 2010), *aff’d*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862 (May 27, 2011), *aff’d*, 693 F.3d 251 (1st Cir. 2012). *But cf.* Form U4 and U5 Interpretative Questions and Answers, at 11, <https://www.finra.org/sites/default/files/AppSupportDoc/p119944.pdf> (interpreting the phrase “a compromise with creditors” in Question 14K on Form U4 as generally referring to “an agreement between a borrower and a creditor in which a creditor agrees to accept less than the full amount owed in full satisfaction of an outstanding debt.”).

<sup>28</sup> Compl. ¶ 26.

<sup>29</sup> FINRA Sanction Guidelines 69 (2015), available at [www.finra.org/industry/sanction-guidelines](http://www.finra.org/industry/sanction-guidelines).

consideration in determining sanctions are: (1) the nature and significance of the information at issue; (2) whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and (3) whether respondent member firm's misconduct resulted in harm to a registered person, another member firm or any other person or entity.

Multiple failures to disclose a person's unpaid debts are egregious. Wolk's failure to timely disclose the six federal tax liens, totaling more than \$810,000, and one state tax levy for more than \$106,000, warrants a significant sanction. The Hearing Officer imposes a \$10,000 fine and a one-year suspension in all capacities. Because Wolk's failures to disclose were willful and the omitted information was material, he is also subject to statutory disqualification.

#### **B. False Attestation on Firm's Annual Compliance Questionnaire (FINRA Rule 2010)**

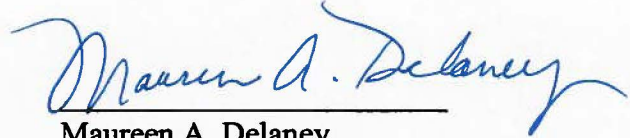
There is no specific Guideline concerning the falsification of an attestation; however, the Guideline for falsification of records in violation of Rule 2010 is analogous. That Guideline recommends a fine between \$5,000 and \$146,000, and a suspension or a bar. In cases where mitigating factors exist, the Guideline recommends consideration of a suspension up to two years. In egregious cases, it is appropriate to consider a bar. The Guidelines contain two relevant Principal Considerations for determining sanctions for falsifying documents: (1) the nature of the document falsified; and (2) whether respondent had a good faith, but mistaken, belief express or implied authority.

The document Wolk falsified was designed by his firm to ensure that the firm and its employees comply with federal securities laws and NASD, FINRA, and other applicable rules. The firm's annual compliance form serves as one of the firm's main methods of oversight over its representatives. Here, there is no evidence that Wolk was mistaken or made a good faith error when falsely executing his attestation. The Hearing Officer imposes a \$5,000 fine and a six-month suspension in all capacities.

#### **IV. Order**

Respondent David Wolk willfully failed to timely update his Form U4, in violation of Article V, Section 2(c) of the NASD and FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Rule 2110, and NASD IM-1000-1. Wolk is suspended from associating with any FINRA member firm in any capacity for one year and fined \$10,000. For Wolk's false attestation on his firm's annual compliance questionnaire, in violation of FINRA Rule 2010, Wolk is suspended from associating with any FINRA member firm in any capacity for six months and fined \$5,000. The suspensions shall run consecutively. Because Wolk's failures to disclose were willful and the omitted information was material, he is also subject to statutory disqualification.

If this Default Decision becomes FINRA's final disciplinary action, Wolk's suspension shall become effective with the opening of business on Monday, February 15, 2016. The fines totaling \$15,000 shall be due and payable if and when Wolk reenters the securities industry.



Maureen A. Delaney  
Maureen A. Delaney  
Hearing Officer

Copies to: David Wolk (via overnight courier and first-class mail)  
Rebecca L. Segrest, Esq. (via email and first-class mail)  
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