

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TODD WILLIAM COWLE  
(CRD No. 724275),

Respondent.

Disciplinary Proceeding  
No. 2006004494201

Hearing Officer—Andrew H. Perkins

**HEARING PANEL DECISION**

November 6, 2007

**Respondent violated NASD Conduct Rule 2110 and IM-1000-1 by failing to update his Form U4 to reflect the filing of federal tax liens. Respondent is suspended from associating with any member firm in any capacity for five business days, fined \$2,500, and ordered to pay costs.**

Appearances

Karen E. Whitaker, Esq., and Mark J. Fernandez, Sr., Esq. for the Department of Enforcement.

Phillip W. Offill, Jr., Esq., LAW OFFICES OF PHILLIP W. OFFILL, JR., for the Respondent.

**DECISION**

On January 17, 2007, the Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority<sup>1</sup> filed a Complaint against Todd William Cowle (“Cowle”) alleging that between September 11, 2005, and April 2, 2006, he willfully failed to update his Form U4, Uniform Application for Securities Industry Registration or Transfer, to disclose two

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<sup>1</sup> As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA shall include, by reference and where appropriate, references to NASD. FINRA’s rules, which include NASD Conduct and Procedural Rules, are available on FINRA’s Internet site at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

unsatisfied federal tax liens, in violation of NASD Conduct Rule 2110 and IM-1000-1. Cowle filed an Answer to the Complaint on February 14, 2007, in which he denied the charges and affirmatively alleged that he was not required to disclose the liens because he had filed an amended tax return.

A hearing was held in Dallas, Texas, on September 5, 2007, before a hearing panel composed of the Hearing Officer and two current members of the District 6 Committee.<sup>2</sup>

## **I. FINDINGS OF FACT**

### **A. The Respondent**

Cowle has been employed in the securities industry since 1981 and obtained his Series 7 license (General Securities Representative) while employed at Verrilli Altschuler Schwartz Inc.<sup>3</sup> Currently, Cowle is employed by Southwest Texas Capital, L.L.C., in Plano, Texas, where he has been registered as a General Securities Representative since January 13, 2003.<sup>4</sup> Between 1981 and 2003, Cowle was employed by the following firms: Verrilli Altschuler Schwartz Inc. (1981); Herzfeld & Stern (1981 through 1982); Merrill Lynch, Pierce, Fenner & Smith (1982 through 1984); Bear, Stearns & Co. (1984 through 1992); PaineWebber Inc. (1992 through 1994); Rodman & Renshaw, Inc. (1994 through 1997); Wheat First Securities, Inc. (1997 through 1998); Dain Rauscher Inc. (1998 through 2000); and Prudential Securities Inc. (2000 through 2002).<sup>5</sup>

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<sup>2</sup> References to Enforcement's exhibits are cited as "CX- \_\_\_\_." The Respondent did not offer any additional exhibits. References to the transcript of the hearing are cited as "Tr. \_\_\_\_."

<sup>3</sup> CX-1, at 62.

<sup>4</sup> CX-1, at 5.

<sup>5</sup> Tr. 187-90; CX-1.

Cowle has a prior disciplinary history. In January 2003, the Texas State Securities Board sanctioned Cowle for selling securities in Texas before his application for registration through Gallamore & Lightfoot Financial Group (the predecessor to Southwest Texas Capital) was approved.<sup>6</sup> Cowle entered into an agreed order that provided for a reprimand, an administrative fine of \$250, and payment of restitution. In addition, the order entered by the Texas State Securities Board contained the following undertakings: (1) Cowle is prohibited from acting in any supervisory capacity within the State of Texas; (2) Cowle is to be directly supervised by a principal who is not subject to statutory disqualification; (3) Cowle is prohibited from exercising discretionary authority over any customer account; (4) Cowle's registration is limited primarily to current and previous clients' accounts and the offer and sale of bonds to institutional clients; and (5) Cowle's new clients must be accredited investors.<sup>7</sup>

#### **B. Origin of Investigation**

In February 2006, FINRA received a tip from a reporter with the Dallas Morning News that Cowle had not reported several misdemeanor charges on his Form U4.<sup>8</sup> FINRA promptly opened an investigation into this allegation. Ultimately, FINRA concluded that Cowle did not need to disclose the three misdemeanor charges.<sup>9</sup> In the course of the investigation, however, FINRA discovered two federal tax liens that Cowle had not disclosed on his Form U4. The Internal Revenue Service ("IRS") filed the first on August 23, 2005,<sup>10</sup> and the second on September 20, 2005.<sup>11</sup> The first lien in the amount of \$21,960.75 was for unpaid taxes for the

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<sup>6</sup> CX-1, at 36.

<sup>7</sup> CX-1, at 36-37.

<sup>8</sup> Tr. 22-24, 51.

<sup>9</sup> Tr. 25.

<sup>10</sup> CX-2A, at 2.

<sup>11</sup> CX-3A, at 2.

1999 tax year.<sup>12</sup> The second lien in the amount of \$69,932.05 was for unpaid taxes for the tax years 2000, 2003, and 2004.<sup>13</sup>

### **C. Form U4 Disclosure**

#### **1. The Federal Tax Liens**

Cowle ran into financial trouble while he was associated with Prudential Securities. He testified that he experienced a substantial drop in business and failed to make any money the last year he was with Prudential Securities.<sup>14</sup> In addition, he testified that Prudential Securities refused to pay him the entire signing bonus to which he was entitled.<sup>15</sup> Prudential Securities discharged him in December 2002 for lack of production and then demanded that Cowle repay a loan it made to Cowle when he joined the firm.<sup>16</sup>

Cowle also experienced financial difficulties due to a dispute he had with Dain Rauscher. Cowle testified that he had to file for bankruptcy in 2003 to force Dain Rauscher to negotiate a settlement.<sup>17</sup>

As a result of his financial difficulties, Cowle was unable to pay his income taxes for 1999 and 2000.<sup>18</sup> In October 2002, Cowle filed an amended 1999 federal tax return seeking a reduction in his tax liability.<sup>19</sup> In June 2003, the IRS asked Cowle to submit proof of his claim,

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<sup>12</sup> CX-2A, at 1.

<sup>13</sup> CX-3A, at 1.

<sup>14</sup> Tr. 209.

<sup>15</sup> Tr. 190-91.

<sup>16</sup> Tr. 191; CX-9H, at 16; CX-1, at 5.

<sup>17</sup> Tr. 209-10; CX-1, at 39.

<sup>18</sup> In providing a summary of the bankruptcy on the Form U4, Cowle wrote that he filed for bankruptcy because he was unable to repay upfront signing bonuses and related taxes. CX-1, at 39.

<sup>19</sup> Tr. 120.

which Cowle did not supply.<sup>20</sup> In October 2003, the IRS informed Cowle that it was unable to process the amended tax return without the requested information.<sup>21</sup>

Between October 2003 and July 2005, Cowle neither paid his outstanding tax liability nor submitted the documentation the IRS had requested. Cowle also did not pay his federal income taxes liabilities for the years 2003 and 2004 as they came due.

Finally, in July 2005, Cowle proposed an installment plan to forestall the IRS from pursuing collection efforts. The IRS accepted his plan, and Cowle began making monthly payments of \$5,000 against his unpaid tax liabilities for the years 1999, 2000, 2003, and 2004.<sup>22</sup> In addition, on or about July 6, 2005, Cowle resubmitted his amended 1999 return with additional documentation to support his request for a reduction in his 1999 tax liability.<sup>23</sup>

To secure the payments due under the installment plan, the IRS filed the two federal tax liens that are the subject of this proceeding. Cowle testified at his on-the-record interview that the IRS filed the liens because it was going to take a long time for the IRS to process the amended 1999 return.<sup>24</sup> Cowle admitted that he received prompt notice of the liens.<sup>25</sup> Nonetheless, he did not disclose them on his Form U4 until April 3, 2006, after FINRA initiated its investigation of Cowle's Form U4 omissions.<sup>26</sup>

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<sup>20</sup> CX-4, at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 4.

<sup>23</sup> CX-9H, at 16.

<sup>24</sup> CX-9, Cowle Tr. at 37-38 (transcript of Cowle on-the-record interview dated Apr. 11, 2006).

<sup>25</sup> *Id.* at 39, lines 12-18.

<sup>26</sup> *See* CX-8.

## 2. Cowle's Failure to Update his Form U4

When Cowle received notice in 2005 that the IRS had recorded two federal tax liens against him in the clerk's office for Collin County, Texas, he was associated with Southwest Texas Capital. In connection with his application for employment with Southwest Texas Capital, Cowle prepared and submitted a Form U4, which, among other things, asked whether he had any unsatisfied judgments or liens against him.<sup>27</sup> By signing the Form U4, Cowle agreed to comply with a written provision that he "update [the] form by causing an amendment to be filed on a timely basis whenever changes occur to answers previously reported."<sup>28</sup> Nevertheless, Cowle did not disclose the tax liens to Southwest Texas Capital, and he did not amend his Form U4 to disclose them until after FINRA staff brought the liens to the attention of Charles L. Gallamore ("Gallamore"), the President of Southwest Texas Capital, in March 2006. Southwest Texas Capital filed an amended Form U4 on Cowle's behalf on April 3, 2006, which disclosed the two tax liens.<sup>29</sup>

Cowle gave several explanations for why he did not disclose the tax liens promptly. During the investigation, FINRA sent a letter to Southwest Texas Capital requesting information from Cowle about the liens.<sup>30</sup> In the written response dated April 3, 2006, Cowle relayed that he had not disclosed the liens because his tax preparer had advised him that the liens were not "formal lien[s]."<sup>31</sup> Based on that advice, Cowle testified that he concluded that he was not required to disclose the liens. However, Cowle's tax preparer denied giving such advice. To the

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<sup>27</sup> See CX-6A, Question 14M.

<sup>28</sup> CX-6A, Section 15A(9).

<sup>29</sup> CX-8.

<sup>30</sup> CX-9G.

<sup>31</sup> CX-9H, at 3; Tr. 37. Gallamore testified that he prepared the response letter incorporating Cowle's answers. See Tr. 156-57.

contrary, she testified that she never said the liens were not “formal liens” and that she would never use such a description because there is no such thing as an informal tax lien.<sup>32</sup> In her words, “a lien is a lien.”<sup>33</sup> The tax preparer’s testimony is supported by Gallamore’s account of a conversation he had with her on March 30, 2006. Gallamore explained in his response letter to FINRA that Cowle’s tax preparer told him that the two federal tax liens were in fact “formal liens,” which the IRS had filed in connection with the payment plan Cowle had entered into approximately a year earlier. Under the payment plan, Cowle was obligated to pay \$5,000 per month to the IRS.<sup>34</sup>

Cowle also testified that he had not reported the liens because PaineWebber had not required him to update his Form U4 to disclose a federal tax lien in 1993.<sup>35</sup> According to Cowle he reported the lien to PaineWebber promptly and paid the amount due the IRS within 11 days of the date he received notice of the lien.<sup>36</sup> Nonetheless, the IRS did not release the lien for many months. Based on these facts, Cowle concluded that he did not need to report the liens in 2005. He testified that he believed he could rely on the fact that PaineWebber’s experienced compliance department apparently had come to the conclusion in 1993 that tax liens were not reportable. However, under the facts and circumstances known to Cowle, his reliance on PaineWebber’s inaction was not reasonable. Because the Form U4 requires disclosure only of unsatisfied liens, once the 1993 lien was paid, Cowle and PaineWebber were not obligated to

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<sup>32</sup> Tr. 109-10, 134-35.

<sup>33</sup> Tr. 109.

<sup>34</sup> CX-9H, at 3.

<sup>35</sup> Tr. 212; CX-9, Cowle Tr. at 42; CX-9H, at 3.

<sup>36</sup> Tr. 37, 45, 212, 233, 240-41; CX-9, Cowle Tr. at 42.

disclose the lien on the Form U4 even though the IRS did not release the lien immediately.<sup>37</sup> In contrast, Cowle did not satisfy the liens filed in 2005 until after he was required to disclose them on his Form U4. Moreover, Cowle admitted that he never discussed the issue of disclosure with anyone at PaineWebber.<sup>38</sup> By his own account, he notified PaineWebber when he received the lien and stated that he would pay the balance due as quickly as possible.<sup>39</sup> He did not request PaineWebber to file an amended Form U4 on his behalf, and no one at PaineWebber told Cowle that he did not need to report unsatisfied tax liens on his Form U4.

Cowle further stated that he did not report the liens because he believed that he had satisfied the liens by filing the amended 1999 tax return. Although he knew the IRS had rejected his first amended filing, he nonetheless testified that he believed he had “satisfied the liens before they were ever put on because [he] filed an amended tax return that showed that [he] didn’t owe [any] taxes.”<sup>40</sup> Cowle stated that he believed the question on Form U4—“Do you have any unsatisfied liens?”—is open to interpretation, and he interpreted the question to ask whether he had any liens that he had not “taken care of.”<sup>41</sup> Cowle stated that the amended 1999 tax return took care of the liens because his tax preparer had advised him that he would be due a refund if the IRS accepted the amended 1999 return. However, in responding to the FINRA’s request for information, Cowle told Gallamore that the liens “had not been satisfied” and that he was making payments to the IRS.<sup>42</sup>

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<sup>37</sup> FINRA’s By-Laws allow a registered representative 30 days to update a Form U4. Cowle testified that he satisfied the lien before the reporting deadline.

<sup>38</sup> Tr. 240-41.

<sup>39</sup> Tr. 240-41.

<sup>40</sup> Tr. 211.

<sup>41</sup> *Id.*

<sup>42</sup> Tr. 38.



In summary, Cowle’s various explanations for his failure to update his Form U4 depend on his professed ignorance of his disclosure obligations, false reliance on others, and an unsupportable construction of Question 14M, which asks “Do you have any unsatisfied judgments or liens against you?” The Hearing Panel, having examined the totality of the evidence, did not find Cowle’s explanations credible. Cowle knew the liens were unsatisfied and that he needed to update his Form U4. Nonetheless, he withheld disclosure of the liens until FINRA staff directed Southwest Texas Capital to add them to his Form U4.

## **II. CONCLUSIONS OF LAW**

### **A. Cowle Violated NASD Conduct Rule 2110 and IM-1000-1 by Failing to Update his Form U4**

Conduct Rule 2110 and IM-1000-1 require associated persons to answer the questions of the Form U4 accurately and fully and to observe high standards of commercial honor and just and equitable principles of trade.<sup>43</sup> Both the SEC and FINRA have held repeatedly that the accuracy of an applicant’s Form U4 “is critical to the effectiveness” of a self-regulatory organization’s ability “to monitor and determine the fitness of securities professionals.”<sup>44</sup> Moreover, Article V, Section 2(c) of the FINRA By-Laws requires that associated persons keep their Forms U4 “current at all times,” and that amendments to Forms U4 be filed “not later than

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<sup>43</sup> IM-1000-1 provides that the filing of registration information that “is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade” in violation of Rule 2110. *See also Department of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*23 (N.A.C. July 27, 2007). NASD Rule 0115 extends NASD rule requirements to persons associated with a member.

<sup>44</sup> *See e.g., Department of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*23 (N.A.C. July 27, 2007) (quoting *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996)); *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *aff’d* 105 F.3d 664 (9<sup>th</sup> Cir. 1996) (Table).

30 days after learning of the facts or circumstances giving rise to the amendment.” Failing to file prompt amendments to a Form U4 is a violation of Rule 2110.<sup>45</sup>

Among the items that must be disclosed on the Form U4 are unsatisfied tax liens.<sup>46</sup> In this case, it is undisputed that Cowle failed to update his Form U4 when he learned that the IRS had filed the two liens. Cowle did not speak to Gallamore about the liens until either the reporter from the Dallas Morning News or FINRA brought them to Gallamore’s attention in March 2006. Southwest Texas Capital did not file an amended Form U4 on Cowle’s behalf until April 2006, more than six months after Cowle received notice of the liens from the IRS. Accordingly, the Hearing Panel finds that, as a matter of law, Cowle violated Conduct Rule 2110 and IM-1000-1. Cowle’s claims that he did not understand that he was required to disclose the liens are relevant only to deciding what sanctions should be imposed and whether his conduct was willful.<sup>47</sup> Also unavailing are Cowle’s efforts to claim that he relied on his former firm to determine whether tax liens were reportable on his Form U4. “As a registered representative, [Cowle] is responsible for his actions and cannot shift that responsibility to the firm or his supervisors.”<sup>48</sup> Moreover, “it is axiomatic that the person who provides information for a regulatory filing and executes that filing is responsible for ensuring that the information contained therein is accurate.”<sup>49</sup> The burden

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<sup>45</sup> See *Toth*, 2007 NASD Discip. LEXIS 25. See also NASD’s Membership, Registration and Qualification Requirements, IM-1000-1 (providing that an incomplete or inaccurate filing of information with FINRA by a registered representative “may be deemed to be conduct inconsistent with just and equitable principles of trade”).

<sup>46</sup> See CX-6A, at 8 (Question 14M).

<sup>47</sup> *District Bus. Conduct Comm. v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37 (N.A.C. Aug. 17, 1998) (holding that the violation of providing false information on a Form U4 requires only that FINRA prove that the information was false). See also *Department of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3 (N.A.C. May 3, 2005).

<sup>48</sup> *DOE v. Lu*, No. C9A020052, 2004 NASD Discip. LEXIS 8 (N.A.C. May 13, 2004), *aff’d*, 2005 SEC LEXIS 117 (2005).

<sup>49</sup> *Department of Enforcement v. Howard*, 2000 NASD Discip. LEXIS 16, at \*31 (N.A.C. Nov. 16, 2000) (citation omitted), *aff’d*, 2002 SEC LEXIS 1909 (July 26, 2002), *aff’d*, 77 Fed. Appx. 2 (1st Cir. 2003).

of updating Forms U4 to keep all information current rests with the registered person, not the member firm.<sup>50</sup>

## **B. Cowle is Subject to a Statutory Disqualification**

The Complaint alleged that Cowle acted willfully in failing to disclose material information on his Form U4 and requested the Hearing Panel make specific findings as to each allegation. If the Hearing Panel finds that Cowle did act willfully and that the omitted information was material, he is statutorily disqualified from association with any FINRA member pursuant to Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and the FINRA By-Laws.<sup>51</sup>

### **1. Willfulness**

“To support a finding that [Cowle] acted willfully, [the Hearing Panel] need not find that he intended to violate NASD rules, but only find that he intended to commit the act that constitutes the violation”—failing to update his Form U4 when he received notice of the two federal tax liens.<sup>52</sup> Applying this inflexible standard, the Hearing Panel finds that Cowle’s failure to disclose the tax liens on the Form U4 was willful. The Form U4 question was clear and unambiguous, and Cowle was fully aware of the liens. Nonetheless, he did not acknowledge them until after they were brought to his firm’s attention in March 2006, approximately six

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<sup>50</sup> See *Jonathan Ornstein*, Exchange Act Release No. 31,557, 1992 SEC LEXIS 2972 (Dec. 3, 1992).

<sup>51</sup> Article III, Section 4(f) of the FINRA By-Laws provides:

[a] person is subject to a “disqualification” with respect to ... association with a member, if such person: ... has 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 light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application ... any material fact which is required to be stated therein.

<sup>52</sup> *Toth*, 2007 NASD Discip. LEXIS 25, at \*32 (citing *Jacob Wonsover*, 54 S.E.C. 1, 17-18 & n.36 (1999), *aff’d*, 205 F.3d 408 (D.C. Cir. 2000) and *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965) (stating that there is “no requirement that the actor ... be aware that he is violating one of the Rules or Acts” to uphold a finding of willfulness)).

months after the IRS filed them. “[Cowle’s] multiple explanations for failing to disclose the [liens] were contradictory and, rather than evidencing confusion, indicated to the Hearing Panel that [Cowle] knew he should have disclosed the [liens] and deliberately failed to do so.”<sup>53</sup> Accordingly, the Hearing Panel must conclude it is more likely than not that Cowle acted “willfully,” as the SEC, FINRA, and the federal courts have defined that term.

## 2. Materiality

The tax liens were material information that Cowle was required to disclose on his Form U4. FINRA recently reaffirmed in *Toth*, “[b]ecause of the importance that the securities industry places on full and accurate disclosure of information required by the Form U4, essentially all of the information that is reportable on the Form U4 may be considered to be material.”<sup>54</sup> Moreover, a member of the public, in deciding whether to hire Cowle as his broker, would most likely want to know that Cowle was experiencing such financial difficulty that he could not pay his federal income taxes as they came due. And the information might reasonably have caused an employer to impose enhanced supervision on Cowle.<sup>55</sup>

In conclusion, based on testimony and exhibits offered at the hearing, the Hearing Panel finds that Cowle violated NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose material information on the Form U4. Cowle is therefore statutorily disqualified from

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<sup>53</sup> *Department of Enforcement v. Rauh*, No. C02040044, 2005 NASD Discip. LEXIS 54, at \*45-46 (O.H.O. Nov. 9, 2005). *Cf. Prewitt*, 1998 NASD Discip. LEXIS 37, at \*6 (holding that representative’s lack of a reasonable basis for his failure to disclose material information on a Form U4 leads to a conclusion that he acted intentionally or in reckless disregard of the truth). *Cf. also Toth*, 2007 NASD Discip. 25, at \*35 (finding that representative’s vague and incomplete responses to FINRA about his Form U4 disclosures corroborates a finding of willfulness).

<sup>54</sup> *Toth*, 2007 NASD Discip. LEXIS 25, at \*34.

<sup>55</sup> *See Department of Enforcement v. Perez*, No. C10950077, 1996 NASD Discip. LEXIS 51 at \*6-7 (N.B.C.C. Nov. 12, 1996).

association with any FINRA member pursuant to Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and FINRA By-Laws, Article III, Section 4(f).<sup>56</sup>

### III. SANCTIONS

The FINRA Sanction Guidelines (“Guidelines”) for filing a false or inaccurate Form U4 provides for fines ranging from \$2,500 to \$50,000 and a suspension in any or all capacities for 5 to 30 business days.<sup>57</sup> In egregious cases, such as those involving false, inaccurate, or misleading filings, the Guidelines recommend consideration of a longer suspension (of up to two years) or a bar.<sup>58</sup> Specific factors to be considered in assessing sanctions for this violation include the nature and significance of the information.<sup>59</sup> The Guidelines also identify a number of other factors to be considered in determining sanctions, including: “the respondent’s relevant disciplinary history” (No.1); “whether [the] ... respondent accepted responsibility for and acknowledged the misconduct to his ... employer ... or a regulator prior to detection and intervention by the firm ... or a regulator” (No. 2); “whether the respondent attempted to conceal his or her misconduct or to lull into inactivity ... the member firm with which he or she is/was associated” (No. 10); “whether the respondent’s misconduct resulted directly or indirectly in injury to ... other parties; and ... the nature and extent of the injury” (No. 11); and “whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence.” (No. 13).<sup>60</sup>

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<sup>56</sup> In order for Cowle to seek readmission to FINRA, a firm must sponsor him through the process known as the Membership Continuation Application or the MC-400. *See Toth*, 2007 NASD Discip. LEXIS 25, at \*40.

<sup>57</sup> FINRA Sanction Guidelines 73 (2007), *available* at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

<sup>58</sup> *Id.* at 74.

<sup>59</sup> *Id.* at 73.

<sup>60</sup> *Id.* at 6-7.

The Hearing Panel finds that Cowle's failure to disclose the tax liens did not cause injury to his firm, customers, or other parties. Nor did the liens disqualify him from associating with a FINRA member. And, while the information was material and potentially important to investors and any future employer because it reflected the financial difficulties he experienced between 1999 and 2005, the evidence shows that he had a reasonable basis for contesting his tax liability and that, in reliance on the advice of his tax preparer, he believed that he was due a refund in excess of the total lien amount.

On the other hand, the Hearing Panel finds aggravating Cowle's refusal to acknowledge and accept responsibility for his conduct. As discussed above, Cowle knew that he should have reported the liens to his firm and updated his Form U4. Nonetheless, he concluded that he could avoid disclosure if his long-running dispute with the IRS was resolved promptly. But Cowle's hopes that the IRS would accept his amended 1999 tax return and wipe out his past due tax liabilities did not excuse his duty to report the liens on his Form U4.<sup>61</sup> The record is clear, and indeed Cowle admits, that when the IRS filed the liens they were valid and unsatisfied. Indeed, the IRS filed the liens in conjunction with its acceptance of Cowle's deferred payment plan. Under these facts and circumstances, Cowle's professed confusion about his obligation to update his Form U4 is deceitful.

Upon careful consideration of the evidence and each of the foregoing factors, the Hearing Panel finds that the appropriate remedial sanction in this case is a suspension of five business days and a fine of \$2,500.

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<sup>61</sup> *CF. Perez*, 1996 NASD Discip. LEXIS 51 at \*5-6 (holding that respondent was not relieved of his obligation to report criminal charge by his alleged hope that his acceptance into a pre-trial intervention program would expunge his arrest record).

#### IV. ORDER

Todd William Cowle violated NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to provide material information on his Form U4.<sup>62</sup> For this violation, Cowle is suspended from associating with any member firm in any capacity for five business days and fined \$2,500. The suspension shall begin on at the opening of business on January 7, 2008, and end at the close of business on January 11, 2008. In addition, Cowle is ordered to pay costs of \$2,433.25, which includes an administrative fee of \$750 and the cost of the hearing transcript.

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies sent to:

Todd William Cowle (*by FedEx and first-class mail*)  
Phillip W. Offill, Jr., Esq. (*by electronic and first-class mail*)  
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Mark J. Fernandez, Sr., Esq. (*by electronic and first-class mail*)  
David R. Sonnenberg, Esq. (*by electronic and first-class mail*)  
Mark Dauer, Esq. (*by electronic and first-class mail*)

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<sup>62</sup> The Hearing Panel considered and rejected without discussion all other arguments of the parties.