FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ALLEN HOLEMAN (CRD No. 1060910), Respondent.	Disciplinary Proceeding No. 2014043001601 Hearing Officer—DW **HEARING PANEL DECISION** May 3, 2017

For willfully failing to timely update his Form U4 to disclose two tax liens 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 30 business days and fined $10,000. His willful violation subjects him to statutory disqualification. Respondent is assessed the costs of the hearing.

Appearances

For the Complainant: Jonathan Golomb, Esq., and Emily Barnes, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Ruthann Granito, Esq.

I. Introduction

The Department of Enforcement alleges that Respondent Allen Holeman willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose three tax liens and failed to tell his firm about the liens on annual compliance certifications.

Holeman denies that he willfully failed to disclose the tax liens within the period required by FINRA's By-Laws and rules. He maintains that he did not receive notice of the liens and that in any event an Internal Revenue Service ("IRS") agent advised him that the liens applied to his property, not him personally. Thus, Holeman argues that he was not required to report these liens.

For the reasons discussed below, this Hearing Panel concludes that Holeman was obligated by FINRA's By-Laws and rules to report the tax liens and that he failed to timely do so.

II. Findings of Fact

A. Background

Holeman's career in the securities industry spans more than fifty years. He began in 1966 as an operations clerk in the compliance department of a FINRA member firm.[1] He continued his work in that firm's compliance department until 1980, when he moved to another firm as its director of surveillance and chief compliance officer.[2] Over the course of his career, he worked as chief compliance officer in a number of other firms until assuming that role with his current employer, David Lerner Associates, in November 2013.[3]

Holeman first registered with FINRA[4] in 1980, and presently holds a number of licenses, including the Series 4, 7, 8, 9, 10, 12, 14, 14a, 15, and 24.[5] Because the alleged misconduct occurred while Holeman was associated with a member firm, and because he remains associated with the firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of its By-Laws.

B. Holeman Fails to Disclose Three IRS Tax Liens

The federal government imposed three tax liens against Holeman. The first came on April 23, 2009, when the government filed and recorded a tax lien for $39,247 "on all property and rights to property" belonging to Holeman for unpaid taxes in 2006 and 2007.[6] This lien was eventually released on April 10, 2013.[7]

A second lien was imposed on October 6, 2009, when the government filed and recorded another tax lien for $58,853 "on all property and rights to property" belonging to Holeman for unpaid taxes in 2008.[8] Later that same month, Holeman entered into a written installment

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[1] Answer ("Ans.") ¶ 3.

[2] *Id*.

[3] *Id*.

[4] Holeman registered with NASD, which later became FINRA.

[5] Ans. ¶ 4.

[6] Stipulations ("Stip.") ¶ 6; CX-2.

[7] Stip. ¶ 6. The Complaint does not allege any violation as a result of Holeman's failure to disclose this lien given that it was released in 2013.

[8] Stip. ¶ 7; CX-3.

agreement with the Internal Revenue Service ("IRS") to pay the outstanding taxes associated with both liens.[9]

Later, in May 2011, the federal government filed and recorded yet another tax lien for $18,444 "on all property and rights to property" belonging to Holeman because of unpaid taxes for the year 2009.[10]

To date, the latter two liens remain in effect.[11] But after each lien was filed, Holeman failed to promptly update his Form U4 to reflect the liens. Between August 2010 and August 2012, Holeman amended his Form U4 six times.[12] None of the amendments disclosed the liens.[13]

When Holeman joined David Lerner Associates in November 2013, he again failed to disclose the liens, completing another Form U4 where he answered "no" to the question "Do you have any unsatisfied judgments or liens against you?"[14] Amendments to the Form U4 in September and December 2014 similarly omitted any disclosure of the liens.[15]

Holeman also submitted a compliance questionnaire to David Lerner Associates in December 2014 where he answered "no" to the question "Do you have any unsatisfied judgments or liens against you?"[16]

C. Holeman Explains His Nondisclosure

In 2014, FINRA investigative staff conducted a LexisNexis search of a group of registered representatives to determine whether they had outstanding liens or judgments.[17] Holeman was among the representatives identified as having outstanding liens.[18] In October 2014—prior to Holeman submitting his compliance questionnaire to David Lerner Associates and amending his Form U4 in December 2014—Enforcement contacted Holeman and asked why he had not disclosed the outstanding liens after they were filed.[19] In November 2014, Enforcement followed up with a letter to Holeman asking for, among other things, a written statement from him explaining whether the liens remained outstanding and why Holeman had

[9] Stip. ¶ 8.

[10] Stip. ¶ 9.

[11] Stip. ¶¶ 7, 9.

[12] Stip. ¶ 10.

[13] Stip. ¶ 10.

[14] Stip. ¶ 11.

[15] Stip. ¶ 12.

[16] Stip. ¶ 14.

[17] Hearing Transcript ("Tr.") at 18-19.

[18] Tr. 18-19. This inquiry led to a subsequent investigation that resulted in the present action.

[19] Tr. 199-200.

not disclosed them.[20] In response, Holeman explained that although he believed the liens were imposed for his failure to pay taxes when due, he did not recall receiving notice of the liens.[21] Holeman explained that he did not disclose the liens because he "was advised by an IRS agent that the liens were against physical property not against me personally."[22] He also said he had no documentation related to the liens because he lost his files and records relevant to the inquiry in Hurricane Sandy.[23]

Later that same month, Enforcement sent another request to Holeman specifically asking for copies of any correspondence, documentation, or other guidance Holeman received from the IRS related to the liens. On December 17, 2014, Holeman again responded in writing, reiterating that he lost his documentation related to the IRS in the hurricane, explaining that he received the advice described in his earlier letter by telephone several years earlier, and that he was "seeking clarification and [had] placed calls to the IRS" regarding the liens.[24] Holeman again maintained that he did "not believe that there were liens against me personally. The language in Form U4 does not include non-judicial and non-personal liens."[25]

On March 4, 2015, Holeman gave on-the-record ("OTR") testimony to Enforcement staff regarding the liens. Holeman testified that in 2008 he had a conversation with an IRS agent who explained that "the tax filings that they were doing were against [Holeman's] property specifically."[26] He reiterated that he did not disclose the liens "[b]ecause I believe they were against my property and not against me personally."[27]

Enforcement also questioned Holeman about how he would respond to the hypothetical situation of a broker asking him, as his firm's chief compliance officer, whether a $500,000 tax lien against the broker's property required disclosure. Holeman explained that he "would confer with my attorneys and say there is a $500,000 property tax lien against this individual, what do you think we need to do with respect to disclosure. … You have to confer with the lawyers and see what the answer is."[28]

Holeman could not explain why he did not confer with counsel regarding his own reporting obligations, and reiterated that he "didn't believe that this was personally against me. I think it was against property. I mean, the fact that I'm not a salesman is not relevant to the

[20] CX-23.

[21] CX-23.

[22] CX-23.

[23] CX-23.

[24] CX-24.

[25] CX-24.

[26] CX-27, at 4.

[27] CX-27, at 5-6.

[28] CX-27, at 11-12.

conversation, I'm registered, but I don't have any clients or accounts, but for somebody that does, maybe I would defer to counsel."[29] Acknowledging his awareness of the existence and language of the liens, Holeman explained that he made his determination without consulting anyone at his firm, based upon his conversation with the IRS agent who "advised me that these things were going to be filed as against the property" and "the filings that occurred which said against personal property and assets."[30]

D. Holeman Belatedly Discloses the Liens

About a month after his OTR testimony, on April 8, 2015, Holeman amended his Form U4. Holeman disclosed the two liens still outstanding, adding the explanation that the liens "are not against 'you' as asked in [the question]. The IRS liens are in favor of the United States on all property and rights to property belonging to the taxpayer."[31] The disclosure represented that Holeman first learned of the liens on October 20, 2011.[32]

Holeman again updated his Form U4 on August 4, 2015, to disclose for the first time the previously satisfied lien related to the 2006 and 2007 tax years.[33] This disclosure reports that Holeman first learned of that lien on April 23, 2009, when it was filed.[34] On June 30, 2016, however, Holeman updated his Form U4 (to disclose this action) and deleted his prior disclosure regarding the lien for the 2006 and 2007 tax years.[35] Still later, on September 27, 2016, Holeman again updated his Form U4, changing his disclosure to read that he first learned of the two outstanding liens on February 20, 2015, and not on October 20, 2014.[36]

At the hearing, Holeman denied that he was aware of the liens at the time they were filed.[37] He claimed that his conversation with the IRS agent related only to an installment agreement for payment on his back taxes, and he understood that the government would impose a lien against his property only if he failed to pay the installments.[38] Holeman explained that his December 2014 letter to Enforcement, where he appeared to acknowledge the existence of the

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[29] CX-27, at 12.

[30] CX-27, at 13, 19.

[31] CX-19.

[32] CX-19. We credit Holeman's assertion that the date reflected on the Form U4, October 20, 2011, was the result of a typographical error when he intended to report October 20, 2014—the date he was first contacted by Enforcement. In subsequent filings, Holeman clarified that he did not become aware of the liens "until brought to [his] attention on or about October 2014." CX-20.

[33] CX-20.

[34] CX-20.

[35] CX-21.

[36] CX-22.

[37] Tr. 152.

[38] Tr. 153.

liens, reflected only what he learned in his initial October 2014 communication with Enforcement, so he "understood that these [liens] may have been filed, but … didn't have any evidence that they were filed at this point."[39] Holeman admitted that in December 2014, he completed the amended Form U4 and submitted a compliance questionnaire to his firm failing to disclose the very liens Enforcement had already raised questions about.[40]

Holeman testified that he never actually saw the liens until February of 2015, so he amended his Form U4 to "correct the record" regarding his disclosure of when he "first learned" of the liens, changing the date from October 20, 2014, to February 20, 2015.[41] Holeman acknowledged that when put on notice of a tax lien, an individual would "have 30 days from the time that they see this information" and would need to "go back to who told them this information, get hard evidence, and you have potentially a reportable event."[42] Holeman did not do so, failing to make disclosure until April 8, 2015, in the midst of Enforcement's investigation.[43]

Enforcement presented evidence that it was standard practice for the IRS to send written notice to individuals subjected to liens within five days of filing, but presented no documentary evidence that Holeman personally received such notice.[44] During its investigation, Enforcement requested that Holeman produce all mailings and other records pertaining to his IRS dealings, Holeman produced nothing, claiming he lost all his records in a hurricane.[45] Enforcement then requested that Holeman sign a consent letter to the IRS allowing the agency to release all correspondence related to the matter.[46] Holeman never signed the consent.[47]

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[39] Tr. 159.

[40] Tr. 159-61.

[41] Tr. 162.

[42] Tr. 163-64.

[43] Tr. 164-65; CX-19. Holeman testified that his former counsel advised him not to disclose the liens earlier. Tr. 168. We do not credit this testimony. During Holeman's March 2015 OTR, his attorney explained that despite counsel's prior representations to Enforcement in February 2015 that Holeman would soon disclose the liens, "it has not been done because my client has very recently advised me that he feels that to do that would be an admission of wrongdoing from the get-go, and his position is that he did not do anything wrong and, therefore, he doesn't want to do anything that would be misconstrued as an admission." Tr. 167. Immediately following this explanation, Holeman stated, "I agree with what [counsel] said …." Tr. 167.

[44] Tr. 127-28.

[45] CX-23; CX-24.

[46] CX-25.

[47] Tr. 207-09.

III. Conclusions of Law

A. Holeman Violated NASD IM-1000-1 and FINRA Rule 1122 by Failing to Timely Update His Form U4

The first cause of the Complaint alleges that Holeman violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, and FINRA Rules 1122 and 2010 by willfully failing to timely amend his Form U4 to report the three tax liens.

These provisions require associated persons to answer the questions of the Form U4 accurately and fully. The accuracy of an applicant's Form U4 "is critical to the effectiveness" of FINRA's ability "to determine and monitor the fitness of securities professionals."[48] Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Form U4s "current at all times" and that amendments to Form U4s be 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."[49] 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."[50] 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.[51] Violations of NASD IM-1000-1 and FINRA Rule 1122 also constitute violations of FINRA Rule 2010.[52]

Among the disclosures called for by the Form U4 is whether the associated person has any unsatisfied tax liens.[53] As set forth above, the IRS filed tax liens against Holeman in April and October of 2009, and again in May 2011. Yet between August 2010 and his first disclosure

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[48] *See, e.g., Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *13-14 (NAC Dec. 12, 2008), *aff'd sub nom. Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff'd sub nom. Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

[49] 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 Holeman's conduct before August 17, 2009; FINRA Rule 1122 applies to Holeman's conduct beginning August 17, 2009. *See* FINRA Regulatory Notice 09-33 (June 2009), http://www.finra.org/industry/notices/09-33. FINRA Rule 2010 became effective on December 15, 2008, superseding NASD Rule 2110, with no material changes. Accordingly, NASD Rule 2110 applies to Holeman's conduct before December 15, 2008, and FINRA Rule 2010 applies to his conduct beginning on that date. *See* FINRA Regulatory Notice 08-57 (Oct. 2008), http://www.finra.org/industry/notices/08-57.

[50] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011).

[51] *See, e.g., Dep't of Enforcement v. Mathis*, 2008 FINRA Discip. LEXIS 49, at *16-17.

[52] *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).

[53] CX-19.

of the liens on April 8, 2015, Holeman filed or amended his Form U4 at least nine times without disclosing the liens. Holeman filed his December 2014 amendment just two months *after* Enforcement contacted him about the undisclosed liens.

To establish a violation, Enforcement must show that Holeman was on notice of the undisclosed liens.[54] Holeman argues that Enforcement failed to prove that he ever received notice of the liens from the IRS. But Holeman's knowledge of the liens is established by his original explanation for his nondisclosure—he asserted in his correspondence to Enforcement and during his OTR testimony that he made an affirmative decision not to disclose the liens because they were filed against his property, not him personally. In making this assessment, Holeman was necessarily aware of the liens and their language.[55] Indeed, Holeman acknowledged that at the time he negotiated an installment payment agreement with the IRS, an agent explained that "there would be liens placed on his property in favor of the IRS."[56]

We also observe that during the investigation, Holeman produced none of his correspondence with the IRS, and later declined to execute a consent to authorize the IRS to release its relevant records to Enforcement. Given his ongoing contacts and dealings with the IRS, and the magnitude of his outstanding debt, it is difficult to understand how Holeman could possess no documentation regarding his obligations. Though Holeman claimed to have lost his records in a hurricane, he failed to explain why he subsequently declined to consent to the IRS providing its documents. Under these circumstances, Holeman's unexplained refusal to consent[57] warrants an inference that he did so because he believed that the requested materials would tend to establish that the IRS had in fact provided him with contemporaneous notice of the liens, consistent with its standard practice. "The failure to bring before the tribunal some circumstance, document, or witness … serves to indicate, as the most natural inference, that the party fears to

[54] *Dep't of Enforcement v. Au*, No. 2013036653301, 2016 FINRA Discip. LEXIS 58, at *22 (OHO Dec. 12, 2016).

[55] *See, e.g.*, CX-27, at 13 (Holeman testified that he made an "independent decision" as to his disclosure obligation based on his conversation with an IRS representative "and the filings that occurred which said against personal property and assets."). Contrary to Holeman's unsupported assessment, the fact that his tax liens are against his property is of no moment. Webster's defines a "lien" as "a charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law." *See* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/lien (accessed Mar. 3, 2017). So the question on the Form U4 asking whether the registered person had any outstanding liens contemplates disclosure of any outstanding "charge upon real or personal property [of the registered person] for the satisfaction of some debt." Holeman's semantic gymnastics cannot excuse his disclosure obligation. *Dep't of Enforcement v. Mathis*, 2008 FINRA Discip. LEXIS 49, at *19-20 (The language "'lien on all property and rights to property belonging to [respondent] for the amount of these taxes' … clearly and unambiguously informed [respondent] that the IRS had entered liens against him in the amounts of his unpaid federal taxes.").

[56] JX-2, at 2.

[57] As a registered person, Holeman was obligated to cooperate with Enforcement's investigative efforts pursuant to FINRA Rule 8210.

do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavorable to the party."[58]

For these reasons, we conclude that Holeman was on notice of the liens at about the time of their filing.[59] And there is no question that Holeman was on notice of the existence of the liens when contacted by Enforcement in October 2014; yet he still failed to update his Form U4 to disclose them for several months after that contact. Holeman's failure to disclose his outstanding liens until April of 2015, nearly six years after the liens were entered against him (and more than six months after being questioned by Enforcement regarding his failure to disclose the liens) establishes his failure to timely update his Form U4 within 30 days after learning of information required to be disclosed, in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, and FINRA Rules 1120 and 2010.

B. Holeman Is Subject to Statutory Disqualification

We also consider whether Holeman's violation subjects him to statutory disqualification. Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact … which is required to be stated" in such application is "statutorily disqualified" from participating in the securities industry unless FINRA approves the association.[60] As explained below, we find by a preponderance of evidence that Holeman's failure to update his Form U4 to disclose his tax liens was a willful nondisclosure of material fact.

1. Holeman Acted Willfully

A willful violation of the securities laws entails "intentionally committing the act which constitutes the violation."[61] In other words, "it means … the person charged with the duty knows

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[58] *Int'l Union, United Automobile, Aerospace and Agric. Implement Workers of Am. (UAW) v. NLRB*, 459 F.2d 1329, 1336 (1972) (citing 2 J. Wigmore, Evidence § 285 (3d ed. 1940) ("When a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.")). Application of such an inference here does not shift the burden of proof to Holeman, as it merely buttresses the proof supplied by Holeman's own OTR testimony acknowledging his awareness of the liens. *Compare generally Dep't of Enforcement v. Fawcett*, No. C9A040024, 2005 NASD Discip. LEXIS 31, at *21 (OHO May 24, 2005) ("[E]ven if an adverse inference is drawn, the inference may be employed to complete a chain of reasoning on a point partially established by direct evidence, but it cannot be used to fill a void where there is otherwise no evidence."), *aff'd*, 2007 NASD Discip. LEXIS 2 (NAC Jan. 8, 2007), *aff'd*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007).

[59] We decline to credit Holeman's contrary hearing testimony on this point in light of the inconsistency of his testimony with his OTR testimony, the shifting dates of when he first claimed to discover the liens in his Form U4 disclosures, and the surrounding facts and circumstances.

[60] *See also* Art. III, Sec. 4 of FINRA's By-Laws.

[61] *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

what he is doing."[62] A finding of willfulness does not require that the person acted with a culpable state of mind or that he was aware of the rule that he violated.[63] "A failure to disclose is willful … if the respondent of his own volition provides false answers on his Form U4."[64] Both the NAC and the SEC have "rejected defenses to allegations of willfulness that … were based on interpretations of Form U4 disclosure questions that were contrary to their plain language, limitations that did not exist in the text of the questions, or a respondent's alleged confusion or lack of understanding about the meaning of a Form U4 disclosure question."[65]

Here, Holeman had notice of the IRS tax liens and consciously, though incorrectly, determined that disclosure was not required because the liens attached to his property and not to him personally. His knowing decision not to disclose the liens sufficiently demonstrates that he acted willfully. His "conscious determination that he was not required to report [the tax liens]" suffices to demonstrate that he "knew what he was doing when he did not timely amend the forms to disclose the liens he knew had been filed."[66]

Any error regarding the need for disclosure cannot negate willfulness where, as here, Holeman failed to follow his own best judgment as a compliance professional: proper practice required that "[y]ou have to confer with the lawyers and see what the answer is."[67] Holeman's failure to seek guidance with respect to a "liens question [that] is unambiguous, straightforward, and clear"[68] was inconsistent with his obligation as a securities professional to "understand [his] duties to the investing public and to comply with the applicable rules and regulations which govern [his] behavior."[69] In light of these obligations, "ignorance of the … rules is no excuse for their violation."[70]

It is also significant that when questioned by Enforcement about the tax liens, Holeman failed to inquire about his disclosure obligation within the 30 days required by FINRA rules. Holeman concedes his obligation to investigate whether disclosure of the liens was required in

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[62] *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)).

[63] *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013).

[64] *Id*. at n.69 (citing *Mathis*, 2009 SEC LEXIS 4376, at *19).

[65] *See Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *23 (NAC Mar. 16, 2017) (collecting authorities), *appeal docketed*, No. 3-17925 (SEC Apr. 11, 2017).

[66] *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2016 FINRA Discip. LEXIS 30, at *22 (OHO June 3, 2016), *aff'd*, 2017 FINRA Discip. LEXIS 9, *appeal docketed*, No. 3-17925 (SEC Apr. 11, 2017).

[67] CX-27, at 11-12.

[68] *Elgart*, 2017 FINRA Discip. LEXIS 9, at *22.

[69] *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8, n.2 (Sept. 30, 1997).

[70] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *16 (Dec. 22, 2008) (quoting *Richard J. Lanigan*, 52 S.E.C. 375, 378 n.13 (1995)).

light of the questions raised and to make necessary disclosures in a timely fashion.[71] We find that Holeman's failure to make his disclosure for more than six months after his initial contact with Enforcement further establishes his willfulness.

2. The Tax Liens Were Material

Holeman withheld material information by failing to report outstanding tax liens on his Form U4. The existence of a particular 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.[72] "Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4," the NAC "presume[s] that essentially all the information that is reportable on the Form U4 is material."[73]

Substantial precedent supports the view that tax liens are material information required to be timely disclosed on a Form U4.[74] We see no reason to depart from these decisions here and find that the undisclosed tax liens here constituted material information. Holeman emphasizes that as a chief compliance officer, he "is not a registered representative such that the disclosure of a lien on his U4 would be material to *customers* who might have concerns about his acumen in managing their investments."[75] But Holeman does not dispute that "[i]nformation about the tax liens was material to [his] employers because it would have alerted them to the outside financial pressures" or that "this information was material to regulators in assessing [his] fitness because it would have provided them with an early notice about his financial difficulties and information on his ability to manage his financial obligations."[76]

And while it may be true that Holeman has no customers, we find it significant that he serves as the chief compliance officer for his firm. Given his responsibility to oversee compliance and provide guidance to others at his firm, Holeman's failure to meet his own obligations calls into question his vigilance in ensuring that others at his firm satisfy their responsibilities. In light of the "the inarguable importance of accurate disclosure on Forms U-4

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[71] Tr. 163-64.

[72] *North Woodward Fin.*, 2014 FINRA Discip. LEXIS 32, at *17 n.13 (citing *Mathis v. SEC*, 671 F.3d at 220).

[73] *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *37 n.31 (NAC July 19, 2016).

[74] *Dep't of Enforcement v. McCune*, No. 201102793301, 2015 FINRA Discip. LEXIS 22, at *14 (NAC July 27, 2015) ("the materiality of information about the bankruptcy and liens is particularly evident because the disclosure was required by specific questions on the Form U4"), *aff'd*, 2016 SEC LEXIS 1026; *North Woodward Fin.*, 2014 FINRA Discip. LEXIS 32, at *17 ("A respondent's failure to disclose a tax lien on his Form U4 is material information that other regulators, employers, and investors would want to know because it may signal financial difficulty"); *Dep't of Enforcement v. Tucker*, No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *21 (NAC Oct. 4, 2011) ("a reasonable employer or regulator would have viewed the tax liens, judgments, and bankruptcies as extremely relevant"), *aff'd*, 2012 SEC LEXIS 3496.

[75] Holeman's Pre-Hearing Brief, p. 5 (emphasis in original).

[76] *Mathis*, 2009 SEC LEXIS 4376, at *29.

regarding a registered representative's serious financial problems,"[77] we conclude that the information regarding Holeman's outstanding tax liens was material.

Because Holeman willfully failed to update his Form U4 to include this material information, he is statutorily disqualified.

C. The False Annual Compliance Certification

Holeman also failed to disclose his outstanding tax liens on a compliance questionnaire that he submitted to his employer in December 2014. Holeman had two outstanding tax liens at the time, and he falsely stated that he had none, even though Enforcement contacted him about the liens only two months earlier.

By making this false statement on his compliance questionnaire, Holeman violated FINRA Rule 2010. "A registered representative's failure to disclose material information to his firm violates [Rule 2010], 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.'"[78]

IV. Sanctions

In determining the appropriate sanction, we first considered FINRA's Sanction Guidelines ("Guidelines") for the failure to amend a Form U4,[79] as well as the Principal Considerations in Determining Sanctions.[80] The Guidelines recommend a suspension of five to 30 business days, as well as a fine of $2,500 to $37,000.[81] In egregious cases, the Guidelines recommend that we consider a more substantial fine or suspending the individual with respect to any or all capacities for up to two years or a bar.[82]

The Guidelines recommend that principal consideration should focus on (1) the nature and significance of the information at issue; (2) whether the failure resulted in a statutorily

[77] *Mathis v. SEC*, 671 F.3d at 220.

[78] *Dep't of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *30 (NAC Feb. 24, 2011) (quoting *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9 (NAC May 7, 2003)), *aff'd*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012). *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).

[79] *See* FINRA Sanction Guidelines 69 (2016), http://www.finra.org/industry/sanction-guidelines.

[80] Guidelines at 7.

[81] Guidelines at 69.

[82] Guidelines at 71.

disqualified individual becoming or remaining associated with a firm; and (3) whether the conduct resulted in harm to the firm, a registered person, or others.[83]

There is no Guideline specifically addressing Holeman's misstatement to his employer on his compliance questionnaire. Guidelines for recordkeeping deficiencies and falsification of records are analogous because Holeman's failure to disclose his outstanding tax liens caused his employer to maintain false books and records.[84] For recordkeeping violations, the Guidelines recommend a fine between $1,000 and $15,000 and a suspension in any or all capacities for a period of 10 business days to three months. If the violation is egregious, the Guidelines recommend a fine of $10,000 to $146,000 and a suspension of up to two years or a bar. Principal consideration should focus on (1) the nature and materiality of the inaccurate or missing information; (2) the extent and duration of the misstatements; and (3) whether the misstatements were negligent or intentional.[85]

Because both of Holeman's violations stem from the same cause, his failure to disclose his outstanding tax obligations, we assess the facts pertaining to the overlapping conduct together.[86]

Considering these principles, we find that the undisclosed information was material. The three liens, totaling over $116,000, revealed that Holeman was under some degree of financial strain.[87] But Holeman's negligent nondisclosure did not result in a statutorily disqualified individual remaining associated, and significantly, the nondisclosure resulted in no harm to Holeman's firm, any of its customers, or anyone else. We do find Holeman's years-long failure to disclose the liens aggravating.[88] We also find that Holeman's hearing testimony was in certain

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[83] Guidelines at 71.

[84] *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), *aff'd*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017); *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).

[85] Guidelines at 29 (Recordkeeping Violations).

[86] Guidelines at 4 (General Principle No. 4); *Dep't of Enforcement v. Riemer*, No. 2013038986001, 2016 FINRA Discip. LEXIS 56, at *23 (OHO Nov. 4, 2016) (unitary sanction appropriate for failure to update Form U4 and false statements on compliance questionnaires, as "[b]oth violations resulted from [respondent's] willful failure to comply with his disclosure obligations"); *Dep't of Enforcement v. Geffner*, No. 2013039639101, 2016 FINRA Discip. LEXIS 41, at *22 (OHO Aug. 12, 2016) (unitary sanction appropriate where "the violations described in both causes of action resulted from [respondent's] willful failure to comply with his disclosure obligations").

[87] We note that Holeman has fully satisfied one of his liens, and presently maintains a payment plan with the IRS to satisfy the two remaining obligations. The value of the two liens still outstanding is approximately $77,000.

[88] Guidelines at 7 (Principal Consideration 9).

respects inconsistent with his OTR testimony and less than candid, and consequently aggravated his violation.[89] Though Holeman's violation was not egregious, it was serious.

Holeman argues that our finding of willfulness itself acts as a sanction because the finding subjects him to statutory disqualification and its associated potentially adverse consequences.[90] While we agree with Holeman that his conduct here does not merit severe collateral consequences,[91] we do not impose statutory disqualification as a sanction.[92] Instead, it is mandated by operation of Section 3(a)(39)(F) of the Exchange Act upon a determination that he willfully failed to disclose material information on his Form U4.[93]

Although Holeman notes that his disciplinary history has been free of incident throughout his fifty-year career, the lack of a prior disciplinary history is not mitigating.[94] We find no mitigating factors. In light of the nature of the misconduct, and after weighing all the facts and circumstances, we suspend Holeman from associating with any FINRA member firm in any capacity for 30 business days and fine him $10,000.

V. Order

Respondent Allen Holeman is suspended from associating with any FINRA member firm in any capacity for 30 business days for failing to timely disclose two IRS tax liens 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 a false statements to his firm, in violation of FINRA Rule 2010. He also is fined $10,000 and ordered to pay the costs of the hearing in the amount of $2,566.19, which includes a $750 administrative fee and $1,816.19 for the cost of the hearing transcript.

If this decision becomes FINRA's final disciplinary action, Holeman's suspension shall become effective with the opening of business on July 3, 2017, and end with the close of business on August 14, 2017. The fine and assessed costs shall be due on a date set by FINRA,

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[89] Guidelines at 8 (Principal Consideration 12).

[90] Holeman's Pre-Hearing Brief, pp. 8-10.

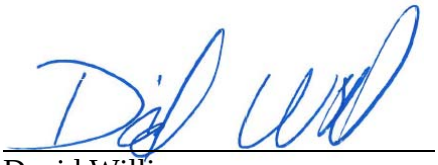
[91] Collateral consequences of a finding of violation are not pertinent to our determination of an appropriately remedial sanction. *Dep't of Enforcement v. Iida*, No. 2012033351801, 2016 FINRA Discip. LEXIS 32, at *21 (NAC May 18, 2016).

[92] *Dep't of Enforcement v. Elgart*, No. 2013035211801, slip op. at 13, n.12.

[93] *McCune*, 2016 SEC LEXIS 1026, at *37. *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); *Craig*, 2008 SEC LEXIS 2844, at *27 ("We also do not consider mitigating the economic disadvantages [respondent] alleges he suffered because they are a result of his misconduct.").

[94] *Craig*, 2008 SEC LEXIS 2844, at *27 (citing *John D. Audifferen*, Exchange Act Release No. 58230, 2008 SEC LEXIS 1740 (July 25, 2008)).

but not less than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[95]



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Hearing Officer
For the Hearing Panel

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[95] The Hearing Panel considered and rejected without discussion all other arguments by the parties.