

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD ALLEN RIEMER, JR.  
(CRD No. 1721245),

Respondent.

Disciplinary Proceeding  
No. 2013038986001

Hearing Officer—MJD

**HEARING PANEL DECISION**

November 4, 2016

**For willfully failing to timely update his Form U4 to disclose two tax liens and a bankruptcy petition and making false statements to his firm on annual compliance questionnaires, Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined \$5,000. His willful violation subjects him to statutory disqualification. Respondent is assessed the costs of the hearing.**

**Appearances**

For the Complainant: Robert Kennedy, Esq., James J. Fauci, Esq., and Bonnie McGuire, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: *Pro se*.

**I. Introduction**

The Department of Enforcement charges Respondent Richard Allen Riemer, Jr., with willfully failing to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose two tax liens and a bankruptcy petition and failing to tell his firm about the liens and his bankruptcy on four annual compliance certifications.

None of the material facts in this case is in dispute. Riemer concedes that he learned of the liens around the time they were filed against him. He admits that he never disclosed a 2002 tax lien on his Form U4, waited eight years to disclose a 2005 tax lien, and waited nearly five years to report he had filed a bankruptcy petition in 2008. Nor does he dispute that he knowingly provided false answers about his financial circumstances on four annual compliance questionnaires. Accordingly, the Hearing Panel finds that Riemer willfully violated Article V, Section 2(c) of FINRA's By-Laws, NASD Interpretive Material ("IM") 1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose the

two tax liens and his bankruptcy. We also find that on four annual compliance certifications Riemer falsely represented to his firm that he had no judgment liens and had not filed a bankruptcy petition, in violation of NASD Rule 2110.

For this conduct, the Hearing Panel suspends Riemer from associating with any FINRA member firm for six months in any capacity and imposes a \$5,000 fine. Because he acted willfully when he failed to update his Form U4, Riemer is also subject to statutory disqualification.<sup>1</sup>

## **II. Findings of Fact**

### **A. Respondent's Background and FINRA's Jurisdiction**

Riemer has been employed as an insurance agent with National Life of Vermont ("National Life"), an insurance company affiliate of FINRA member firm Equity Services, Inc., since 1998.<sup>2</sup> Riemer entered the securities industry in October 2000 when he became associated with Equity Services. He registered with the firm as an Investment Company and Variable Contracts Products Representative in January 2001.<sup>3</sup> On April 4, 2014, Equity Services filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Riemer's registration. The Form U5 reported that Riemer was permitted to resign because of his "lack of timely financial disclosures."<sup>4</sup> Riemer has not been associated with another FINRA member firm since then.

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) the Complaint was filed within two years after the effective date of termination of Riemer's registration with a member firm, and (2) the Complaint charges him with misconduct that occurred while he was associated with a member firm.

### **B. Origin of the Matter**

In early 2013, FINRA learned that Riemer may have failed to disclose two tax liens and a bankruptcy on his Form U4. In May 2013, a FINRA investigator emailed Riemer's employer, Equity Services, to inform the firm of the possible undisclosed financial events. This was the first indication the firm had received that Riemer had failed to make proper disclosures about his finances.<sup>5</sup> The firm promptly contacted Riemer who, on May 29, 2013, confirmed in writing that the Internal Revenue Service (IRS) had recorded two liens against him and he had filed a bankruptcy petition. During the investigation of this matter, Riemer told FINRA that his income

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<sup>1</sup> A hearing was held in New York, New York, on September 27, 2016.

<sup>2</sup> Joint Exhibit ("JX-") 1, at 3.

<sup>3</sup> Parties' Joint Stipulations ("Stip.") ¶ 1; JX-1, at 3, 5.

<sup>4</sup> JX-1, at 124-25.

<sup>5</sup> JX-2b, at 1.

began declining in 2005 while his expenses increased, which led to his filing the bankruptcy petition in 2008.<sup>6</sup>

The firm also reviewed compliance questionnaires Riemer submitted to Equity Services, including the most recent one he submitted in April 2013, in which he did not disclose any personal financial issues.<sup>7</sup> On June 11, 2013, Riemer amended his Form U4 to disclose the IRS tax lien that was less than ten years old and the bankruptcy petition.<sup>8</sup> Equity Services assessed Riemer a \$1,575 late filing fee imposed by FINRA for the late filing of the disclosures.<sup>9</sup>

### **C. Riemer's Two IRS Tax Liens and Bankruptcy Petition**

The Complaint alleges that Riemer failed to timely update information on his Form U4 to disclose two IRS tax liens totaling \$33,589.13 and a bankruptcy petition. Riemer admits that he knew of the liens at the time they were recorded.<sup>10</sup> He never disclosed the 2002 lien on his Form U4. He amended his Form U4 in June 2013 only after his firm learned of the liens and bankruptcy from FINRA, disclosing the 2005 lien eight years after it was filed and the bankruptcy five years after he filed the petition. Riemer admits he did not disclose the 2005 tax lien and the 2008 bankruptcy petition earlier “because he feared losing his job and he was embarrassed.”<sup>11</sup> At the hearing, Riemer testified that he knew he had to report the IRS tax liens but did not do so “out of fear and ignorance, because I thought that [reporting them] would cause me to lose my job.”<sup>12</sup>

#### **1. The 2002 IRS Tax Lien**

On July 2, 2002, the IRS filed and recorded a tax lien against Riemer in the amount of \$7,752.13. Riemer satisfied the lien on February 9, 2006. Riemer never disclosed the 2002 tax lien on his Form U4.<sup>13</sup>

#### **2. The 2005 IRS Tax Lien**

On March 7, 2005, the IRS filed and recorded a tax lien against Riemer for \$25,837. Riemer did not disclose the 2005 lien until June 11, 2013, when he filed an amended Form U4

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<sup>6</sup> JX-2c.

<sup>7</sup> JX-2b, at 1; JX-2f, at 21.

<sup>8</sup> When he amended his Form U4 on June 11, 2013, Riemer also reported two previously undisclosed judgments recorded against him by his condominium association in New Jersey state court—one for \$4,899.07 docketed on September 21, 2005, and another for \$6,514 docketed on May 2, 2007—both of which Equity Services first learned of on May 13, 2013. JX-1, at 75-77; JX-3, at 3.

<sup>9</sup> JX-2b; JX-2f, at 61, 63; JX-9, at 12, 16-17.

<sup>10</sup> Hearing Transcript (“Tr.”) 26-28, 71.

<sup>11</sup> Stip. ¶ 26.

<sup>12</sup> Tr. 72.

<sup>13</sup> Stip. ¶¶ 4-6.

after receiving an inquiry from Equity Services. The 2005 lien was unsatisfied when he filed the amended Form U4 to disclose the lien and remained unsatisfied for the duration of his registration in the securities industry.<sup>14</sup>

### **3. The 2008 Bankruptcy Petition**

On August 4, 2008, Riemer filed a Chapter 13 bankruptcy petition in the U.S. Bankruptcy Court for the District of New Jersey. He signed the petition and therefore had notice of the filing.<sup>15</sup> Riemer did not disclose his bankruptcy petition until June 11, 2013, when he submitted an amendment to his Form U4.<sup>16</sup> At the hearing, Riemer testified that he knew he had to report his bankruptcy on his Form U4 but “stuck my head in the sand on it,” adding that he thought if he could “get out from under this, pay these folks off . . . no harm, no foul, I’ll never have to tell.”<sup>17</sup>

#### **D. Riemer’s False Statements to His Firm**

Cause two of the Complaint alleges that on four annual compliance questionnaires Riemer falsely told his firm he had no liens recorded against him and had not filed a bankruptcy petition, in violation of NASD Rule 2110. Specifically, the Complaint charges that on November 8, 2005, November 10, 2006, and November 1, 2007—after the 2002 and 2005 IRS tax liens were recorded—Riemer submitted an annual certification form to Equity Services in which he falsely stated he had no unsatisfied judgments or liens.<sup>18</sup> When Riemer submitted the annual certification for 2005, both tax liens were unsatisfied; when he submitted the annual certifications for 2006 and 2007, the 2005 tax lien was still unsatisfied. In his Answer, Riemer admits that he submitted annual certifications to his employer in 2005, 2006, and 2007.<sup>19</sup>

The Complaint alleges that on November 25, 2008, Riemer submitted an annual certification form in which he falsely stated he had not filed a bankruptcy petition since submitting his annual certification for the preceding year.<sup>20</sup> In fact, Riemer had filed a bankruptcy petition three months earlier, on August 4, 2008. In his Answer, Riemer admits the allegation.<sup>21</sup> He testified at the hearing that he knew he had to disclose the liens and the

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<sup>14</sup> Stip. ¶¶ 7-9.

<sup>15</sup> Stip. ¶¶ 10-11; JX-5.

<sup>16</sup> Stip. ¶ 12; JX-1, at 69-71.

<sup>17</sup> Tr. 73-74.

<sup>18</sup> Complaint (“Compl.”) ¶¶ 27-32.

<sup>19</sup> Answer (“Ans.”) ¶¶ 28, 30, 32. *See also* Stip. ¶¶ 13-15.

<sup>20</sup> Compl. ¶¶ 33-34.

<sup>21</sup> Ans. ¶ 34. *See also* Stip. ¶ 16.

bankruptcy to his firm but “again, [I] stuck my head in the sand. I knew I had to disclose them but I didn’t.”<sup>22</sup>

### **E. Equity Services’ Written Supervisory Procedures**

From 2005 to at least 2012, Equity Services maintained written supervisory procedures instructing its registered representatives they had to keep their Forms U4 updated.<sup>23</sup> The procedures specifically warned employees to “promptly” report the filing of a bankruptcy petition to the firm’s compliance department.<sup>24</sup> The firm also conducted annual compliance training sessions with its registered representatives from 2005 to 2013 that included written materials reminding them they were obligated to report bankruptcies and liens to the firm and update their Forms U4 to reflect bankruptcies and liens.<sup>25</sup> With the exception of the 2007 session, Riemer attended every annual firm compliance training session from 2001 to 2013.<sup>26</sup>

Equity Services also circulated reminders to its registered representatives that they must keep their Forms U4 current. In May 2005, the firm’s chief compliance officer circulated an “Important Notice” to all registered representatives reminding them they were responsible for updating their Forms U4 to disclose bankruptcies and liens.<sup>27</sup> In January 2008, the firm issued a notice to all registered representatives titled “Late Disclosure Filings” that stated a bankruptcy, civil judgment, or lien “must be reported to FINRA via the Form U4 within 30 days of the event.”<sup>28</sup> In December 2012, Equity Services circulated a “Field Notice” titled “Change to FINRA Fees and Review of Reporting Obligations.” The Field Notice reminded registered representatives that they must “immediately report” a bankruptcy filing or unsatisfied lien to the firm.<sup>29</sup>

## **III. Conclusions of Law**

### **A. Riemer Failed to Update his Form U4**

Cause one of the Complaint charges Riemer with violating Article V, Section 2(c) of FINRA’s By-Laws, NASD IM-1000-1 and NASD Rule 2110, and FINRA Rules 1122 and 2010

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<sup>22</sup> Tr. 75.

<sup>23</sup> Stip. ¶ 21; JX-16b, at 10-11; JX-16c, at 11-13; JX-16d, at 12-13; JX-16e, at 15-17; JX-16f, at 14-15, 17; JX-16g, at 18-20.

<sup>24</sup> Stip. ¶ 21.

<sup>25</sup> Stip. ¶ 22. *See also* JX-2k, at 19, 23, 25.

<sup>26</sup> Stip. ¶ 20; JX-16i, at 4, 28, 39, 53-54, 57, 114, 116, 120, 123, 128, 134.

<sup>27</sup> Stip. ¶ 23.

<sup>28</sup> Stip. ¶ 24; JX-16h, at 2. The firm told FINRA it had incorrectly dated the notice titled “Late Disclosure Filings” January 2007. It should have been dated January 2008. *See* JX-16a, at 1.

<sup>29</sup> Stip. ¶ 25.

by willfully failing to amend, or timely amend, his Form U4 to report the two IRS tax liens and a bankruptcy petition.

Article V, Section 2 of FINRA's By-Laws requires that associated persons applying for registration with FINRA provide "such . . . reasonable information with respect to the applicant as [FINRA] may require" and further states that such applications "shall be kept current at all times by supplementary amendments . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment." To implement this provision, FINRA Rule 1122 and its predecessor, NASD IM-1000-1, provide that no member or associated person "shall file with FINRA information which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."<sup>30</sup> These provisions are intended to ensure that the Forms U4 of registered persons contain accurate, up-to-date information so that regulators, employers, and members of the public "have all material, current information about the securities professional with whom they are dealing."<sup>31</sup> Therefore, filing a false or incomplete Form U4, or failing to timely amend a Form U4, violates NASD IM-1000-1 and FINRA Rule 1122.<sup>32</sup> Violations of NASD IM-1000-1 and FINRA Rule 1122 also constitute violations of NASD Rule 2110 and FINRA Rule 2010.<sup>33</sup>

Riemer is charged with failing to truthfully answer Question 14M of Form U4 by not disclosing his two IRS tax liens.<sup>34</sup> Question 14M asks, "Do you have any unsatisfied judgments or liens against you?" If he had truthfully answered the question, Riemer would have had to provide details about the tax liens. Riemer is also charged with failing to truthfully answer Question 14K(1) of Form U4 by not disclosing his 2008 bankruptcy petition.<sup>35</sup> Question 14K(1) asks, "Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?" Riemer admits

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<sup>30</sup> FINRA Rule 1122 became effective on August 17, 2009, superseding NASD IM-1000-1 without substantive changes at issue here. Therefore, NASD IM-1000-1 applies to Riemer's conduct before August 17, 2009; FINRA Rule 1122 applies to Riemer's conduct beginning August 17, 2009. *See* FINRA Regulatory Notice 09-33, 2009 FINRA LEXIS 96 (June 2009). FINRA Rule 2010 became effective on December 15, 2008, superseding NASD Rule 2110, with no material changes. Accordingly, NASD Rule 2110 applies to Riemer's conduct before December 15, 2008, and FINRA Rule 2010 applies to his conduct beginning on that date. *See* Regulatory Notice 08-57, 2008 FINRA LEXIS 50 (Oct. 2008).

<sup>31</sup> *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at \*17-18 (Oct. 20, 2011).

<sup>32</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*, *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff'd*, 671 F.3d 210 (2d Cir. 2012).

<sup>33</sup> *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at \*17 (NAC July 21, 2014); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*12 (Mar. 15, 2016); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*36-37 (Nov. 9, 2012).

<sup>34</sup> Compl. ¶ 11.

<sup>35</sup> Compl. ¶ 20.

that he failed to update his Form U4 within 30 days of learning of the two tax liens and filing the bankruptcy petition.<sup>36</sup>

The Hearing Panel finds that Riemer never disclosed the 2002 IRS tax lien on his Form U4 and did not timely update his Form U4 to disclose the 2005 IRS tax lien and the 2008 bankruptcy petition.

### **B. Riemer 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 a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 if, among other things, the person:

has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, . . . any material fact which is required to be stated therein.

Thus, a registered person is subject to statutory disqualification for failing to update a Form U4 if the failure was willful and the omitted information was material.<sup>37</sup>

As discussed below, the Hearing Panel finds that Riemer acted willfully when he failed to disclose the 2002 tax lien and failed to timely disclose the 2005 tax lien and his bankruptcy petition on his Form U4. The Hearing Panel also finds the existence of Riemer’s two tax liens and his bankruptcy to be material.

### **C. Riemer Acted Willfully**

A willful violation of the securities laws means “intentionally committing the act which constitutes the violation.”<sup>38</sup> Stated differently, “it means . . . the person charged with the duty knows what he is doing.”<sup>39</sup> A finding of willfulness does not require that the person acted with a

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<sup>36</sup> Tr. 34.

<sup>37</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 the NAC found that the individual respondent willfully failed to disclose material information on his Form U4).

<sup>38</sup> *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

<sup>39</sup> *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

culpable state of mind or that he was aware of the rule that he violated.<sup>40</sup> “A failure to disclose is willful . . . if the respondent of his own volition provides false answers on his Form U4.”<sup>41</sup>

Here, Riemer admits that he had notice of the two IRS tax liens when they were recorded and it is undisputed that he knew he filed the bankruptcy petition. Yet, he failed to timely amend his Form U4 to report the liens and the bankruptcy. At the hearing, Riemer testified unambiguously that he knew he had an obligation to report the liens and bankruptcy.<sup>42</sup> Riemer knew he was obligated to disclose his 2008 bankruptcy. He had disclosed his first bankruptcy petition—filed in June 1998—when he first associated with Equity Services in 2000.<sup>43</sup> Riemer did not acknowledge the two IRS tax liens and the 2008 bankruptcy until after the firm learned of their possible existence as a result of FINRA’s May 2013 inquiry. The Hearing Panel accordingly finds that Riemer’s actions were willful.

#### **D. The Two IRS Tax Liens and the Bankruptcy Were Material**

A fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available.<sup>44</sup> The National Adjudicatory Council (“NAC”) has held that “essentially all of the information that is reportable on the Form U4 may be considered material.”<sup>45</sup> Tax liens and a bankruptcy petition specifically have been determined to be material information that must be reported on a Form U4.

Disclosure of his tax liens and bankruptcy petition would have alerted Riemer’s employer that he was facing outside financial pressure; given customers a means to assess if the liens and bankruptcy “had a bearing on his ability to provide them with appropriate financial advice”; and provided regulators “with early notice about his financial difficulties and ability to manage his

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<sup>40</sup> *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*38 (Apr. 18, 2013).

<sup>41</sup> *Id.* at n.69 (citing *Mathis*, 2009 SEC LEXIS 4376, at \*19).

<sup>42</sup> Tr. 29.

<sup>43</sup> Stip. ¶¶ 2-3. Riemer disclosed the 1998 Chapter 13 bankruptcy petition when he submitted his first Form U4 on October 26, 2000. JX-1 at 27; JX-2e, at 8, 13, 23, 28-29. New York State recorded three tax liens against Riemer—on March 27, 2007 (\$889), November 17, 2008 (\$3,354), and April 28, 2010 (\$4,430). He satisfied the New York tax liens on October 2, 2009, December 3, 2009, and September 10, 2015, respectively. Riemer disclosed the first two New York tax liens on his Form U4 on June 30, 2009, after Equity Services learned of their existence when it received garnishment orders from state authorities. Riemer disclosed the third New York tax lien on his Form U4 on February 25, 2014, a month before resigning from Equity Services. Stip. ¶¶ 17-19; JX-13; JX-14, at 3-7. Riemer did not disclose the unsatisfied 2005 IRS lien and the 2008 bankruptcy when he updated his Form U4 in June 2009 to disclose two New York State tax liens.

<sup>44</sup> *North Woodward Fin. Corp.*, 2014 FINRA Discip. LEXIS 32, at \*17 n.13 (citing *Mathis*, 671 F.3d at 220).

<sup>45</sup> *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*34 (NAC July 27, 2007).

financial obligations.”<sup>46</sup> For these reasons, the Hearing Panel finds that Riemer’s IRS tax liens and bankruptcy are material information that should have been reported on his Form U4.

Because he acted willfully and the missing information was material, the Hearing Panel finds that Riemer willfully violated Article V, Section 2(c) of FINRA’s By-Laws,<sup>47</sup> NASD IM-1000-1 and NASD Rule 2110, and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose the two IRS tax liens and his bankruptcy petition.

#### **E. The Four False Annual Compliance Certifications**

Riemer failed to disclose the two IRS tax liens on three annual certifications in 2005, 2006, and 2007 and the bankruptcy on his 2008 annual certification. He therefore violated NASD Rule 2110, which states, “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” Riemer admits that he knowingly submitted false certifications to Equity Service.”<sup>48</sup>

Making false statements on a firm compliance questionnaire violates NASD Rule 2110. “A registered representative’s failure to disclose material information to his firm violates NASD Rule 2110, and calls into question the registered representative’s ‘ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.’”<sup>49</sup>

#### **IV. Sanctions**

In determining the appropriate sanction, the Hearing Panel considered FINRA’s Sanction Guidelines (“Guidelines”). For filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine ranging from \$2,500 to \$73,000, and a suspension in any or all capacities for 5 to 30 business days.<sup>50</sup> For egregious cases, including cases involving repeated failures to file,

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<sup>46</sup> *McCune*, 2016 SEC LEXIS 1026, at \*22-23 and nn.25-26. *See also Tucker*, 2012 SEC LEXIS 3496, at \*32-33 (The respondent’s liens, bankruptcies, and judgments found significant as they “raise 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 ... [and] also reflected significant outside financial pressures that could affect his judgment when providing financial services.”).

<sup>47</sup> *North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at \*29 n.28 (May 8, 2015) (finding that FINRA is authorized to impose sanctions for violations of its By-Laws pursuant to Article XIII, Section 1(b) of the By-Laws).

<sup>48</sup> Tr. 23; Ans. ¶¶ 28, 30, 32.

<sup>49</sup> *Dep’t of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at \*30 (NAC Feb. 24, 2011), *aff’d*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at \*1 (Feb. 10, 2012) (quoting *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at \*9 (NAC May 7, 2003)). *See also James A. Goetz*, 53 S.E.C. 472, 477-78 (1998) (finding that a registered representative’s false statements on firm’s forms reflect directly on his ability to comply with regulatory requirements fundamental to the securities industry).

<sup>50</sup> FINRA Sanction Guidelines at 69 (2016), <http://www.finra.org/industry/sanction-guidelines>.

untimely filings, or false, inaccurate, or misleading Form U4 filings, the Guidelines call for consideration of a longer suspension of up to two years in any or all capacities, or a bar.<sup>51</sup>

The relevant Principal Consideration in Determining Sanctions in this case is the nature and significance of the information at issue.<sup>52</sup> The undisclosed information—two tax liens and a bankruptcy petition—was material. His failure to disclose these events significantly affected the mix of information available to regulators assessing whether to scrutinize Riemer’s conduct, member firms assessing whether to hire Riemer, and investors and clients assessing whether to trust Riemer’s judgment.

There is no Guideline that specifically addresses making false statements to an employer. Guidelines for recordkeeping deficiencies and the falsification of records are analogous because Riemer’s failure to disclose the tax liens and his bankruptcy caused Equity Services to maintain false books and records.<sup>53</sup> For recordkeeping violations, the Guidelines recommend a fine between \$1,000 and \$15,000 and a suspension in any or all capacities for up to 30 business days. In cases involving egregious recordkeeping violations, the Guidelines recommend a fine of \$10,000 to \$146,000 and a suspension of up to two years or a bar. The Guidelines recommend that adjudicators consider the nature and materiality of the inaccurate or missing information.<sup>54</sup>

For falsifying records, the Guidelines recommend a fine of \$5,000 to \$146,000 and instruct adjudicators to consider suspending a respondent in any or all capacities for up to two years if mitigating factors are present. In egregious cases, adjudicators should consider a bar. When determining sanctions, the Guidelines instruct adjudicators to consider the nature of the falsified documents and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.<sup>55</sup>

Riemer’s failure to update his Form U4 and his false statements to his firm on the compliance questionnaires are related. Both violations resulted from Riemer’s willful failure to comply with his disclosure obligations. The Hearing Panel therefore believes it appropriate to

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<sup>51</sup> Guidelines at 70.

<sup>52</sup> Guidelines at 69.

<sup>53</sup> *Dep’t of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at \*86-87 (NAC July 18, 2016) (applying Guidelines for recordkeeping violations and falsification of records for registered representative’s false statements on firm compliance questionnaires) (citing *Mullins*, 2012 SEC LEXIS 464, at \*83 (applying Guidelines for recordkeeping violations for misstatements on firm compliance questionnaires) and *Dep’t of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at \*26-27 (NAC May 13, 2011) (applying Guideline for the falsification of records for false statements on firm compliance questionnaires), *aff’d*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012)).

<sup>54</sup> Guidelines at 29 (Recordkeeping Violations).

<sup>55</sup> Guidelines at 37 (Forgery and/or Falsification of Records).

impose a unitary sanction for these two violations.<sup>56</sup> Accordingly, the Panel imposes sanctions designed to deter the same underlying misconduct.

The Hearing Panel also considered aggravating factors. Riemer failed to amend his Form U4 three times, and this failure extended over many years. Riemer never disclosed the 2002 IRS tax lien. He did not disclose the 2005 IRS tax lien for more than eight years and the 2008 bankruptcy for nearly five years.<sup>57</sup> Because Riemer admits that he knew he was obligated to update his Form U4, the Hearing Panel finds that Riemer acted willfully when he decided not to disclose the IRS tax liens and bankruptcy on his Form U4.<sup>58</sup>

The Hearing Panel finds it aggravating that Riemer concealed the two IRS liens and bankruptcy from his firm by giving false answers on four annual compliance questionnaires, which specifically asked whether he had any unsatisfied judgments or liens recorded against him or had filed a bankruptcy petition.<sup>59</sup> Riemer's repeated failures to make required disclosures about his finances constitute a disturbing pattern of misconduct.<sup>60</sup> The Hearing Panel also finds it aggravating that Riemer did not disclose the unsatisfied 2005 IRS lien and his bankruptcy in June 2009 when he updated his Form U4 to disclose two New York State tax liens recorded in 2007 and 2008. The Hearing Panel notes that when Equity Services first learned of the New York State tax liens, in May 2009, it caused Riemer to amend his Form U4 the following month. The firm specifically reminded Riemer in writing that "judgments and liens must be reported on your Form U4 within 30 days of receipt of notice."<sup>61</sup> Riemer ignored this instruction and did not disclose the unsatisfied 2005 IRS lien or the 1998 bankruptcy at that time.

When fashioning appropriate sanctions, the Guidelines instruct adjudicators also to consider whether the employer disciplined the respondent before regulatory detection.<sup>62</sup> Here, Equity Services terminated Riemer but only after FINRA learned of Riemer's possible

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<sup>56</sup> *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at \*55 (NAC July 18, 2014) (citing *Dep't of Enforcement v. Fox & Co. Inv., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at \*37 (NAC Feb. 24, 2005) (finding that "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve NASD's remedial goals")), *aff'd*, 58 S.E.C. 873 (2005).

<sup>57</sup> Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 9) (directing adjudicators to consider whether the respondent engaged in misconduct over an extended period of time).

<sup>58</sup> Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 13) (directing adjudicators to consider whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

<sup>59</sup> Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 10) (directing adjudicators to consider whether the respondent attempted to conceal his misconduct).

<sup>60</sup> Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 8) (directing adjudicators to consider whether the respondent engaged in numerous acts and/or a pattern of misconduct).

<sup>61</sup> JX-2f, at 1. *See also* JX-2f, at 34.

<sup>62</sup> Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 14) (directing adjudicators to consider "[w]hether the member firm with which an individual is/was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection.").

misconduct and brought it to the firm's attention. Thus, the Hearing Panel does not find that Riemer's termination is a mitigating factor.

Riemer testified truthfully at the hearing, repeatedly accepting responsibility for his decision not to disclose the IRS liens and bankruptcy. He convincingly expressed considerable remorse for his actions. Nonetheless, the Hearing Panel finds that Riemer's contrition is outweighed by the considerable length of time he failed to make required disclosures, the nature of the events he failed to disclose, and his repeated false statements to his firm.

Riemer urges the Hearing Panel to find that he did not act willfully because doing so subjects him to a statutory disqualification.<sup>63</sup> He testified that National Life has told him it will discharge him if this disciplinary action results in a statutory disqualification.<sup>64</sup> The Hearing Panel however does not impose a statutory disqualification as a sanction. Instead, it is a collateral consequence arising from the operation of Section 3(a)(39)(F) of the Exchange Act when there is a determination that a person willfully failed to disclose material information on his Form U4.<sup>65</sup>

The Securities and Exchange Commission has explained that a broker's Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public."<sup>66</sup> "Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm."<sup>67</sup>

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<sup>63</sup> Riemer states that, because of statutory disqualification, "a finding of willfulness is a sanction itself and one which triggers consequences that are disproportionate to the misconduct at issue. Accordingly, . . . Riemer respectfully requests a resolution which does not subject him to [statutory disqualification]." Riemer Pre-Hearing Brief, at 3. In exchange for a finding that he did not act willfully to avoid a statutory disqualification, Riemer offers to "execute an undertaking in which he irrevocably and permanently covenants to refrain from seeking to register with a member firm" and to pay a \$5,000 fine when he executes the undertaking, Riemer Pre-Hearing Brief, at 2. The record evidence compels the Hearing Panel to find that Riemer acted willfully when he failed to disclose the two IRS liens and the bankruptcy on his Form U4 and therefore rejects his proposed sanctions as inappropriate.

<sup>64</sup> Tr. 35, 39. At the hearing, Equity Services' chief compliance officer confirmed that statutory disqualification would have "serious ramifications" for Riemer's employment with National Life, although he could not be certain that it would result in his losing his job. Tr. 63, 65.

<sup>65</sup> *McCune*, 2016 SEC LEXIS 1026, at \*36. *See also Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at \*35-36 (Feb. 20, 2014) (finding that any collateral consequence suffered as a result of misconduct or the disciplinary proceeding that followed, such as impact on reputation, career, or finances, is not a mitigating factor); *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at \*27 (Dec. 22, 2008) ("We also do not consider mitigating the economic disadvantages [respondent] alleges he suffered because they are a result of his misconduct.").

<sup>66</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*24-25 n.44 (quoting *Tucker*, 2012 SEC LEXIS 3496, at \*26), *petition for review denied*, 575 F. App'x 1 (D.C. Cir. 2014) (citations omitted).

<sup>67</sup> *Id.* at \*23 (quoting *Tucker*, 2012 SEC LEXIS 3496, at \*26) (citations omitted).

The Hearing Panel finds no mitigating circumstances warranting reduced sanctions. Given the seriousness of his misconduct, and after weighing all the facts and circumstances, the Hearing Panel finds it appropriately remedial to suspend Riemer from associating with any FINRA member firm in any capacity for six months and to impose a \$5,000 fine for willfully failing to timely amend his Form U4 to disclose the two IRS tax liens and his bankruptcy petition and for making false statements to Equity Services on four annual compliance questionnaires.

Riemer's willful failure to timely update his Form U4 violates Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010. Because his misconduct was willful, and the information about his tax liens and bankruptcy petition is material, Riemer is subject to statutory disqualification. Riemer's false statements to his firm on the annual compliance questionnaires violate NASD Rule 2110.

## **V. Order**

Respondent Richard Allen Riemer, Jr., is suspended from associating with any FINRA member firm in any capacity for six months for failing to timely disclose two IRS tax liens and a bankruptcy petition on his Form U4, in willful violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010, and for making false statements to his firm, in violation of NASD Rule 2110. He also is fined \$5,000 and ordered to pay the costs of the hearing in the amount of \$1,539.55, which includes the cost of the hearing transcript and a \$750 administrative fee.

If this decision becomes FINRA's final disciplinary action, Riemer's suspension shall become effective with the opening of business on January 2, 2017. The fine and assessed costs shall be due on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.<sup>68</sup>

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Michael J. Dixon  
Hearing Officer  
For the Hearing Panel

Copies to: Richard Allen Riemer, Jr. (via overnight courier, electronic, and first-class mail)  
Robert Kennedy, Esq. (via electronic and first-class mail)  
James J. Fauci, Esq. (via electronic mail)  
Bonnie McGuire, Esq. (via electronic mail)  
Jeffrey D. Pariser, Esq. (via electronic mail)

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<sup>68</sup> The Hearing Panel considered and rejected without discussion all other arguments by the parties.