SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 68210 / November 9, 2012

Admin. Proc. File No. 3-14613

In the Matter of the Application of

ROBERT D. TUCKER
1481 Fifth Avenue, Apt 8-D
New York, NY 10035

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Membership and Conduct Rules

Misstatements and Omissions on Forms U4

During the course of seven years, applicant—a registered representative of a member firm of a registered securities association—failed to disclose, on the Forms U4 he completed for eleven employers, three judgments, two bankruptcies, a federal tax lien, and a state tax lien. *Held*, association's findings of violation and sanctions imposed are *sustained*.

APPEARANCES:

Robert B. Tucker, pro se.

Marc Menchel, *Alan Lawhead*, *Carla Carloni*, and *Colleen E. Durbin*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: October 31, 2011
Last brief received: April 26, 2012

I.

Robert D. Tucker, a registered representative of a FINRA member firm,[1] seeks review of a FINRA disciplinary action.[2] FINRA found that during the course of seven years Tucker failed to disclose, on Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") he completed for eleven employers, three judgments, two bankruptcies, a federal tax lien, and a state tax lien in violation of NASD IM-1000-1 and Conduct Rule 2110.[3] As sanctions, the self-regulatory organization suspended Tucker from associating with any FINRA member in any capacity for two years and required that, at the conclusion of his suspension, he re-qualify as a corporate securities limited representative. In addition, because FINRA found that his failures to disclose the judgments, bankruptcies, and federal tax lien (though not the state tax lien) were willful and material, it concluded that Tucker was statutorily disqualified from future association with FINRA member firms.[4] Costs were also assessed. We base our findings on an independent review of the record.

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[1] Tucker has been associated with ICM Capital Markets Ltd. since January 2010. We take official notice of this information on BrokerCheck, an electronic database maintained by FINRA and available at www.finra.org/Investors?toolsCalculators/BrokerCheck. *See* 17 C.F.R. § 201.323 (rule of practice relating to official notice).

[2] The Financial Industry Regulatory Authority, Inc. is a private, not-for-profit, self-regulatory organization registered with, and overseen by, the Securities and Exchange Commission. It was created in July 2007 following the consolidation of the National Association of Securities Dealers, Inc. and the member regulation, enforcement, and arbitration functions of the NYSE Regulation, Inc. *[No Name in Original]*, Securities Exchange Act Release No. 56751, 2007 SEC LEXIS 2902, at *3−4 (Nov. 6, 2007); *Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes To Accomm. the Consol. of the Member Firm Regulatory Functions of NASD and NYSE Reg., Inc.*, Exchange Act Release No. 56145, 2007 SEC LEXIS 1640, at *133 (July 26, 2007). The consolidation of the two SROs eliminated their overlapping jurisdiction and set in motion the writing of a uniform set of rules to be administered by the surviving entity—a process that continues to this day. Though the case at hand was instituted after the consolidation, some of the conduct at issue took place before then. Accordingly, this opinion refers to those conduct rules that were in place at the time.

[3] NASD IM-1000-1 prohibits the filing, in connection with registration as a registered representative, of information that 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." NASD Conduct Rule 2110 requires members to observe "high standards of commercial honor and just and equitable principles of trade."

[4] Securities Exchange Act § 3(a)(39)(F), 15 U.S.C. § 78c(a)(39) (defining statutory disqualification). Under Article III, § 3(b) of FINRA's By-Laws, a statutorily disqualified person cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for, and is granted in FINRA's discretion, relief from the statutory disqualification.

II.

A. Tucker's Forms U4

Tucker entered the securities industry in 1989 and first registered with FINRA in 1991. During the roughly twenty years since first registering, he has been associated with twenty-three FINRA member firms. This case concerns the Forms U4 Tucker completed when he registered with eleven of those firms from 2001 through 2008. The firms and dates those forms were filed are as follows:

Firm	Date
Broadband Capital Management, LLC	01/08/2001
InvestPrivate, Inc. (currently DPEC Capital, Inc.)	04/10/2001
Schneider Securities, Inc.	08/28/2001
GunnAllen Financial, Inc.	09/27/2002
vFinance Investments, Inc.	02/09/2005
Pointe Capital, LLC	05/19/2005
Meyers Associates, L.P.	06/01/2005
Prestige Financial Center, Inc.	01/31/2007
Perrin, Holdin and Davenport Capital Corp. (PHD Capital)	10/08/2007
Brill Securities, Inc.	12/20/2007
Bishop Rosen & Co., Inc.	06/16/2008

As relevant here, the Forms U4 asked: (i) whether the registrant had any unsatisfied judgments or liens against him (the "Judgments-and-Liens Question"); and (ii) if, within the past ten years, he had "made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition" (the "Bankruptcy Question"). Each of the forms required an explanation for any questions answered in the affirmative. The forms also required Tucker to certify that he had "read and underst[ood] the items and instructions on th[e] form and that [his] answers . . . [were] true and complete to the best of [his] knowledge." By signing the forms, Tucker also acknowledged that false or misleading answers could subject him to administrative, civil, or criminal penalties.

On each, Tucker responded "no" to the Judgments-and-Liens and the Bankruptcy Questions and failed to identify any of the judgments, bankruptcy filings, federal tax lien, or state tax lien described below.

1. 2000−2003: Pre-Bankruptcy Judgments and Federal Tax Lien

American Express and the Hamlet Golf & Country Club Judgments. On March 3, 2000, a Civil Court of the City of New York entered a $10,058.62 default judgment against Tucker in favor of American Express Travel Related Services Co., Inc. ("AmEx") relating to an unpaid credit card balance after Tucker failed to answer a November 1999 summons that warned that failure to answer would result in a default judgment. By January 9, 2001, he was notified that his funds could be garnished to satisfy that judgment. In February 2001, funds were in fact garnished from his bank account, in partial satisfaction of it.

On July 17, 2002, the Hamlet Golf & Country Club, Inc. (the "Country Club") obtained a judgment against Tucker and his wife for $37,511.67 relating to unpaid membership fees. Tucker received notice of it when it was entered.

Federal Tax Lien. During this period, Tucker received numerous notices from the Internal Revenue Service regarding unpaid federal income taxes going back to 1994. When Tucker failed to pay those taxes, the IRS filed a federal tax lien of $329,917.63 against him on June 4, 2002.

2. 2002 and 2004 Bankruptcy Filings

Attempting to resolve the IRS's claim, Tucker filed two voluntary petitions for bankruptcy—one in 2002 and one in 2004. Tucker listed himself as the only debtor in both of these filings.[5]

2002 Bankruptcy Filing. Tucker made the first bankruptcy filing on June 10, 2002, about a week after the federal tax lien was filed, through a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "2002 Bankruptcy Filing"). That case was later dismissed on April 15, 2004.

2004 Bankruptcy Filing. Tucker filed a second voluntary petition under Chapter 13 of the Bankruptcy Code on August 3, 2004 (the "2004 Bankruptcy Filing," together with the 2002 Bankruptcy Filing, the "Bankruptcy Filings").[6] In the 2004 Bankruptcy Filing, Tucker listed both AmEx and the IRS as creditors. The Country Club also filed a notice of appearance in this

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[5] In addition, Tucker's then-wife separately filed for bankruptcy on April 26, 2004 and December 13, 2005.

[6] Tucker testified that he started the bankruptcy process to protect his assets from the IRS tax liens and to stop IRS attempts to garnish his salary, but his rationale for making two separate Bankruptcy Filings is not clear from the record. The documents from the Bankruptcy Filings indicate that the first bankruptcy case was dismissed based on a motion by the United States Trustee and that Tucker then filed the second bankruptcy through a separate voluntary petition. During Tucker's investigative testimony, however, he denied that the 2004 Bankruptcy Filing was a separate case, claiming that it was a conversion of the 2002 Bankruptcy Filing.

bankruptcy proceeding on March 29, 2005.[7] The case was ultimately converted to a Chapter 7 bankruptcy on September 8, 2005 and terminated on July 20, 2007.

3. 2006−2007: State Tax Lien and FSA Judgment

State Tax Lien. On September 19, 2006, the New York State Tax Commission filed a $7,980 lien against Tucker for unpaid state taxes.

Friedman, Schnaier & Associates Judgment. On December 18, 2007, several months after Tucker left Prestige Financial, the Supreme Court of the State of New York entered a $48,000 judgment against him in favor of Friedman, Schnaier & Associates ("FSA"), a brokerage firm owned by Prestige Financial.[8] During FINRA's investigation, Tucker testified under oath that he learned of this judgment around June 2008 while he was with Brill Securities,[9] and that approximately half of it had not been satisfied as of July 31, 2008 (the date his investigative testimony was taken).

B. FINRA's Investigation

Tucker's Response to FINRA's Request for Information. On February 5, 2008, a FINRA investigator asked Tucker to provide, pursuant to NASD Procedural Rule 8210,

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[7] In April 2005, eight months after filing the second bankruptcy petition, Tucker notified vFinance of his intent to sever their relationship. According to the Uniform Termination Notice for Securities Industry Registration ("Form U5") the firm filed on June 9, 2005, he did so without disclosing this bankruptcy filing to the firm or to FINRA's predecessor, NASD. Files it later gave to FINRA suggested that vFinance learned about the 2004 Bankruptcy Filing through an online search it performed on May 11, 2005—after Tucker had given notice. The Form U5 also described a physical altercation between Tucker and his supervisor when Tucker collected his last paycheck.

The AmEx and Country Club judgments were discharged on March 29, 2006 in the second bankruptcy case. The federal tax lien was not. It remained outstanding as of the date the Form U4 was filed for Bishop Rosen; it was still outstanding when FINRA's hearing began. There is no evidence in the record that this lien was ever discharged.

[8] This was based on a confession of judgment signed by Tucker on June 13, 2007 in connection with an amount his firm lost when, ostensibly, a customer would not pay for a trade Tucker executed. *Cf. Dep't of Enf. v. J. Alexander Secs., Inc.*, Complaint No. CAF010021, 2004 NASD Discip. LEXIS 16, at *10 n.6 (NAC Aug. 16, 2004) ("The term 'DK,' or 'Don't Know,' is used when brokers question a trade and exchange comparison sheets to verify the details of the transaction").

[9] Although Tucker testified at the hearing that he did not know that FSA had obtained a judgment against him, the hearing panel did not find his testimony convincing and instead credited his earlier, contrary investigative testimony. *Dep't of Enf. v. Tucker*, Complaint No. 2007009981201, 2010 FINRA Discip. LEXIS 30, at *14 (OHO May 10, 2010), *aff'd as to liability, mod. as to sanctions*, 2011 FINRA Discip. LEXIS 66 (NAC Oct. 4, 2011).

information about his Forms U4.[10] Among other things, the investigator asked about Tucker's Bankruptcy Filings, identifying each by their court tracking numbers. Tucker responded weeks later in a letter dated February 26, 2008. But rather than address those filings, he instead deflected the request by describing another made by his wife in 2004, the significance of which he downplayed.[11] Specifically, Tucker said that the

> issue of bankruptcy filings was the result of bad advice from a lawyer that my wife had retained. She filed a Chapter-13 and I was going to be the Administrator. This was immediately dismissed because of her not being employed. Perhaps I should have put this on my U-4. It was an oversight and I will take the necessary steps to correct this matter.

Later in 2008, after sending this letter, Tucker became associated with Bishop Rosen. He completed and certified his Bishop Rosen pre-hire and U4 disclosure forms without disclosing any of the judgments, bankruptcies, or liens.

Tucker's Investigative Testimony. During his sworn testimony before FINRA on July 31, 2008, Tucker acknowledged that the Forms U4 at issue were inaccurate, though not initially. When first asked about his Bankruptcy Filings, he instead focused on those of his wife—that is, until he was confronted with documents confirming that his and his wife's bankruptcy filings were separate. He then testified that his Bankruptcy Filings had "been in the back of [his] mind" and acknowledged that he should have disclosed them, but did not because he was "embarrassed," adding, "If you want to say, Tucker, you're out, okay, that's something that you have to decide."

As for the judgments and liens, Tucker said he did not disclose them because he contested them. The firms, he said, "pretty much didn't know about" some of the judgments and liens. Tucker also admitted that he bore responsibility for the false answers, conceding that "I sign the forms. It's not the firm because I signed the forms."

Notwithstanding those admissions, Tucker later asserted that some—though not all—of the firms he was associated with shared some responsibility for his failure to make proper disclosures. GunnAllen, he claimed, knew that his wages might be garnished. He also said that he spoke with compliance representatives at Meyers Associates, Brill Securities, and Bishop Rosen about his inaccurate Forms U4 and the need to amend them. The consensus of advice he

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[10] The investigator also asked the firms for copies of Tucker's Form U4 disclosures and other employment records. Though FINRA lacks subpoena power, its staff has the right to ask member firms and associated persons to provide information, documents, and testimony upon request pursuant to Rule 8210. *See, e.g.*, *Howard Brett Berger,* Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (sustaining a bar imposed by NASD for failures to comply with Rule 8210), *petition denied*, 347 F. App'x 692 (2d Cir. 2009).

[11] *See supra* note 5.

said he received, however, was that he should delay correcting them until his legal liabilities were resolved. Once that occurred, he should amend the forms "as soon as possible." Notwithstanding this purported advice, no amendments to the forms had been filed through the end of 2009.[12]

FINRA's Disciplinary Proceeding. FINRA's Division of Enforcement initiated this proceeding on February 24, 2009 with a complaint that alleged three causes of action based on Tucker's willful failures to disclose the three judgments, two bankruptcies, and the federal tax lien on Forms U4. A fourth cause of action alleged a non-willful failure to disclose the state tax lien.[13] Instead of filing his answer when it was originally due, Tucker successfully moved for additional time. When he did file his answer on April 7, 2009, he said he was unable to admit or deny the allegations in the complaint and moved for a more definite statement. The hearing officer denied Tucker's motion on April 9, 2009 and ordered him to file an amended answer by April 30, 2009 that responded specifically to each allegation in the complaint. Tucker failed to do so.

During a pre-hearing conference on May 6, 2009, the hearing officer asked Tucker about his failure to file his amended answer, explained what was required, and agreed to allow him to file his amended answer the next day. When the hearing officer asked Tucker about his plans for the hearing, Tucker said he was in the process of retaining counsel and expected to call two or three witnesses. The parties and the hearing officer agreed to schedule the hearing to begin six months later on November 17, 2009.

After receiving yet another extension of time from the hearing officer, Tucker finally filed his amended answer on May 11, 2009. In response to the Bankruptcy Question charges, he again failed to address the two separate bankruptcy filings he made on his own behalf. Instead, he said, "The U.S. bankruptcy was filed on behalf of [his] wife and [him]self." He also said that various firms knew about his bankruptcy filings; that Schneider Securities failed to update his Form U4; that he told the Brill Securities compliance department that he wanted to amend his Form U4; and that he submitted amendment forms to Bishop Rosen.

Days later, on May 14, 2009, the parties agreed to a scheduling order that set (among other things) filing deadlines for pre-hearing briefs, stipulations, witness lists, exhibit lists, and exhibits. During the summer of 2009, an attorney entered, but then withdrew, an appearance for Tucker.

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[12] At the February 2010 hearing, the FINRA investigator testified that no Form U4 amendments were filed to disclose Tucker's judgments, bankruptcies, or liens through the end of 2009.

[13] After the complaint was filed, Tucker completed and certified Forms U4 to register his association with Mercer Capital Ltd. in May 2009 and Union Financial Corp. in September 2009. Notwithstanding the earlier discussions he had with compliance representatives at other firms, the Rule 8210 request he received from FINRA, the discussion he had with FINRA staff during his on-the-record investigative testimony, and the filing of a formal disciplinary action against him, neither Form U4 disclosed Tucker's judgments, bankruptcies, or tax liens.

Thereafter, Tucker's participation in the proceeding deteriorated. While Enforcement filed all of its pre-hearing submissions, Tucker failed to file any.

During what was supposed to be the final pre-hearing telephone conference on November 6, Tucker said that he had looked through Enforcement's pre-hearing brief and exhibits. The hearing officer then asked Tucker about his failure to file any of his own. Tucker offered no explanation for his failure to file a pre-hearing brief, stipulations, witness list, or exhibit list. As for exhibits, he said he was prevented from doing so because a lawyer he previously worked with refused to release them until Tucker paid him for services rendered. The hearing officer gave Tucker until November 13, 2009—four days before the scheduled hearing date—to submit these exhibits, warning Tucker that he would be precluded from introducing them at the hearing if he failed to do so. Tucker acknowledged the warning and his obligation to meet the deadline, but ultimately did not comply, filing no submissions.

On November 17, 2009—the date the hearing was scheduled to begin—the hearing officer, two panelists, and counsel for Enforcement arrived at FINRA's New York office prepared to begin. Tucker did not appear. Instead, he notified the Office of Hearing Officers that day that he was ill and unable to participate. The hearing officer rescheduled the hearing for November 20, 2009.

On November 19, 2009, Tucker filed an emergency motion asking for a further postponement. He argued that he needed additional time to address his health concerns and to retain counsel. In his motion, Tucker said that he "recognize[d] that the charges against me are very serious, and threaten my ability to make a living and work in the industry." He also represented that he was able to hire a lawyer, though he would not be available until mid-January. Tucker also sought leave to introduce a pre-hearing memorandum and a witness and exhibit list. The hearing officer granted Tucker's motion for postponement over Enforcement's objection and directed the parties to pick a hearing date in January 2010. The hearing officer denied Tucker's request for leave to make pre-hearing submissions, noting that Tucker gave no reason for why he missed the previous extended deadline.

At the final pre-hearing conference on December 1, 2009, Tucker said that he had chosen counsel whose schedule required a further delay in the hearing. He would not, however, reveal counsel's identity when asked. The parties agreed that the hearing would begin on January 21, 2010.

Notwithstanding his earlier statements, Tucker represented himself at the hearing. In its case-in-chief, Enforcement called three witnesses—a FINRA investigator and the chief compliance officers (each, a "CCO") for PHD Capital and Bishop Rosen. In his defense, Tucker used Enforcement's exhibits and cross-examined Enforcement's witnesses. But having failed to meet the various submission deadlines, Tucker was not permitted to present additional exhibits or witnesses. He was, however, allowed to testify on his own behalf.

The PHD Capital CCO testified that, when he assisted Tucker with his Form U4, Tucker did not (i) tell him about the judgments, bankruptcies, or liens; (ii) disclose them in his Form U4

documentation; or (iii) ask the CCO about his disclosure obligations. Instead, Tucker volunteered that a bankruptcy may appear on his background check but that it was his wife's. Tucker also gave the PHD Capital CCO a document from his wife's bankruptcy to support this claim.[14]

As noted, Tucker was hired by Bishop Rosen after he learned that FINRA was examining his Form U4 filings. The CCO of Bishop Rosen testified that Tucker did not disclose the judgments, bankruptcies, or liens in his pre-hire or Form U4 documentation. Then, about two months after Tucker's Form U4 filing, Bishop Rosen's registration department began receiving levies—including one from the IRS indicating that Tucker owed $1.9 million for tax years 1994 through 2005.[15] The CCO further described an e-mail that the firm sent to Tucker after it received the levies, pointing out that the liens were not reflected on his Form U4. The firm's e-mail asked Tucker to complete an amended written response to the Form U4 Judgments-and-Liens Question. That e-mail attached copies of Tucker's original Form U4, which falsely answered no to that question. The CCO also testified that he had numerous discussions with Tucker about why the federal tax lien had not been disclosed on his Form U4 or registration documents from his previous employer. He said that, when confronted, Tucker consistently denied responsibility, claiming that his wife, not he, had filed for bankruptcy, that he would "be vindicated in court," that the lien would be cancelled, and that most of the federal tax levy had been reversed. The CCO also said his firm considers judgments, bankruptcies and liens that are disclosed on the Form U4 to be a critical measure of a representative's business judgment, and that such items raise questions about the financial advice a registered representative gives to his customers.

Tucker's testimony at the hearing was varied and inconsistent. Much of his testimony was inconsistent with the documentary evidence and his earlier sworn testimony. He denied knowledge of and responsibility for the judgments, repeatedly avoided answering direct questions about the federal tax lien and his Form U4 disclosures, and said he disclosed his bankruptcies on some (though not all) of the Forms U4 he submitted. For instance, he claimed that officers from Broadband Capital, GunnAllen, and vFinance advised him not to disclose his bankruptcy filings given that he had not done so in the past. Doing so now, they ostensibly said, would only raise "red flags." During his summation, he claimed that other unspecified firms received IRS notices,

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[14] PHD Capital sent a copy of this document, which is included in the record, to FINRA during its investigation.

[15] This IRS levy covered an unpaid balance and accrued statutory additions of $597,763.25 in connection with the federal tax lien recorded in 2002, described above. The levy also showed an unpaid IRS balance and statutory additions of $1,334,823.06 in connection with an additional federal tax lien that the IRS recorded on April 3, 2008, which covered taxes for 1994, 1997−2000, 2002−2003, and 2005. This lien was recorded before Tucker completed his Bishop Rosen Form U4, though he was not charged in the complaint with a failure to disclose the 2008 federal tax lien on this Form U4.

The e-mail also attached notices from the City Marshall of the City of New York and the Supreme Court of the State of New York seeking to garnish Tucker's Bishop Rosen salary to cover his other outstanding financial obligations.

that he discussed with them the liens, and that he was advised against amending his forms (again because filing such amendments would only raise "red flags"). In alluding to these purported discussions with firm officials, Tucker did not explain how they related to his repeated and consistent pattern of false filings at each of eleven firms over a seven-year period. Tucker did concede, however, that he completed two additional Forms U4 after giving his sworn investigative testimony and after receiving FINRA's complaint, but that he did not disclose the bankruptcies or liens on either.[16]

C. The FINRA Decisions

On May 10, 2010, the hearing panel issued its decision finding that Tucker willfully failed to disclose the three judgments, two bankruptcies, and federal tax lien, and that he failed to disclose the state tax lien. ("Willfulness" as to the state tax lien was never charged.) It then barred Tucker from associating with any FINRA member firm and found him statutorily disqualified. Based on its observation of Tucker at the hearing, the panel also found that his testimony denying responsibility was not credible, concluding:

> Tucker repeatedly made a calculated decision to hide his financial problems from numerous firms. At the hearing, he showed no remorse and took no responsibility for his actions. His answers to questions were frequently evasive and dissembling. The Hearing Panel believes that Tucker lacks respect for FINRA's rules and processes.[17]

Tucker appealed the decision to FINRA's National Adjudicatory Council. On October 4, 2011, the NAC affirmed the hearing panel's findings as to liability, giving considerable weight and deference to its credibility findings and describing Tucker's testimony as "evasive and contradictory, evincing his continued refusal to admit his failures to disclose."[18] Tucker, who was represented by counsel before the NAC, argued that FINRA's failure to provide him with an attorney deprived him of a fair hearing. The NAC held that respondents are not entitled to have counsel appointed in a FINRA disciplinary proceeding and that the hearing was fundamentally fair, noting (among other things) that it "was delayed several times based on Tucker's representations that he was hiring an attorney, thereby providing [him] with ample opportunities to actually do so."[19] The NAC rejected Tucker's other substantive and procedural arguments.[20]

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[16] *See supra* note 13.

[17] 2010 FINRA Discip. LEXIS 30, at *20; *see also id*. at *10 (finding his denials of his sworn investigative testimony not credible) & *18 (finding, after observing his testimony describing various purported amendment attempts and discussions with firm officials, that "Tucker knew about the federal tax lien, bankruptcies and judgments, but purposely chose not to disclose them on his Forms U4").

[18] 2011 FINRA Discip. LEXIS 66, at *14.

[19] *Id*. at *25.

Nevertheless, it reduced the bar imposed by the hearing panel to a two-year suspension with a requirement that he requalify as a corporate securities limited representative, and assessed costs.[21] This appeal followed.[22]

Here, Tucker does not deny that he knew about the judgments, bankruptcies, and liens against him and that he falsely answered "no" to the Judgments-and-Liens Question and the Bankruptcy Question in the Forms U4 that were filed. Instead, he attempts to shift responsibility for his misconduct to the firms by claiming that they were aware of and responsible for his false disclosures. He also argues that various procedural deficiencies during the hearing prevented him from fairly defending himself against FINRA's charges. None of Tucker's arguments warrant a different result.

III.

A. Tucker Violated NASD IM-1000-1 and Conduct Rule 2110 by Providing Incorrect Answers on His Forms U4

Registered representatives, such as Tucker, represent their firms to the public. Before they can align themselves with any member firm, they must complete and file with FINRA a Form U4. The importance of that form, as a regulatory tool, cannot be overstated.

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.[23] The public can also access the information

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[20] Tucker argued that he was prejudiced by his lack of counsel at the hearing, and supported this claim by submitting four examples of documents that he had been prevented from offering into evidence. After reviewing these documents, the NAC "independently conclude[d] that [they did] not alter [it]s view of the facts and violations" and were not "material or exculpatory" because they could not "extinguish or even diminish Tucker's obligation to disclose his bankruptcies, judgments, and liens on his Forms U4." *Id*. at *26−27. It also reviewed and affirmed the hearing officer's decision to preclude Tucker from offering additional evidence at the hearing under Rule 9280(b)(2), which states that a party shall not be permitted to use evidence at a hearing unless the party complies with the scheduled pre-hearing submission deadlines or has substantial justification for failing to do so and such failure was harmless. Noting the multiple opportunities that Tucker was afforded to produce this evidence before the hearing, the NAC found that Tucker failed to provide substantial justification for his failure to abide by the pre-hearing order, and that such failure was not harmless. *Id.* at *27 n.9.

[21] Finding that Tucker's multiple violations could be traced to his "ongoing desire to conceal his myriad financial woes," the NAC aggregated them when assessing sanctions. *Id*. at *28.

[22] In this appeal, Tucker requested an extension of the briefing schedule, again citing efforts to secure counsel. After an extension was granted, Tucker proceeded on a *pro se* basis.

[23] *Rosario R. Ruggiero*, Exchange Act Release No. 37070, 52 SEC 725, 1996 SEC LEXIS 990, at *8−9 (Apr. 5, 1996).

reported in the form, via BrokerCheck®,[24] which can be used when deciding to whom to entrust investor monies.[25] Truthful answers to the form's inquiries can serve as an early warning mechanism, identifying individuals with troubled pasts or suspect financial histories.[26] Untruthful answers call into question an associated person's ability to comply with regulatory requirements. The form is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry.[27] It ultimately serves as a means of protecting the investing public.[28]

For that reason, every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment.[29] "The duty to provide accurate information and to amend the Form U4 to provide current information assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing."[30]

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[24] According to FINRA's website:

> BrokerCheck is a free tool to help investors research the professional backgrounds of current and former FINRA-registered firms and brokers, as well as investment adviser firms and representatives. It should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.

FINRA website, at http://www.finra.org/Investors/ToolsCalculators/BrokerCheck.

[25] *See Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009), *petition denied*, 671 F.3d 210 (2d Cir. 2012).

[26] *Mathis*, 2009 SEC LEXIS 4376, at *16; *Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *7 n.8 (July 17, 2009); *Douglas J. Toth*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520, at *18 (July 1, 2008), *petition denied*, 319 F. App'x 184, 2009 U.S. App. LEXIS 7226 (3d Cir. 2009). Depending on what is learned, a firm may decide not to hire the individual or, alternatively, place that individual on heightened supervision.

[27] *Mathis*, 2009 SEC LEXIS 4376, at *16; *Emerson*, 2009 SEC LEXIS 2417, at *7 n.8 (July 17, 2009); *Toth*, 2008 SEC LEXIS 1520, at *18; *Ruggiero*, 1996 SEC LEXIS 990, at *9; *Thomas R. Alton*, Exchange Act Release No. 36058, 52 SEC 380, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995), *aff'd*, 105 F.3d 664 (9th Cir. 1996) (Table).

[28] *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). Inadequate disclosure "undermines [FINRA]'s ability to carry out its self-regulatory functions." *Richard J. Lanigan*, Exchange Act Release No. 36028, 52 SEC 375, 1995 SEC LEXIS 1899, at *5 (July 27, 1995); *see also* NASD Notice to Members 04-09, 2004 NASD LEXIS 11, at *2 (Feb. 2004) (reporting information "may form the basis for examinations and investigations and, ultimately, disciplinary action. The receipt of timely and complete information . . . is essential to NASD's fulfillment of its role as a self-regulatory organization").

[29] FINRA By-Laws of the Corporation, Art. V, § 2(c). On his Forms U4, Tucker certified that he had an obligation to keep his Forms U4 current at all times and to file timely supplementary amendments.

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

As of October 2012, there were 635,488 registered representatives in 163,370 branch offices of 4,333 FINRA member firms.[31] FINRA "cannot investigate the veracity of every detail in each document filed with it, [and] must depend on its members to report to it accurately and clearly in a manner that is not misleading."[32] Because of this, NASD IM-1000-1 prohibits the filing, in connection with the membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading.[33]

> Every person submitting [a] Form U4 has the obligation to ensure that the information provided on the form is true and accurate. Filing a misleading Form U4, in addition to violating Membership Rule IM-1000-1, violates the standard of just and equitable principles of trade to which every person associated with a [FINRA] member is held.[34]

Association with any FINRA member firm is contingent upon the successful completion of a Form U4. Each time Tucker aligned himself with a new firm, he completed a new Form U4, certified that he understood the questions, and certified that his answers were accurate and complete. On these forms, Tucker falsely answered "no" to the Judgments-and-Liens Question and the Bankruptcy Question. He also failed to disclose the AmEx, Country Club, and FSA judgments; his two Bankruptcy Filings; and the federal and state tax liens—all of which were items covered by the plain language of the Form U4 questions.

Tucker's false answers to the Judgments-and-Liens Question and the Bankruptcy Question violated his duty under IM-1000-1 to provide full, accurate, and non-misleading information in connection with his registration. As the Bishop Rosen CCO testified, the judgments, bankruptcies, and liens Tucker failed to disclose on the Forms U4 constituted serious financial problems critical to evaluating his fitness to associate in the securities industry and the firm's ability to assess his business judgment.[35] These serious financial problems raise concerns about

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[31] FINRA website, at http://www finra.org/Newsroom/Statistics (Statistical Review 2007−2012) (last visited Nov. 8, 2012).

[32] *Robert E. Kauffman*, Exchange Act Release No. 33219, 51 SEC 838, 1993 SEC LEXIS 3163, at *3 (Nov. 18, 1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (Table).

[33] NASD IM-1000-1. "This rule applies to Form U4." *Mathis*, 2009 SEC LEXIS 4376, at *16.

[34] *Mathis*, 2009 SEC LEXIS 4376, at *16. *Accord Toth,* 2008 SEC LEXIS 1520, at *18; *Kauffman*, 1993 SEC LEXIS 3163, at *5. *See also Stephen G. Gluckman*, Exchange Act Release No. 41628, 54 SEC 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (noting the Commission's "long-standing and judicially-recognized policy that a violation of another Commission or NASD rule or regulation . . . constitutes a violation of" the NASD rule regarding just and equitable principles of trade). *See generally Dep't of Enf. v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11−18 (NAC June 2, 2000) (analyzing the scope of Rule 2110).

[35] *Mathis*, 671 F.3d at 220.

whether Tucker 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.[36] These judgments, bankruptcies, and liens also reflected significant outside financial pressures that could affect his judgment when providing financial services.[37] By providing false answers, Tucker violated his own disclosure responsibilities under IM-1000-1. Those false answers also undermined the firms' ability to screen his fitness to associate with them and, if applicable, to determine whether they should place him on heightened supervision.[38]

A representative's truthfulness in answering the financial disclosure questions on the Form U4 is a particularly critical measure of fitness for the industry because a commitment to accurate, complete, and non-misleading financial disclosure is central to any securities professional's responsibilities.[39] As this case demonstrates, an inability or unwillingness to honestly answer straightforward questions on a written, certified registration form casts doubt on the individual's commitment to truthfulness and accuracy in other situations requiring financial disclosure to regulators and investors.[40]

Tucker's actions also reflect poorly on his commitment to his regulatory responsibilities in general. Tucker did not confine his false and misleading explanations to the Form U4 registration forms described in the complaint. He also gave false and misleading explanations and documentation to his firms, to FINRA staff, and to the hearing panel. He even continued to provide false answers on Forms U4 he completed after FINRA investigated this matter and filed its complaint instituting these proceedings. A history involving multiple false filings and misleading financial disclosures is highly problematic in any person participating in an industry that "presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[41]

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

[37] *See id*.

[38] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *28 (Dec. 22, 2008); *see also Neaton*, 2011 SEC LEXIS 3719, at *41 ("Neaton deprived Securian, Mutual, FINRA, and his customers of information on which to determine whether to hire him, and if so, whether he required heightened supervision, whether to do business with him, or whether to permit him to register").

[39] *Cf. Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *21 (Jan. 14, 2011) (noting that "false statements to the government and others concerning financial matters and . . . concealing assets and lying about their disposition" is highly relevant to determining "fit[ness] to work in an industry where honesty and rectitude concerning financial matters is crucial").

[40] *Dep't of Enf. v. Neaton*, Complaint No. 207009082902, 2011 FINRA Discip. LEXIS 13, at *32 (NAC Jan. 7, 2011).

[41] *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *27 (Sept. 26, 2007), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

Without challenging the documents establishing his false and misleading Form U4 submissions, Tucker suggests he should be excused because several—though not all—of the firms "were aware of [his] financial situation."[42] He claims that he explained his circumstances to various firm personnel and that they also learned about these issues from credit reports and other third-party notices they received. He also claims that he tried to address the incorrect disclosures at issue by speaking with representatives of some of the firms about amending his Forms U4 (even though no amendments were ever filed).

By submitting false answers on each Form U4, Tucker violated IM-1000-1 and Conduct Rule 2110. Tucker, like any other securities industry professional, "must take responsibility for compliance" with the form and "cannot be excused for lack of knowledge, understanding or appreciation of" its requirements.[43] He cannot avoid responsibility for his own false responses, particularly given that the language of the forms (which Tucker certified that he understood) is unambiguous.[44] Tucker—not the firms—was in the best position to provide accurate information about the judgments, bankruptcies, and liens covered by the questions in the Forms U4,[45] demonstrating why it was appropriate that he bore "primary responsibility for maintaining [their] accuracy."[46]

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[42] Petition for Review at 1 (Mar. 23, 2012).

[43] *Guang Lu*, Exchange Act Release No. 51047, 58 SEC 43, 2005 SEC LEXIS 117, at *22 (Jan. 14, 2005) (rejecting defense that firm's president advised against Form U4 disclosure), *aff'd*, 179 F. App'x 702, 2006 U.S. App. LEXIS 24875 (D.C. Cir. 2006) (unpublished); *see also Craig*, 2008 SEC LEXIS 2844, at *15 (noting that a representative "cannot shift his responsibility to comply with NASD rules to his firm"). Representatives have a duty to make accurate and complete disclosure and a "culpable state of mind" is not necessary to establish a violation of IM-1000-1. *Craig*, 2008 SEC LEXIS 2844, at *13. Tucker also acknowledged this when he testified during the investigation, stating: "I sign the forms. It's not the firm because I signed the forms."

[44] During his investigative testimony, Tucker suggested that he was entitled to withhold disclosure of the judgments and liens if he contested them. This is not the case and he offered no support for this argument. The Judgments-and-Liens Question covers *any* unsatisfied judgments or liens against the registered representative. *See Mathis*, 2009 SEC LEXIS 4376, at *21 (rejecting applicant's claim that the question was ambiguous, noting that it "contains no limitations on the kind of liens required to be disclosed").

[45] Tucker also claims that credit reports requested by Bishop Rosen on June 3, 2008 and August 22, 2008 demonstrate Bishop Rosen's knowledge of reportable events. But Tucker's violative Form U4 disclosures are not excused by the availability of relevant information through third parties—particularly given the evidence that Tucker offered evasive and misleading explanations for why he answered the questions the way he did.

[46] *Toth*, 2008 SEC LEXIS 1520, at *25 (citing *Guang Lu*, 2005 SEC LEXIS 117, at *22). We do not suggest that firms or others can disclaim responsibility for the accuracy of registration filings they make or the advice they give to persons answering registration questions. The Forms U4 in the record required the firms to certify that they took "appropriate steps to verify the accuracy and completeness of the information contained in and with" the forms that they filed on Tucker's behalf. *See also* Form U4 (05/2009) available at http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf. *See Kauffman*, 1993 SEC LEXIS 3163, at *5 ("Every person submitting registration documents has the obligation to

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The purpose of Form U4 is to provide information that is accurate, timely, and complete so that it can be relied upon by firms, regulators, and investors. Any private discussions Tucker had with his firms during interviews, after filing a Form U4, or otherwise—to the extent they occurred—do not excuse his decision to provide false, or omit, information on the form.[47] Tucker's claim that he unsuccessfully tried to amend some of the forms also does not excuse his past filings.[48] Tucker was not charged with a failure to amend and attempts to amend do not excuse past false violative filings, particularly when he has admitted that he made those false filings to avoid scrutiny. In any event, no amendments were ever made.

B. Tucker Is Statutorily Disqualified

The Securities Acts Amendments of 1975 introduced the concept of a "statutory disqualification."[49] As enacted, a person is subject to a statutory disqualification under Exchange Act § 3(a)(39)(F) if, among other things, he "has *willfully* made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any *material* fact, or has omitted to state . . . any *material* fact which is required to be stated therein."[50]

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ensure that the information printed therein is true and accurate."); FINRA Regulatory Notice 09-33, 2009 FINRA LEXIS 96, at *7 (June 2009) (stating that FINRA Rule 1122—the successor to IM-1000-1—clarifies that the obligation to file complete and accurate membership and registration information applies to both FINRA member firms and their associated persons).

[47] "[A] member firm's own interpretations of the securities laws and rules do not protect associated persons. To hold otherwise would permit every broker-dealer to interpret the laws and rules to its liking and would result in enormous inconsistency of enforcement." *Alton*, 1995 SEC LEXIS 1975, at *8 n.12; *see also Barry C. Wilson*, Exchange Act Release No. 37867, 52 SEC 1070, 1996 SEC LEXIS 3012, at *9 n.12 (Oct. 25, 1996) (noting that "failings on the part of certain firm personnel do not excuse misconduct by others").

Even if, contrary to our holding, private discussions with firm officials could excuse false filings, the hearing panel found Tucker's testimony to be "evasive and dissembling" and ultimately not credible. *Tucker*, 2010 FINRA Discip. LEXIS 30, at *20. We concur with the panel's credibility findings, which are entitled to considerable weight. *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *49 & 49 n.22 (Feb. 1, 2010), *petition denied*, 647 F.3d 1156 (D.C. Cir. 2011); *see also Laurie Jones Canady*, Exchange Act Release No. 41250, 54 SEC 65, 1999 SEC LEXIS 669, at *27 (Apr. 5, 1999).

[48] Filing misleading information and failing to correct past misleading filings are separate offenses under IM-1000-1. *See, e.g., Toth*, 2008 SEC LEXIS 1520, at *25−26 (finding that representative violated IM-1000-1 both by causing a false answer on his Form U4 and by failing to have the form amended thereafter).

[49] *See Proposal to Adopt Secs. Exch. Act Rules 19d-1, 2 and 3, and 19h-1; Proposed Rescission of Secs. Exch. Act Rules 15Ab-1 and 15Ag-1*, Exchange Act Release No. 12561, 1976 SEC LEXIS 1382, at *5 (June 21, 1976).

[50] 15 U.S.C. § 78c(a)(39)(F) (emphasis added).

1. Tucker's Violations Were Willful

A willful violation under the federal securities laws simply means "'that the person charged with the duty knows what he is doing.'"[51] It is not necessary to additionally find that Tucker "was aware of the rule he violated or that he acted with a culpable state of mind."[52] A failure to disclose is willful under Exchange Act § 3(a)(39)(F) if the respondent of his own volition provides false answers on his Form U4.[53]

Tucker challenges FINRA's finding of willfulness by claiming that he discussed his financial difficulties with representatives of Schneider Securities, vFinance, PHD Capital, and Bishop Rosen and that he attempted to amend the Forms U4 registering his association with Schneider Securities, vFinance, and Bishop Rosen (albeit unsuccessfully). His claims, however, do not controvert FINRA's findings.

Tucker acted willfully by voluntarily supplying false answers to the Judgments-and-Liens Question and the Bankruptcy Question on the Forms U4[54] while he was aware of the judgments, bankruptcies, and the federal tax lien.[55] His false answers and omissions were neither involuntary

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[51] *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)).

[52] *Craig*, 2008 SEC LEXIS 2844, at *13. *Accord Mathis*, 671 F.3d at 217; *Wonsover*, 205 F.3d at 414; *Neaton*, 2011 SEC LEXIS 3719, at *21.

[53] *Mathis*, 2009 SEC LEXIS 4376, at *19; *see also Mathis*, 671 F.3d at 216 (finding that the Commission "did not abuse its discretion when it concluded that Mathis willfully failed to disclose . . . tax liens within the meaning of [Exchange Act] § 3(a)(39)(F) because he 'voluntarily provided false answers on his Form U4'").

[54] We find that, after he made the 2002 Bankruptcy Filing, Tucker willfully failed to disclose it on the September 2002 Form U4 registering his association with GunnAllen and willfully failed to disclose either of the Bankruptcy Filings on each subsequent Form U4 (*i.e.*, vFinance, Pointe Capital, Meyers Associates, Prestige Financial, PHD Capital, Brill Securities, and Bishop Rosen). We find he willfully failed to disclose the AmEx judgment, which was filed in March 2000, on the Broadband Capital Form U4 filed in January 2001 and each subsequent Form U4 filed through its March 2006 discharge in bankruptcy (*i.e.*, InvestPrivate, Schneider Securities, GunnAllen, vFinance, Pointe Capital, and Meyers Associates). We find he willfully failed to disclose the Country Club judgment, which he received in July 2002, on the GunnAllen Form U4 on September 2002 and each subsequent Form U4 filed through its March 2006 discharge in bankruptcy (*i.e.*, vFinance, Pointe Capital, and Meyers Associates). We find he willfully failed to disclose the federal tax lien, publicly filed in June 2002, on the GunnAllen Form U4 filed in September 2002 and each subsequent Form U4 (*i.e.*, vFinance, Pointe Capital, Meyers Associates, Prestige Financial, PHD Capital, Brill Securities, and Bishop Rosen). We further find he willfully failed to disclose the FSA judgment, which he acknowledged he knew of while at Brill Securities, on the next Form U4 filed in June 2008 to register his association with Bishop Rosen.

[55] FINRA's complaint did not allege that Tucker's failure to disclose the state tax lien was willful. Accordingly, we do not make a finding regarding its willfulness. In any case, we note that an Exchange Act statutory disqualification can be triggered by a single willful violation. *See* Exchange Act § 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F) (covering any willful statement or omission made on any application for association with a member firm).

nor inadvertent. Though Tucker's financial difficulties had "been in the back of [his] mind," he decided against accurately answering the Form U4 questions in order to avoid raising "red flags." He repeatedly acted to conceal his poor financial history—further confirming the willfulness of his actions.[56] Tucker was presented with successive opportunities to set the record straight, but consistently avoided doing so by attributing his bankruptcies and liens to his wife and errors by the IRS. He engaged in this strategy when completing the Forms U4, when later confronted with evidence of inaccuracies in his previously-filed forms, and even in response to FINRA's investigative inquiries.

In addition, Tucker's descriptions of attempts to amend the Forms U4—particularly in light of the filings he made after these purported attempts—reinforce rather than undermine these willfulness findings. Tucker's own statements indicate that he attempted amendments only after the firm by which he was then employed learned from *others* about his bankruptcy filings and outstanding liens. For instance, Tucker claims that he sent Schneider a Form U4 amendment reflecting "the IRS info as well as the liens info" *after* the IRS attempted to garnish his firm wages.[57] Thus, he was indisputably aware—at least as of 2002 when his association with Schneider ended—of the federal lien and the Form U4 disclosure obligation it triggered. Even if Schneider did not immediately file the amended Form U4 that Tucker claims he completed, each Form U4 he later completed presented an opportunity to make full disclosure. Yet Tucker continued to provide false answers on eight Forms U4 he submitted over the next seven years and acknowledged that he did so to avoid drawing attention to his financial history.[58] Even after

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[56] Although scienter is not necessary to establish willfulness, we note that efforts to conceal violative conduct demonstrate scienter. *See, e.g.*, *SEC v. Ficken*, 546 F.3d 45, 52 (1st Cir. 2008) (scienter was demonstrated when brokers misrepresented their and their customers' identities in order to facilitate trades that otherwise would have been blocked); *SEC v. Seghers*, 298 F. App'x 319, 334 (5th Cir. 2008) (unpublished) (motive to conceal problems with investments, "although not alone sufficient, is relevant to showing scienter").

[57] Tucker's Brief at 3.

[58] The other attempts Tucker mentions in his brief do not stand up to this admission that he delayed filing Form U4 amendments and his pattern of blaming others for his own misconduct. Further evidence of this pattern includes his failure to file amendments even after he gave investigative testimony acknowledging his responsibility for inaccuracies on his prior Forms U4 and his decision to file additional false Forms U4 after the complaint was filed. Although Tucker does not specify the timing of his purported attempts to amend, his testimony and other evidence indicates that any efforts he might have made were most likely prompted by his firm's receipt of relevant information from another source.

For instance, Tucker argues that he sent an e-mail to vFinance on May 12, 2005 that evidenced his attempts to amend his Form U4. That e-mail, however, was ostensibly sent three months after he submitted his Form U4 for vFinance, a day after vFinance received notice of one of his bankruptcy filings from a court report, and after he had already given notice to terminate his association with the firm. Tucker also claims that he completed an amended Form U4 for Bishop Rosen. The evidence, however, suggests that any such attempt was two months after he submitted his original Form U4 for Bishop Rosen and after the firm began inquiring about multiple levies it received and asked him to amend the form. Tucker also claims that he discussed submitting, at an unspecified future date, an amended form for PHD Capital. But Tucker testified during the hearing that PHD Capital received IRS notices *after* his association began and, according to his brief, he delayed any update until after he opened a branch office.

(continued…)

FINRA sued Tucker in this case, he continued to file inaccurate Forms U4—further confirming that his pattern of non-disclosure did not result from a misunderstanding or inadvertence.

2. The Information Tucker Failed to Disclose Was Material

The information Tucker excluded from the eleven Forms U4 at issue was material. We have held that the test for determining whether information not disclosed on a Form U4 is material is whether the omitted information would have "significantly altered the total mix of information made available."[59] We have also deemed omitted facts material when they "would have assumed actual significance in the deliberations of" the representative's employers, regulators, and investors.[60] "[A]ccurate disclosure on Forms U4 regarding a registered representative's serious financial problems" are of "inarguable importance" in the industry.[61] The judgments, bankruptcies, and liens were significant because they cast doubt on Tucker's ability to manage his personal financial affairs and provide investors with appropriate financial advice. The materiality of such information is particularly evident when, as in this case, their disclosure should have been triggered by specific questions on the Form U4.[62] "[E]ssentially all the information that is reportable on the Form U4 is material."[63]

During his investigative testimony he discussed amending his Form U4 with Brill, but then admitted those discussions were prompted by a call by a third party to the firm regarding the FSA judgment.

[59] *Mathis*, 2009 SEC LEXIS 4376, at *29 & 29 n.27 (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (stating that a fact is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available"); *cf. Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 SEC LEXIS 96, at *25 & 25 n.27 (Jan. 16, 2008) (applying "total mix" standard for determining materiality of information on investment adviser registration form and stating that false statements are material when they address "qualities that would be important to clients and prospective clients in selecting an investment adviser").

[60] *Mathis*, 2009 SEC LEXIS 4376, at *31 (citing *TSC Indus.*, 426 U.S. at 449).

[61] *Mathis*, 671 F.3d at 220.

[62] Tucker himself recognized the materiality of this information when he testified that he decided against making accurate disclosure on the Form U4 because he wanted to avoid raising red flags.

[63] *Dep't of Enf. v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004); *see also Mathis*, 2009 SEC LEXIS 4376, at *28−29 (rejecting challenge to similar FINRA finding).

C. Tucker's Procedural Arguments

1. Tucker's *Pro Se* Status Did Not Deprive Him of a Fair Hearing

Exchange Act § 15A(b)(8) requires FINRA to provide a fair procedure for disciplining its members and associated persons.[64] Section 15A(h)(1) of that Act highlights how this is achieved; *i.e.*, by filing specific charges, notifying a respondent of those charges, giving him a chance to defend himself, and by keeping a record of those proceedings so that they may be reviewed (if necessary) on appeal.[65] Fairness is determined by examining the entire record.[66]

Tucker claims FINRA denied him a fair hearing because it failed to give him free legal representation, which he asserts prevented him from effectively responding to the charges against him. Although FINRA's rules permit the participation of counsel, it is well established that "there is no right to counsel in [its] disciplinary proceedings."[67] Moreover, we have conducted an independent review of the record and find that the proceedings complied with the statute. Tucker was given appropriate opportunities to present evidence and arguments, to testify, and to cross-examine witnesses.[68] And FINRA evaluated his testimony and defenses against the evidence that was introduced and applicable legal standards.

Tucker claims that, as a result of his *pro se* status, he "was often prevented from finishing statements, was interrupted while asking questions, and was even given misleading and inaccurate information that trained counsel would have been better able to respond to."[69] He also claims that the hearing officer denied him a fair opportunity to demonstrate that his conduct was not willful. After reviewing the transcript and record, we do not find that the hearing officer exceeded her authority under FINRA Rule 9235(a), which authorizes hearing officers to "regulat[e] the course

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64 15 U.S.C. § 78o-3(b)(8). *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009).

65 15 U.S.C. § 78o-3(h)(1).

66 *See Mark H. Love*, Exchange Act Release No. 49248, 57 SEC 315, 2004 SEC LEXIS 318, at *16 (Feb. 13, 2004).

67 *Craig*, 2008 SEC LEXIS 2844, at *23; *see also, e.g., Sundra Escott-Russell*, Exchange Act Release No. 43363, 54 SEC 867, 2000 SEC LEXIS 2053, at *16 n.18 (Sept. 27, 2000) ("Although the NASD provisions 'permit the participation of counsel[,] . . . there is no constitutional or statutory right to counsel in NASD disciplinary proceedings.'" (quoting *Falcon Trading Group, Ltd.*, Exchange Act Release No. 36619, 52 SEC 554, 1995 SEC LEXIS 3454, at *13−14 (Dec. 21, 1995), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996))).

68 *See Craig*, 2008 SEC LEXIS 2844, at *23 (finding that the proceeding was fair when applicant "had the opportunity to present evidence and arguments in his favor, to testify, and to cross-examine witnesses").

69 Tucker's Brief in Support of Reversal and Modification of Sanctions at 3 (NAC Sept. 17, 2010) ("NAC Brief").

of the hearing" and to "resolv[e] any and all procedural and evidentiary matters."[70] Tucker's claims focus on instances in which the hearing officer exercised this authority by addressing the admissibility of evidence and directing questions and testimony onto matters relevant to the charged violations. Moreover, the transcript does not support Tucker's argument that the panel improperly "refus[ed] to let him explain the relevance of his dealings with his superiors at various firms regarding the circumstances surrounding his U4 nondisclosures."[71] He was directly asked, and testified, about such discussions during the hearing.[72] We find no fault with the hearing panel's conclusion that Tucker's testimony was not credible and the NAC's finding that his testimony lacked veracity[73]—conclusions that are amply supported by the evidence. In our *de novo* review we have considered Tucker's claims regarding his purported discussions at various firms in light of his pattern of filings reflected in the entirety of the record and for the reasons discussed above conclude that they do not excuse his violative filings or demonstrate a lack of willfulness.[74]

Tucker also suggests that his lack of counsel prevented him from developing defenses to the charged violations. In the NAC appeal, Tucker's counsel argued that "experienced counsel might have been able to interview prospective witnesses that would buttress—or

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[70] *See also Epstein,* 2009 SEC LEXIS 217, at *63−64 (relying on NASD Rule 9235).

[71] NAC Brief at 10.

[72] The hearing officer interrupted Enforcement's examination of Tucker at the hearing by stating that "what compliance directors may or may not have told him is irrelevant." But this did not prevent Tucker from describing such discussions. Tucker was asked, for example: "on any of the Forms U4 . . . did you disclose that you had filed for bankruptcy"; "on the ones that you did not, why did you not disclose the bankruptcies?"; "What compliance officer told you not to disclose your personal bankruptcies?"; and "It's your testimony today that multiple compliance officers told you not to disclose your bankruptcies?" In response, Tucker testified that he discussed the bankruptcies with compliance officers at Broadband Capital, vFinance, and GunnAllen; that he attempted to amend the Schneider and Bishop Rosen Forms U4 to reflect his bankruptcy filing; and that he "spoke at length" and "negotiated" with representatives of PHD Capital in connection with "[his] bankruptcy, as well as [his] wife's bankruptcy and anything that's out there" because he was planning to open a PHD Capital branch office.

[73] 2011 FINRA Discip LEXIS 66, at *20.

[74] Such *de novo* review by the NAC and the Commission dissipates any harm that may have resulted from any improper procedural decisions made at the hearing level. *See Heath v. SEC*, 586 F.3d 122, 142 (2d Cir. 2009) ("[B]ecause the SEC conducted a thorough, *de novo* review of the record, any procedural errors that may have been committed by the [NYSE's] Chief Hearing Officer are cured"); *Robert Tretiak*, Exchange Act Release No. 47534, 56 SEC 209, 2003 SEC LEXIS 653, at *39 (Mar. 19, 2003) (finding that *de novo* review "dissipates even the possibility of unfairness"); *Frank J. Custable*, Exchange Act Release No. 33324, 51 SEC 855, 1993 SEC LEXIS 3437, at *19 (Dec. 10, 1993) (stating that *de novo* review by NASD appellate panel and Commission "dissipates any harm" that may have resulted from staff irregularities); *Robert Bruce Orkin*, Exchange Act Release No. 32035, 51 SEC 336, 1993 SEC LEXIS 726, at *19 (Mar. 23, 1993) (finding that the Commission's "*de novo* review . . . cures whatever bias or disregard of precedent or evidence, if any, that may have existed below"), *aff'd*, 31 F.3d 1056 (11th Cir. 1994).

articulate—[Tucker]'s position," "obtain [relevant documents] and get them admitted into evidence," or cross-examine witnesses to "reveal facts that would lead to a different result regarding the issue of willfulness."[75] Tucker's brief to the Commission includes similar arguments. But Tucker's repeated failures to comply with FINRA's requirements for introducing additional or more probative evidence in support of his position and his speculation about how he might have benefitted from counsel to articulate or develop evidence supporting his defense do not demonstrate unfairness in the proceedings or entitle him to relief or procedural accommodation.[76] Ultimately, "[i]t is the respondent's obligation, not [FINRA]'s, to marshal all the evidence in his defense,"[77] and any failure to "adduce available evidence to meet the charges against him and show mitigating factors does not entitle him to have the proceedings reopened after the issuance of an adverse decision."[78]

We also note that the hearing officer repeatedly tried to accommodate Tucker's *pro se* status well before the hearing took place. She explained to Tucker that FINRA would not provide him with counsel and, during the pre-hearing conferences, repeatedly asked about his efforts to secure counsel. Tucker said he would be represented at the hearing. She also granted Tucker numerous extensions, in part to accommodate Tucker's *pro se* status and purported efforts to secure counsel, ultimately delaying the hearing by approximately two months. Given these efforts, it would be particularly inappropriate for Tucker to "be permitted to gamble on one course of action" by proceeding *pro se* after repeatedly indicating that he would be represented and, "upon an unfavorable decision, to try another course of action."[79]

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[75] Reply Brief in Further Support of Reversal and Modification of Sanctions at 3 (NAC Oct. 28, 2010).

[76] *See supra* note 20. Under Rule 9252 of FINRA's Code of Procedure, a respondent may, under certain specified conditions, request that FINRA compel member firms or associated persons to testify or produce documents. Rule 9252 provides that such request, if timely, will only be granted if, among other things, the information sought is relevant, material, and non-cumulative; the request is not "unreasonable, excessive in scope, or unduly burdensome"; the respondent has demonstrated reasonable efforts to secure such material by other means; and the materials or testimony are sought from persons subject to FINRA jurisdiction. Tucker did not timely comply with any of these requirements. He also offers no reasonable basis to conclude that such a request, even if timely made, would have satisfied these requirements or produced relevant documents, particularly when the FINRA investigator in this case contacted the firms to obtain copies of relevant Forms U4 and employment files. As noted above, disciplinary proceedings by SROs such as FINRA do not provide for subpoenas. *See supra* note 10; *see also Thomas E. Warren*, Exchange Act Release No. 33677, 51 SEC 1015, 1994 SEC LEXIS 508, at *12 n.22 (Feb. 24, 1994), *aff'd*, 69 F.3d 549 (10th Cir. 1995) (table).

[77] *Ronald Earl Smits*, Exchange Act Release No. 30787, 50 SEC 1020, 1992 SEC LEXIS 1251, at *10 (June 8, 1992).

[78] *Epstein*, 2009 SEC LEXIS 217, at *60 n.52. Here, the pre-hearing transcript shows that Tucker understood the need to produce evidence before the hearing.

[79] *Gross v. SEC*, 418 F.2d 103, 108 (2d Cir. 1969).

2. Tucker Has Not Satisfied the Requirements for Adducing Additional Evidence on Appeal

Below, Tucker repeatedly ignored the deadlines for exchanging and filing exhibits. Tucker also ignored those accommodations the hearing officer made that would have allowed him to file such exhibits as late as the week before the hearing.[80] As a result, the hearing officer ultimately precluded him from introducing any exhibits of his own at the hearing. (He was permitted, however, to use those exhibits previously submitted by Enforcement, which he did.)

On appeal, with no attempt to seek permission, Tucker attached more than thirty proposed exhibits to his brief. Those documents were apparently included to support his claim that he tried to amend some of the Forms U4; to illustrate shared culpability or other wrongdoing by some of the firms and their representatives; and to downplay the importance of the information required to be disclosed on the Forms U4 or the egregiousness of his violations. Several of these exhibits are duplicates of documents already in the record, which we already considered as part of our review. As for the rest, we evaluate requests to adduce additional evidence under SEC Rule of Practice 452, which requires that such additional evidence be accompanied by a showing "with particularity that the evidence is material and that there were reasonable grounds for failing to produce the evidence previously."[81] In attaching the new exhibits, Tucker failed to satisfy either of these requirements and we therefore decline to admit them.[82] They are also not material because they are not offered in support of claims that would excuse or mitigate the violations or

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[80] The hearing was originally scheduled for November 17, 2009 and the deadline for submitting exhibits was extended to November 13, 2009. Tucker later sought, and was granted, a delay of the hearing to January 21, 2010. In requesting this postponement, Tucker also sought a further extension of his deadline to introduce a pre-hearing memorandum, a witness list, and an exhibit list. Although the hearing officer postponed the hearing date, she rejected this request to further extend the deadline for pre-hearing submissions.

[81] 17 C.F.R. § 201.452; *see also* 17 C.F.R. § 201.460(c) (providing that documents not admitted at hearing "shall not be considered a part of the record before the Commission"); *CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *18 & 18 n.20 (Jan. 30, 2009) (determining not to adduce into the record documents proffered when applicants did not file a motion under Rule 452).

[82] *See John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *56 n.60 (Feb. 10, 2012) (declining to admit exhibits attached to an applicant's brief that were "not material to [the applicant's] case" and that addressed issues not under review); *Daniel C. Montano*, Exchange Act Release No. 40243, 53 SEC 681, 1998 SEC LEXIS 2874, at *18 (July 22, 1998) (declining to admit proffered evidence that was not material to the allegations in the case).

address the relevant issues in this case. In addition, Tucker has not explained his failure to introduce the exhibits earlier; we find no reasonable grounds for that failure.[83]

V.

Pursuant to Exchange Act § 19(e)(2), we sustain FINRA sanctions unless we find, giving due regard to the public interest and the protection of investors, that the sanctions are excessive, oppressive, or impose an unnecessary or inappropriate burden on competition.[84] Tucker asks that his two-year suspension be reduced and the requirement that he requalify be eliminated. We find no basis for reducing these sanctions. We begin by noting that they are consistent with FINRA's Sanction Guidelines.[85] For individuals filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine of between $2,500 and $50,000 and a suspension of five-to-thirty business days. The Guidelines recommend that adjudicators consider a longer suspension of up to two years or a bar in egregious cases, such as when false, misleading, or inaccurate Form U4 filings have been made repeatedly.[86] The Guidelines also invite consideration of the "[n]ature and significance of [the] information," whether the violation "resulted in a statutorily disqualified

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[83] For example, Tucker includes as an exhibit an affidavit from a person that was never identified as a witness in any of his earlier filings. That affidavit by Carlos Clarke, dated March 19, 2012, and sworn and notarized on March 20, 2012, states:

> My name is Carlos Clarke and I was with Mr. Tucker when he interviewed at PHD Capital, Meyers Associates, [vFinance], Prestige Financial and Pointe Capital[,]Inc. During each of these he made them aware of his Bankruptcies and liens. Most of the firms advised him to be defer [sic] initially and later on amend the Form U4. I attest to this as being truthful.

As an initial matter, Tucker's failure to adduce this affidavit or identify Clarke as a potential witness earlier in this case casts doubt on its reliability. Additionally, the discussions and advice mentioned in the affidavit—even if they occurred—do not excuse false and misleading Form U4 disclosures. Nor, in light of the other evidence and Tucker's purported amendment attempts, does the affidavit suggest that Tucker reasonably believed that full disclosure on the Forms U4 was not required. In any event, Tucker has not offered any explanation for why this and other documents could not have been submitted earlier, before the deadline for filing such had passed.

[84] 15 U.S.C. § 78s(e)(2). Exchange Act § 19(e)(2) permits us to cancel, reduce, or remit a FINRA sanction, but does not authorize us to increase the sanction. *Id.*; *see also Gregory W. Gray*, Exchange Act Release No. 60361, 2009 SEC LEXIS 2554, at *39 n.41 (July 22, 2009) (noting that the Exchange Act does not authorize the Commission to increase a NYSE disciplinary sanction). Tucker does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[85] FINRA promulgated the Sanction Guidelines to achieve greater consistency, uniformity, and fairness in its sanctions. Although the Guidelines do not bind our consideration of the sanctions, they serve as a benchmark for our review under Exchange Act § 19(e)(2). *Craig*, 2008 SEC LEXIS 2844, at *18 n.27.

[86] FINRA Sanction Guidelines at 74, at http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

individual becoming or remaining associated with a firm," and whether it "resulted in harm to a registered person, another member firm or any other person or entity."[87]

Tucker's failures to disclose the judgments, bankruptcies, and liens were egregious. Over seven years, Tucker was responsible for eleven false and misleading Forms U4.[88] The multiple and longstanding judgments, bankruptcies, and liens that he failed to disclose involved large dollar amounts and longstanding financial obligations to multiple creditors. They were material reflections on his business judgment and the financial pressures and distractions he continually faced while rendering investment advice. His false and misleading filings egregiously violated the standard of "candor and forthrightness" required of associated persons during the registration process.[89] And he continued to make such misrepresentations even after the complaint in this case was filed. Accurate and timely disclosure would have provided material information to the firms with which he sought employment and to existing and potential customers. As he acknowledged, such information could have affected the regulatory scrutiny applied to his filings and conduct.

Tucker's ongoing attempts to conceal and evade responsibility for the underlying bankruptcies and federal tax lien aggravate the seriousness of his violations and demonstrate the extent to which he was willing to go to avoid his regulatory responsibilities.[90] Tucker's persistent attempts to deflect blame onto others and his pattern of hiding and mischaracterizing the underlying events to the firms and even to FINRA during its investigation suggests that he is likely to engage in similar misconduct in the future. This pattern of deflection and misdirection also

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[87] *Id.* at 73.

[88] The Sanctions Guidelines set forth "Principal Considerations in Determining Sanctions" applicable to all violations, including whether the respondent "accepted responsibility for and acknowledged the misconduct . . . prior to detection"; "demonstrated reasonable reliance on competent legal or accounting advice"; "engaged in numerous acts and/or a pattern of misconduct"; "engaged in the misconduct over an extended period of time"; "attempted to conceal his or her misconduct or to lull into inactivity [or] mislead . . . regulatory authorities or . . . the member firm"; "attempted to . . . conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA." FINRA Sanction Guidelines at 6−7. Here, we find that Tucker repeatedly failed to accept responsibility for his actions, failed to demonstrate that he reasonably relied on advice from others, engaged in a pattern of misconduct over a long period of time, and took numerous steps to conceal his misconduct from the firms and even from FINRA, including by providing evasive and contradictory testimony. Moreover, Tucker was not entitled to reasonably rely on any advice to withhold disclosure on his Forms U4 (assuming for the sake of argument that such advice was actually given) because, among other things, the questions triggering his disclosure obligations were unambiguous and he misrepresented his financial history during discussions with the firms. *See supra* notes 43−45 & 58 and accompanying text.

[89] *Mathis*, 2009 SEC LEXIS 4376, at *16; *see also Craig*, 2008 SEC LEXIS 2844, at *15 ("[t]he effectiveness of the form depends on applicants' candid disclosures").

[90] *See Craig*, 2008 SEC LEXIS 2844, at *22 (noting that a "failure to take responsibility for his conduct makes recurrence more likely").

discredits his claims that he believed disclosure was not required based on discussions with firm officials. Tucker had opportunities to make accurate filings each time he associated with a new member firm but repeatedly chose not to—even after he acknowledged the deficiencies in his past filings. He continued to make false filings long after he claims he submitted amended forms at Schneider and other firms, after FINRA began its investigation, after he represented he would correct his earlier filings, after he gave investigative testimony acknowledging his failures to disclose, and even after FINRA filed its complaint in this case. Like FINRA, we conclude that his explanations and testimony were evasive and contradictory and that they ultimately reveal a disconcerting failure to acknowledge his own responsibility in this matter.

We find no mitigating factors.[91] Contrary to Tucker's assertion that his repeated violations were harmless, his employers, regulators, and investors were entitled to rely on the disclosures he submitted as part of the Form U4 registration process. His false and misleading disclosures undermined efforts by each of these stakeholders in the securities industry to gather accurate information and to detect risks.[92]

Tucker's attempts to shift blame for his own repeated misconduct cast doubt on his commitment to the high standards of conduct demanded of associated persons and ultimately suggests an opportunistic attitude towards disclosure and compliance. Tucker consistently failed to acknowledge the wrongfulness of his conduct—that he had a duty to respond fully and accurately on *each of the* Forms U4 that he completed and certified and that others were entitled to rely upon in terms of accuracy and completeness. Here, Tucker's migration among eleven firms over seven years, and consistent certifications of inaccurate information with each, highlights the difficulty in detecting a representative's past failures to disclose. Accordingly, we find that

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[91] We are not persuaded by the NAC's decision to aggregate the repeated Form U4 violations for sanctioning purposes because they each related to Tucker's "ongoing desire to conceal his myriad financial woes." We note that an ongoing desire to conceal or mislead will commonly be present in cases presenting repeated Form U4 violations and such a long-standing attitude aggravates rather than mitigates the seriousness of repeated violations. Aggregating violations that occur over such a long period could inadvertently discourage representatives from filing corrected answers on Forms U4 once a pattern of violative filings has begun. As noted above, however, the Exchange Act does not authorize us to increase sanctions imposed by the NAC. *See supra* note 84.

[92] Tucker also cites the sanctions imposed in other cases involving Form U4 violations to suggest that the sanctions are inappropriate. It is well established, however, that the determination of appropriate remedial action "depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings." *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *30–31 (Apr. 11, 2008) (citing *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973)), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009); *see also Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004) (declining to "compare this sanction to those imposed in previous cases."); *Hiller v. SEC*, 429 F.2d 856, 858 (2d Cir. 1970) ("[W]e cannot disturb the sanctions ordered in one case because they were different from those imposed in an entirely different proceeding."). The circumstances of this case are more than sufficient to establish a basis for the sanctions imposed.

suspension and license requalification is an appropriate remedial response.[93] We find these sanctions are also appropriate to encourage other representatives to provide complete and accurate Form U4 disclosures even when "detection of dishonest responses seems unlikely."[94] They also serve the public interest in "maintain[ing] a high level of business ethics in the securities industry" based on timely, accurate, and complete disclosure to investors.[95]

Accordingly, we sustain these sanctions because they are neither excessive nor oppressive, are remedial, and will protect investors and the public interest. They also impose no unnecessary or inappropriate burden on competition.

An appropriate order will issue.[96]

By the Commission (Commissioners WALTER, AGUILAR and GALLAGHER); Chairman SCHAPIRO and Commissioner PAREDES not participating.

Elizabeth M. Murphy
Secretary

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[93] FINRA's Sanction Guidelines state that requalification may serve a remedial purpose if "respondent's action . . . demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry." FINRA Sanction Guidelines at 5. We find requalification here appropriate to remedy Tucker's refusal to recognize the violative nature of his own conduct and to remind him of his disclosure obligations in any future Form U4 or other industry filings. *See Pacific On-Line Trading & Sec., Inc.*, Exchange Act Release No. 48473, 56 SEC 1111, 2003 SEC LEXIS 2164, at *22 (Sept. 10, 2003) (affirming requalification when the applicant demonstrated a "continued refusal to appreciate" the violative nature of his past misconduct); *see also Harry Gliksman*, Exchange Act Release No. 42255, 54 SEC 471, 1999 SEC LEXIS 2685, at *488 (Dec. 20, 1999) (finding the requirement to requalify as a general securities principal is appropriate to remind applicant of his obligations), *aff'd*, 24 F. App'x 702 (9th Cir. 2001) (unpublished).

[94] *Neaton*, 2011 SEC LEXIS 3719, at *45.

[95] *Mathis*, 671 F.3d at 217; *see also Steadman v. SEC*, 603 F.2d 1126, 1142 (5th Cir. 1979) ("[T]he Commission also may consider the likely deterrent effect its sanctions will have on others in the industry."); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007) (noting that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry'" (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005)).

[96] We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68210 / November 9, 2012

Admin. Proc. File No. 3-14613

In the Matter of the Application of

ROBERT D. TUCKER
1481 Fifth Avenue, Apt 8-D
New York, NY 10035

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by FINRA against Robert B. Tucker is hereby sustained.

By the Commission.

Elizabeth M. Murphy
Secretary