FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CARLOS FRANCISCO OTALVARO (CRD No. 2294420), Respondent.	Disciplinary Proceeding No. 2008011725901 Hearing Officer – LBB **HEARING PANEL DECISION** Date June 24, 2011

Respondent Carlos Francisco Otalvaro is suspended from associating with any FINRA member firm in any capacity for one year, barred from acting as a principal for any FINRA member firm, and fined $15,000 for willfully failing to disclose material information on his FormU4, willfully failing to update his Form U4 to disclose material information within the time required by NASD and FINRA Rules and By-Laws, and willfully filing amended Forms U4 that omitted material information, in violation of FINRA and NASD By-Laws, NASD Conduct Rule 2110, IM-1000-1, and FINRA Rules 1122 and 2010.

Appearances

Michael A. Gross, Esq., Regional Counsel, and David B. Klafter, Esq., Deputy Chief Regional Counsel, Boca Raton, Florida, for the Department of Enforcement.

Carlos Francisco Otalvaro, *pro se*.

DECISION

The Department of Enforcement ("Enforcement") filed the one-cause Complaint in this disciplinary proceeding on June 25, 2010, charging Respondent Carlos Francisco Otalvaro ("Respondent" or "Otalvaro") with willful failure to disclose and untimely disclosure of material facts on his Uniform Application for Securities Industry Registration or Transfer (Form U4), and willful filing of false and misleading amendments to his Form U4, in violation of FINRA Rules

1122 and 2010, IM-1000-1, NASD Conduct Rule 2110, and FINRA and NASD By-Laws.[1] The alleged violations were related to seven arbitrations in which Otalvaro was named as a respondent. Respondent filed an Amended Answer on December 10, 2010, denying that the violations were willful, and stating that a Letter of Caution would be a sufficient sanction.

A hearing was held in Boca Raton, Florida, on April 7, 2011, before a Hearing Panel composed of two current members of the District 7 Committee and a Hearing Officer.

I. Respondent

Respondent was first registered with a FINRA member firm in 1993.[2] From August 1997 until December 2, 2010, he was registered though FINRA member firm WallStreet*E Financial Services, Inc. ("WSE").[3] Respondent is not currently registered with a FINRA member firm. At the time of the alleged violations, Respondent had Series 3, 7, 24, 27, 63, and 66 licenses. *See*, e,g,, CX-1.

Respondent is the majority owner of WSE, and from 2004 through 2010, he was the firm's president and chief compliance officer. Tr. 19, 80-81. Respondent was responsible for WSE's filings in the Central Registration Depository ("CRD"). Tr. 19, 81.

[1] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD and FINRA Conduct and Membership Rules that were in effect at the time of Respondent's alleged violations: Article V, Section 2 of NASD's By-Laws for violations from March 2005 until July 29, 2007; Article V, Section 2 of FINRA's By-Laws for violations after that date; FINRA Rule 1122 for violations occurring on or after August 17, 2009; NASD Conduct Rule 2110 for violations prior to December 15, 2008; IM-1000-1 for violations from March 2005 through August 16, 2009; and FINRA Rule 2010 for violations occurring on or after December 15, 2010. Because the changes in the By-Laws and Rules did not effect changes in the reporting requirements that are material to the violations charged by the Complaint, this decision does not analyze the violations individually with respect to the specific By-Law or Rule violated. The applicable rules are available at www.finra.org/rules.

[2] References to hearing exhibits submitted by Enforcement are designated as "CX-___." Respondent did not submit any hearing exhibits. References to the hearing transcript are designated as "Tr. ___."

[3] The firm was formerly known as WallStreet Electronica, Inc., and some of the arbitrations were filed against the firm in its former name. WSE's FINRA membership was cancelled on December 2, 2010, for nonpayment of fees. Tr. 19.

II. Facts

WSE filed 27 amendments to Respondent's Form U4 from January 1, 2005, through September 14, 2010. Respondent filed 25 of the amendments, submitting them both as the applicant and on behalf of WSE; two were submitted by another principal of WSE on behalf of the firm, and on Respondent's behalf as the applicant.[4] This case involves reporting failures with respect to 12 events that should have been disclosed on Respondent's Form U4: failure to report or late reporting on Respondent's Form U4 of seven customer arbitrations in which Respondent was a named respondent, and failure to report or late reporting of settlements of five of those seven arbitrations.[5]

The arbitration claims and settlements were required to be disclosed in response to Question 14I of the Form U4, which asks:

> (1) Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:
>
> (a) is still pending, or;
>
> (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;
>
> (c) was settled for an amount of $10,000 or more?

See, e.g., CX-5 at 10 (italics in original). The minimum amount for a reportable settlement was changed to $15,000 for settlements occurring on or after May 18, 2009. *See*, e.g., CX-21 at 15.[6]

As set forth in more detail in the attached table, Otalvaro was named as a respondent in seven arbitrations filed by WSE customers. All of the claims related to investments with WSE.

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[4] *See* table attached to this Decision, and summary at CX-29. Don Lee, a branch office manager with a Series 24 license, submitted CX-6 and CX-9 on behalf of WSE. Tr. 21, 103-104. Lee did not submit any forms unless Respondent had reviewed them. Tr. 81, 113.

[5] The table attached to this decision sets forth the relevant information concerning the arbitrations and settlements.

[6] The language changed somewhat over the period, primarily due to the change in the dollar amount of a reportable settlement.

There were fraud claims against one or more of the arbitration respondents in each of the seven arbitrations. Other claims in the arbitrations alleged recommendation of unsuitable investments, conversion, excessive trading, and unauthorized trading. All of the arbitrations included claims against Otalvaro for supervisory failures, and at least one charged Otalvaro with active participation in the alleged fraud. Each of the five settlements exceeded $15,000.

For these seven arbitrations, and five related settlements, Otalvaro either did not file an amendment to his Form U4, or filed the amendment more than 30 days after he learned of the reportable event. Five of the arbitrations and four of the settlements were ultimately disclosed on Otalvaro's Form U4, but the disclosures were late, from 44 days to more than two years. Two arbitrations were never reported, and the settlement of one of the unreported arbitrations was never reported.[7] In addition, Respondent filed a number of Forms U4 that failed to mention these reportable events, falsely answering "No" to Question 14I. When Respondent eventually reported some of the arbitrations and settlements, the Forms U4 reported some, but not all, of the reportable events, and were accordingly false and misleading.

III. Respondent Violated FINRA and NASD By-Laws, NASD Conduct Rule 2110, IM-1000-1, and FINRA Rules 1122 and 2010, by Failing to Disclose and Late Disclosure of Information on His Form U4, and by Filing Inaccurate Forms U4

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such … reasonable information with respect to the applicant as [FINRA] may require." A registrant is under a continuing obligation to update information required by Form U4 as changes occur.[8] Article V, Section 2(c) requires that "[e]very application for registration filed with the Corporation shall be kept current at all times

[7] Both of the unreported arbitrations were settled, and neither settlement was ever disclosed on Respondent's Form U4. The Complaint charges Respondent with failing to report only one of the two unreported settlements. *See* table attached to this decision.

[8] *Dep't of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 1, at *15 (N.A.C. Jan. 7, 2011), *appeal docketed*, SEC Dkt. No. 3-14206 (Feb. 8, 2011).

by supplementary amendments … filed with the Corporation not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA uses the Form U4 to screen applicants and monitor their fitness for registration within the securities industry.[9]

Submitting a Form U4 that is inaccurate or incomplete so as to be misleading may be deemed conduct inconsistent with just and equitable principles of trade, in violation of NASD Conduct Rule 2110 and IM-1000-1.[10] Similarly, FINRA Rule 1122, which superseded IM-1000-1 in August 2009, provides, "No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."[11] When a registered representative's Form U4 has not been promptly updated, the Form U4 is misleading, and the representative has violated NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.[12]

As set forth in detail in the attached table, Respondent failed to amend his Form U4 to disclose arbitrations and settlements that he was required to report on his Form U4, filed amended Forms U4 that falsely stated that there were no arbitrations or settlements to disclose or disclosed only some of the arbitrations and settlements, and amended his Form U4 to disclose other information after the time required by FINRA's By-Laws. The plain language of Question

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[9] *Dep't of Enforcement v. Neaton*, 2011 FINRA Discip. LEXIS 1, at *14-15.

[10] *See IM-1000-1* ("The filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action."); *Dep't of Enforcement v. Neaton*, 2011 FINRA Discip. LEXIS 1, at *15; *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *16 (Dec. 7, 2009), *appeal docketed*, No. 10-429-ag (2d Cir. Feb. 3, 2010).

[11] Amended by SR-FINRA-2009-009 eff. Aug. 17, 2009; *see* Reg. Notice 09-33.

[12] *Richard G. Cody*, Exchange Act Rel. No. 64565, 2011 SEC LEXIS 1862, at *54 (May 27, 2011); *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *33 (N.A.C. Feb. 12, 2007).

14I required the disclosure of the arbitrations and settlements. All of the arbitrations were "investment related" as that term is used in the Form U4. The Explanation of Terms in the instructions for the Form U4 defines "investment-related" broadly. A matter is "investment related" if it "pertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association)." *See*, e.g., CX-30 at 2; CX-31 at 2; CX-32 at 2. The seven arbitrations related to securities, the actions of WSE as the broker-dealer for the claimants, and the actions of registered representatives who were associated with WSE.

The Statements of Claim in the arbitrations show that each arbitration was filed by a customer of WSE, and therefore was "consumer-initiated."[13] Each alleged that Respondent was "involved" as the term is used in the Form U4. The Explanation of Terms for the Form U4 defines "involved" as "doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act." CX-30 at 2; CX-31 at 2; CX-32 at 2. All of the Statements of Claim alleged that Respondent failed to supervise WSE representatives, and at least one Statement of Claim alleged that Respondent himself made misrepresentations.

A "sales practice violation" is defined for the Form U4 as including "any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any *self-regulatory organization*; any provision of the Securities Exchange Act of 1934 [("Exchange Act")]; or any state statute prohibiting fraudulent conduct in

[13] "Cases interpreting the term 'customer' in the securities context have viewed the term broadly to encompass individuals or entities that have some brokerage or investment relationship with the broker-dealer." *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *18 (N.A.C. Aug. 19, 2010). All of the statements of claim asserted that the claimants were customers with accounts at WSE.

connection with the offer, sale or purchase or a security or in connection with the rendering of investment advice." CX-30 at 2 (emphasis in original); CX-31 at 2; CX-32 at 2. Each of the arbitrations included claims based on fraud and other alleged violations against at least some of the arbitration co-respondents, including at least one that asserted that Otalvaro had participated in the alleged fraud. All of the statements of claim alleged that Otalvaro had failed to supervise. All alleged violations for which Respondent could have been disciplined by FINRA.

Respondent failed to disclose material information on his FormU4, failed to update his Form U4 to report material information within the required time, and filed Forms U4 that falsely stated that there were no reportable arbitrations or settlements, and others that reported some, but not all, of the reportable events. By these acts and omissions, Respondent violated FINRA's and NASD's By-Laws, NASD Conduct Rule 2110, IM-1000-1, and FINRA Rules 1122 and 2010.

IV. Respondent is Subject to Statutory Disqualification

Section 3(a)(39)(F) of the Exchange Act states that a person who files an application for association with a member of a self-regulatory organization, and who willfully omits any material fact in that application, is statutorily disqualified from participating in the securities industry.[14] The information concerning the arbitrations was material, and Respondent's reporting violations were willful under the standards used in securities law violations. Respondent is subject to statutory disqualification.

A. The Information Concerning the Arbitrations Was Material

Information required to be reported on a Form U4 is presumptively material. As the National Adjudicatory Council has stated, "Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially

[14] *See* 15 U.S.C. § 78c(39)(F); see also FINRA By-Laws Art. III, Sec. 4; *Dep't of Enforcement v. Neaton*, 2011 FINRA Discip. LEXIS 1, at *17-18.

all the information that is reportable on the Form U4 is material."[15] Information omitted from a Form U4 is material if the omitted information would have significantly altered the total mix of information made available.[16]

The information that Respondent omitted was material. Information on investment-related customer arbitrations is important to regulators, investors, and potential employers. FINRA and other regulators would want to be aware of arbitrations promptly, because the filing or settlement of an arbitration might signal that there are problems that need regulatory attention, and multiple arbitration filings would cause greater concern. For example, the arbitrations filed against Respondent and his firm might have alerted regulators to possible supervisory problems and sales practice problems. Similarly, the settlement of five arbitrations in which Otalvaro was a respondent, each for more than $15,000, might indicate that the claims asserted in the arbitration were serious, and warrant regulatory attention. The payment of substantial settlements, for as much as $75,000, might indicate that the firm could have net capital issues.

The filing and settlement of arbitrations would also be material to customers and potential customers, because arbitrations might raise questions about whether customers should rely on the broker. The "clean" reports would have falsely given customers comfort that the firm was free of customer problems and that Respondent was supervising the firm diligently, when, in fact, the pattern of arbitrations filed against Respondent, WSE, and its representatives, suggest the opposite.

If Respondent had sought other employment, the arbitrations would also have been highly material to any potential employer. An employer considering Respondent as a principal

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[15] *Dep't of Enforcement v. Neaton*, 2011 FINRA Discip. LEXIS 1, at *21, quoting *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (N.A.C. Apr. 27, 2004).

[16] *Scott Mathis*, 2009 SEC LEXIS 4376, at *29 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

or supervisor would want to know that claims had been filed against Respondent alleging that he had failed to supervise registered representatives at his firm, who had allegedly committed fraud and converted customer funds.

The Hearing Panel finds that Respondent's disclosure failures all involved material information.

B. Respondent's Violation Was Willful

Under the securities laws, a violation is willful if Respondent voluntarily committed the act that constituted the violation. A finding that a violation was willful does not require proof that Respondent intended to violate the laws or rules.[17] For violations relating to inaccurate Forms U4, "A willfulness finding is predicated on [the respondent's] intent to commit the act that constitutes the violation – completing the Form U4 inaccurately."[18] A failure to disclose information on a Form U4 is willful if the Respondent voluntarily omitted the information from the Forms U4.[19]

Respondent understood that his Form U4 needed to be updated within 30 days of reportable events, as shown by the fact that he sometimes updated his Form U4, albeit tardily. Tr. 87-88. Respondent "voluntarily provided false answers on his Form U4" (or, in this case, 27 Forms U4).[20] Respondent acted voluntarily when he completed the Form U4 inaccurately. The evidence establishes that Respondent willfully omitted material information from his Form U4,

[17] *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *13 n.11 (Aug. 19, 2010); *see also*, *Dep't of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *16 (Dec. 18, 2009); *Scott Mathis*, 2009 SEC LEXIS 4376, at *19.

[18] *Dep't of Enforcement v. Neaton*, 2011 FINRA Discip. LEXIS 1, at *18 (quoting *Dep't of Enforcement v. Zdzieblowski*¸ No. C8A030062, NASD Discip. LEXIS 3, at *14 (N.A.C. May 3, 2005)).

[19] *Dep't of Enforcement v. Kraemer*, 2009 FINRA Discip. LEXIS 39, at *16 (citing *Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *1 (Dec. 22, 2008)); *Scott Mathis*, 2009 SEC LEXIS 4376, at *19.

[20] *Scott Mathis*, 2009 SEC LEXIS 4376, at *19; *see also Dep't of Enforcement v. Zayed*, 2010 FINRA Discip. LEXIS 13, at *18 (finding that failure to update a Form U4 to disclose litigation of which respondent was aware was willful).

and thereby violated FINRA and NASD By-Laws, NASD Conduct Rule 2110, IM-1000-1, and FINRA Rules 1122 and 2010.

V. Sanctions

For late filing of a Form U4, FINRA's Sanction Guidelines ("Guidelines") recommend a fine of $2,500 to $25,000.[21] For failing to file a Form U4 or filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a suspension in any or all capacities of five to 30 business days and a fine of $2,500 to $50,000. The Guidelines recommend a longer suspension in any or all capacities or a bar in egregious cases, "such as those involving repeated failures to file, untimely filings or false, inaccurate, or misleading filings; those involving the failure to disclose or timely to disclose a … customer complaint." The Principal Considerations for Form U4 violations are the nature and significance of the information, and whether the information resulted in a statutorily disqualified person remaining associated with a firm.

Respondent's violations were egregious. Respondent repeatedly failed to file or filed false Forms U4 for several years. He eventually filed late but inaccurate amendments, but only after he was alerted to the filing deficiencies and FINRA's concerns by questions concerning the failure to file amendments to his Form U4 at a FINRA on-the-record interview on December 2, 2008. Tr. 18, 81-82; CX-29. The information would have been highly significant to customers, and to FINRA and other regulators. The number of arbitrations and settlements suggests a possible pattern of sales practice violations and supervisory failures that went unreported for years.

Respondent's disciplinary history is an aggravating factor. In December 2009, Respondent entered into a consent order with the New Jersey Bureau of Securities, settling

[21] *FINRA Sanction Guidelines* at 71-72 (2011).

charges that he had failed to supervise several representatives. He agreed not to supervise any agents or advisors registered with the Bureau of Securities. CX-54. In April 2010, the Florida Office of Financial of Financial Regulation filed an Administrative Complaint and Notice of Intent to Deny Pending Application and Notice of Rights against Respondent, WSE, and its affiliated investment advisor, WallStreetE Investment Advisors. The Complaint alleged that WSE had failed to establish and maintain an adequate system to supervise the activities of its associated persons. CX-55. On December 6, 2010, the Florida Office entered a Default Final Order and Notice of Rights, ordering Respondent to cease and desist from further violations of Chapter 517 of the Florida statutes, [22] revoking Respondent's registration as an associated person of WSE, denying his pending application as an associated person of WallStreetE Investment Advisors, ordering Respondent and WSE to pay a $162,500 fine, and ordering Respondent and WallStreetE Investment Advisors to pay a $4,000 fine. CX-55.

Respondent offers two explanations for his failures to file, apparently in mitigation rather than as defenses. First, he testified that the law firms involved in the arbitrations were supposed to have filed some of the amendments. Tr. 89. He did not identify any specific matters for which the law firms were supposed to file, and offered no evidence other than his vague and unsupported testimony that the law firms were responsible for any filings. He also said there were two other representatives at the firm who assisted him in compliance, suggesting that his subordinates might share some responsibility, and noted that the firm used an outside compliance consultant, but provided no evidence that either these representatives or the consultant had any responsibility with respect to the filing failures charged in the Complaint. Tr. 100-101. Respondent's testimony was not credible. He could not have reasonably believed that others had

[22] Chapter 517 is the section of the Florida Statutes that governs securities transactions. *See* Florida Statutes, available online through www.law.cornell.edu.

done any of the filings, especially given the duration and number of filing failures. If Respondent believed that others were supposed to have filed, he had ample notice that they did not. He should have seen that the 27 forms that were filed on his behalf by his firm, 25 of which he personally submitted, omitted information about some or all of the arbitrations and settlements. He also should have seen that there were no Forms U4 filed by the law firms on his behalf throughout this period, and that the two that were filed by another principal at his firm omitted material information.

Furthermore, even if he had genuinely and reasonably believed that others had filed some of the forms, it would not be a mitigating factor. It is well established that a registered representative is responsible for maintaining his or her Form U4.[23] Attempting to shift the blame to other representatives and law firms is especially inappropriate for someone who is the president and chief compliance officer of the firm, and responsible for the firm's CRD filings. Respondent's failure to accept full responsibility for his violations is an aggravating factor, not a mitigating factor.

Respondent also asked the Hearing Panel to consider that, in his view, the CRD process was somewhat confusing and complicated. Tr. 14, 78. The Hearing Panel rejects this contention. The questions concerning arbitration claims and settlements on the Form U4 were quite clear, as were the instructions and the information on FINRA's website. CX- 1-28, 30-32. In addition, Respondent was able to understand the process well enough to file 25 amendments to his Form U4.

Even if Respondent's reporting failures could be attributed to some confusion on his part, however, it would not be a mitigating factor. FINRA has repeatedly held that ignorance of the

[23]*Richard G. Cody*, 2011 SEC LEXIS __, at *__, slip op. at 24); *Dep't of Enforcement v. Kraemer*, 2009 FINRA Discip. LEXIS 39, at *20 ("It was [Respondent's] responsibility to make the requisite disclosures on *his* Forms U4.")

rules is no excuse for their violation.[24] It is especially inappropriate for the president and chief compliance officer of a firm, with 10 to 15 years of industry experience at the time of his violations, to claim that he was confused by such basic forms and procedures.[25] To the extent that Respondent had any difficulty understanding his obligations to keep his Form U4 current, and his obligation to file the updates as the principal of the firm who was responsible for the filings, it supports the imposition of a substantial suspension in all capacities.

Each new arbitration filing or settlement should have served as a reminder to Respondent that he and WSE were obligated to ensure that his Form U4 was updated and accurate, yet Respondent continued to fail to report events and submitted 25 false Forms U4 on behalf of the firm. Respondent cannot be responsible for compliance and regulatory filings for a firm when he has shown that he is incapable or unwilling to comply with regulatory requirements with respect to his own Form U4. Any failure to understand the filing requirements and procedures for a Form U4 provides further evidence that Respondent is not capable of functioning as a principal.

The Sanction Guidelines state that adjudicators may consider suspensions or a bar in any or all capacities.[26] Respondent's failure to maintain his own Form U4 for more than five years

[24] *Dep't of Enforcement v. Kraemer*, 2009 FINRA Discip. LEXIS 39, at *20 (citing *Richard J. Lanigan*, 52 S.E.C. 375, 378 (1995)).

[25] The fact that Respondent was the firm's president and chief compliance officer is an aggravating factor. *Harry Friedman*, Exchange Act Rel. No. 64486, slip opinion at 12, 2011 SEC Lexis ___, at *__ (May 13, 2011); *see also Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *21 (Nov. 8, 2006) (finding that Respondent's claimed ignorance of his obligations was "only aggravated in light of his fifteen years experience in the securities industry….").

[26] *FINRA Sanction Guidelines* at 71-72 (2011).

shows that he is incapable of performing the duties of a principal.[27] Respondent was the president of the firm, the chief compliance officer, and the person responsible for filings, and thus was responsible for the firm's regulatory filings in three separate capacities. Respondent ignored his responsibilities to ensure that WSE was complying with reporting requirements even with respect to his own Form U4.[28] Respondent is barred as a principal.

A one-year suspension in all capacities and a bar as a principal are both appropriate. A $15,000 fine is appropriate to reinforce the seriousness of Respondent's violation.

VI. Conclusion

Respondent Carlos Francisco Otalvaro is suspended from association with any FINRA member firm in any capacity for one year, barred from acting as a principal for any FINRA member firm, and fined $15,000, for willfully failing to disclose material information on his Form U4, willfully failing to update his Form U4 to disclose material information within the required time, and willfully filing Forms U4 that omitted material information, in violation of FINRA's and NASD's By-Laws, NASD Conduct Rule 2110, IM-1000-1, and FINRA Rules 1122 and 2010. Respondent is subject to statutory disqualification.

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[27] The Complaint does not expressly identify the capacities in which Respondent was charged or in which sanctions were being sought. Respondent had adequate notice that he was subject to sanctions in any or all capacities, including his capacity as a principal. Respondent was clearly aware that he had duties to maintain an accurate Form U4 both in his capacity as a registered person and as a principal. The Sanction Guidelines recommend a suspension in any or all capacities, which should have provided notice that he was subject to a suspension in any appropriate capacity, including his capacity as a principal. Furthermore, Enforcement's pre-hearing brief requested a bar in Respondent's capacity as a principal. *See* Department of Enforcement's Pre-Hearing Brief, filed March 3, 2011, at 11-12. Respondent was clearly not misled, and did not state at any time that he was. *John M. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010) (*appeal docketed*, No. 10-1195 (D.C. Cir. July 22, 2010) ("As long as a party to an administrative proceeding is reasonably apprised of the issues in controversy and is not misled, notice is sufficient.") (internal quotations and citations omitted).

[28] For a responsible principal, the Guidelines recommend consideration of a fine of $5,000 to $100,000, suspension of the principal in all supervisory capacities for 10 to 30 business days, and, in egregious cases, consideration of a suspension in any or all capacities (of up to two years) of the responsible principal or a bar of the responsible principal in all supervisory capacities. *Guidelines* at 71-72 (2011).

If this decision becomes FINRA's final disciplinary action, the bar prohibiting Respondent from associating with any FINRA member firm in any principal capacity shall be effective immediately. The suspension in all capacities shall become effective upon the opening of business on August 15, 2011, and end at the close of business on August 14, 2012. The fine shall be due and payable upon Respondent's return to the securities industry.[29]

Respondent is also ordered to pay the costs of the hearing, in the amount of $1,858.40, which includes an administrative fee of $750 and the cost of the hearing transcripts.

Hearing Panel.

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Lawrence B. Bernard
Hearing Officer

Copies to: Carlos Francisco Otalvaro (*via overnight courier and first class mail)*
Michael A. Gross, Esq. (*via electronic and first class mail)*
David B. Klafter, Esq. (*via electronic and first class mail)*
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

[29] The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

Respondent's Form U4 Violations

Event Date	Arbitration or Settlement	Nature of Arbitration or Settlement, and Respondent's Role	Event Establishing Respondent's Knowledge	Forms U4 Not Reporting Event[30]	First Form U4 Reporting Arbitration or Settlement	Amount Late
2004	O.D. customer arbitration filed. CX-34[31]	Fraud claim against WSE registered representative, alleging misuse of customer funds. Respondent charged with negligent supervision.	Answer filed Feb. 23, 2005, signed by Respondent. CX-35	CX- 2 – CX-28	Not reported on any Form U4	Not reported
Apr. 18, 2005 and May 2005	E.L. customer arbitration, Motion for Leave to Amend to Add Parties to arbitration. CX-36. (Motion granted, adding Respondent as arbitration respondent, May 2005. CX-37.)	Investment-related fraud claim for unsuitable trading, conversion of funds invested with mutual funds. Claim added against Respondent for negligent supervision.	Answer and Motion to Dismiss, dated June 25, 2005. Submitted by Respondent. CX-38	CX-3 – CX-28	Not reported on any Form U4	Not reported
Feb. 26, 2006	Settlement of E.L. customer arbitration. CX-39	WSE pays customer $17,750, guaranteed by Respondent.	Respondent signs on Feb. 26, 2006. CX-39	CX-6 – CX-28	Not reported on any Form U4	Not reported

[30] WSE filed Forms U4 for Respondent on the following dates from September 2004 through September 2010: Jan. 14, 2005 (CX-2); Nov. 30, 2005 (CX-3); Dec. 15, 2005 (CX-4); Jan. 19, 2006 (CX-5); Nov. 20, 2007 (CX-6); Nov. 27, 2007 (CX-7); Dec. 5, 2007 (CX-8); Jan. 17, 2008 (CX-9); Jan. 2, 2009 (CX-10); Jan. 15, 2009 (CX-11); Jan. 16, 2009 (CX-12); Jan. 22, 2009 (CX-13); Jan. 26, 2009 (CX-14); Jan. 27, 2009 (CX-15); Feb. 23,2009 (CX-16); March 3, 2009 (CX-17); March 11, 2009 (CX-18); March 30, 2009 (CX-19); May 13, 2009 (CX-20); Aug. 11, 2009 (CX-21); Aug. 12, 2009 (CX-22); Jan.11, 2010 (CX-23); Jan. 12, 2010 (CX-24); Jan. 20, 2010 (CX-25); Jan. 22, 2010 (CX-26); Apr. 27, 2010 (CX-27); Sept. 14, 2010 (CX-28). *See* summary at CX-29. Don Lee, a branch office manager with a Series 24 license, signed CX-6 and CX-9 on behalf of WSE. Tr. 21, 103-104.

[31] This matter was settled with a $36,000 payment to the arbitration claimant. Tr. 32. The failure to file an amended Form U4 with respect to the settlement was not charged as a violation.

Event Date	Arbitration or Settlement	Nature of Arbitration or Settlement, and Respondent's Role	Event Establishing Respondent's Knowledge	Forms U4 Not Reporting Event	First Form U4 Reporting Arbitration or Settlement	Amount Late
Mar. 31, 2006	O.I.G. customer arbitration. CX-40	Fraud and other claims against WSE, Respondent, and others, in liquidating equities.	Motion to dismiss filed June 26, 2006. CX-41 (matter dismissed, CX-41 at 2)	CX-6, CX-7	Dec. 5, 2007 CX-8 at 18	More than 16 months
Sept. 25, 2006	G.E. customer arbitration. CX-42	Fraud in sale of mutual fund, unauthorized trading. Claim against Respondent alleges supervisory failures.	Answer and counterclaim by WSE and Respondent, November 17, 2006, through counsel. CX-43	CX-6 – CX-4	Jan. 27, 2009 CX-15 at 23	More than 2 years
Oct. 2, 2007	Settlement of G.E. customer arbitration. CX-44	WSE pays customer $60,000. Respondent guarantees payment.	Respondent signs settlement agreement on Oct. 2, 2007. CX-44	CX-6 - CX-14	Jan. 27, 2009 CX-15 at 23	More than 14 months
Dec. 15, 2006.	G.S. customer arbitration. CX-45	Unsuitability, excessive trading, fraudulent bond sale. Claim against Respondent alleges supervisory failures.	Answer and Counterclaim served by Respondent's counsel, Feb. 26, 2007. CX-46	CX-6 - CX-14	Jan. 27, 2009 CX-15 at 16	11 months

Event Date	Arbitration or Settlement	Nature of Arbitration or Settlement, and Respondent's Role	Event Establishing Respondent's Knowledge	Forms U4 Not Reporting Event	First Form U4 Reporting Arbitration or Settlement	Amount Late
Feb. 8 – 12, 2008	Settlement of G.S. customer arbitration agreement. CX-47	WSE pays customer $75,000. Respondent guarantees payment.	Settlement agreement Feb. 8, 2008. CX-47 [32]	CX-10 - CX-14	Jan. 27, 2009 CX-15 at 16	10 months
June 2007	M.G. customer arbitration. CX-48	Fraud by WSE representatives recommending sale of securities to invest in hedge fund. Claim against Respondent alleges supervisory failures.[33]	Motion to Dismiss, Answer and Counterclaim served by counsel, July 30, 2007. CX-49	CX-6	Nov. 27, 2007 CX-7 at 16	Almost 3 months
Nov. 14, 2008	Settlement of M.G. customer arbitration. CX-50	Respondent pays customer $50,000.	Respondent signs settlement agreement November 14, 2008. CX-50	CX-10 - CX-14	Jan. 27, 2009 CX-15 at 21	44 days

[32] The settlement agreement in the record not signed by Respondent, but was signed by the claimants on February 8, 2008. Respondent's Form U4 states that the matter was settled on Feb. 8, 2008. CX-15 at 17.

[33] The Statement of Claim is not clearly drafted, but a number of allegations suggest that the claim against Respondent was also based on allegations that Respondent had participated in the fraud.

Event Date	Arbitration or Settlement	Nature of Arbitration or Settlement, and Respondent's Role	Event Establishing Respondent's Knowledge	Forms U4 Not Reporting Event	First Form U4 Reporting Arbitration or Settlement	Amount Late
July 2007	C.C. customer arbitration. CX-51	Fraud by WSE representatives recommending sale of securities to invest in hedge fund. Claim against Respondent alleges supervisory failures.[34]	Motion to Dismiss, Answer and Counterclaim served by counsel, Aug. 9, 2007. CX-52	CX-6, CX-7	Nov. 27, 2007 CX-7 at 13	80 days
Nov. 14, 2007	Settlement of C.C. customer arbitration. CX-5	WSE pays customer $30,000, guaranteed by Respondent.	Respondent signs settlement agreement on Nov. 14, 2007	CX-6 - CX-10	Jan. 15, 2009 CX-15 at 18	13 months

[34] The Statement of Claim is not clearly drafted, but a number of allegations suggest that the claim against Respondent was also based on allegations that Respondent had participated in the fraud.