SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 84513 / October 31, 2018

Admin. Proc. File No. 3-18262

In the Matter of the Application of

RICHARD ALLEN RIEMER, JR.

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Former registered representative of FINRA member firm appeals from FINRA disciplinary action finding that he willfully failed to update, and did not timely update, his Form U4 and provided false information in his firm's annual compliance certifications. *Held*, FINRA's findings of violations and imposition of sanctions are sustained.

APPEARANCES:

Richard Allen Riemer, Jr., pro se.

Alan Lawhead, *Andrew Love*, and *Celia L. Passaro* for FINRA.

Appeal filed: October 20, 2017
Last brief received: February 1, 2018

Richard Allen Riemer, Jr., a former registered representative of Equity Services, Inc., a FINRA member firm, seeks review of FINRA disciplinary action finding that he violated FINRA By-Laws and NASD and FINRA rules by willfully failing to update, and not timely update, his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to report two federal tax liens and a bankruptcy petition, and by failing to tell Equity Services about the liens and bankruptcy in four annual compliance certifications. FINRA suspended Riemer for six

months, fined him $5,000, and assessed a total of $2,870.24 in costs. We sustain FINRA's findings of violations and the sanctions imposed.

I. Background

At all relevant times, Riemer was employed as an insurance agent with National Life of Vermont, an affiliate of Equity Services. Riemer became associated with Equity Services in October 2000 and, in January 2001, registered through Equity Services as an investment company and variable contracts products representative with FINRA. In April 2014, Equity Services terminated Riemer's registration because of his "lack of timely financial disclosures."

A. Riemer failed to disclose, and did not timely disclose, two tax liens and a bankruptcy on his Form U4 and did not disclose them on his firm's annual compliance certifications.

During the relevant period, Equity Services' written supervisory procedures instructed registered representatives to keep their Form U4 updated and "promptly" report bankruptcies to the compliance department. Riemer also attended annual compliance trainings during which he received written materials advising that registered representatives were obligated to report liens and bankruptcies to the firm and update their Form U4.

On or about July 2, 2002, the Internal Revenue Service filed and recorded a $7,752.13 tax lien against Riemer (the "2002 federal tax lien"). Riemer admitted that he knew about the lien at the time it was filed and recorded. The 2002 federal tax lien was satisfied on or about February 9, 2006. Riemer never disclosed the 2002 federal tax lien on his Form U4.

On or about March 7, 2005, the IRS filed and recorded a $25,837 tax lien against Riemer (the "2005 federal tax lien"). Riemer admitted that he knew about the lien at the time it was filed and recorded. On May 9, 2005, Equity Services issued a notice to registered representatives reminding them of their reporting obligations. Yet Riemer did not disclose the 2005 federal tax lien on his Form U4 until June 11, 2013, following an inquiry from FINRA. The 2005 federal tax lien remained unsatisfied during the period that Riemer was registered with Equity Services.[1]

On or about August 4, 2008, Riemer filed a Chapter 13 bankruptcy petition (the "2008 bankruptcy"). Riemer had previously filed for Chapter 13 relief in 1998 and disclosed that filing on his first Form U4 to become registered with Equity Services in 2001. Riemer knew of the 2008 bankruptcy but did not report it in 2008. In addition to the written supervisory procedures and annual compliance trainings that instructed registered representatives to report liens and bankruptcies, Equity Services had issued a notice reminding registered representatives of their reporting obligations in January 2008. Equity Services issued another notice reminding

[1] The record does not indicate whether the lien has been satisfied.

registered representatives of their reporting obligations in December 2012. Yet Riemer did not report the bankruptcy on his Form U4 until June 11, 2013, following an inquiry from FINRA.

In November 2005, November 2006, and November 2007, Riemer completed and submitted to Equity Services three annual compliance certifications in which he falsely stated that he had no unsatisfied liens against him. In November 2008, Riemer completed and submitted to Equity Services an annual compliance certification in which he falsely stated that he had not filed for bankruptcy since the completion of his 2007 annual certification and again falsely stated that had no unsatisfied liens against him. Riemer stipulated that, in a 2014 telephone call with FINRA staff, he said that he did not disclose the liens and bankruptcy because he "feared losing his job and he was embarrassed."

B. FINRA found that Riemer violated FINRA By-Laws and NASD and FINRA rules.

On March 24, 2016, FINRA's Department of Enforcement ("Enforcement") filed a two-cause complaint against Riemer. The first cause alleged that Riemer failed to amend his Form U4 to disclose two federal tax liens and a Chapter 13 bankruptcy, in 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; that his failures to timely amend his Form U4 were willful; and that the liens and bankruptcy he omitted to disclose constituted material information. The second cause alleged that Riemer violated NASD Rule 2110 by falsely stating to his firm in four annual compliance certifications that he had no unsatisfied liens against him and had not filed for bankruptcy.

Riemer subsequently submitted a settlement offer, which Enforcement opposed. A FINRA Hearing Panel rejected Riemer's contested settlement offer, finding that "the proceeding cannot be adjudicated on the papers by way of a contested Offer of Settlement." The Hearing Panel stated further that "[r]esolving the issues in this case—including determining liability, whether or not Riemer acted 'willfully,' and appropriate sanctions, if any—will require a hearing where the Panel can fully evaluate the documentary and testimonial evidence." Riemer thereafter filed a motion for a two-month postponement of the hearing, which was denied.

On September 27, 2016, the Hearing Panel held a hearing at which Riemer and Equity Services' chief compliance officer testified. At the hearing, Riemer admitted that he knew of the liens and bankruptcy and his obligation to report them and agreed that he "decided not to tell the firm" because he feared it "would cause me to lose my job." Riemer also admitted, with respect to the compliance questionnaires, that he "knew I had to disclose them but I didn't."

On November 4, 2016, the Hearing Panel issued a decision finding that Riemer had engaged in the violations as alleged in the complaint. The Hearing Panel also found that Riemer was subject to a statutory disqualification under Exchange Act Section 3(a)(39)(F) because his Form U4 violations were willful and the omitted information was material.[2] The Hearing Panel suspended Riemer for six months, fined him $5,000, and assessed hearing costs of $1,539.55.

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[2] 15 U.S.C. § 78c(a)(39)(F).

Riemer appealed the Hearing Panel's decision to FINRA's National Adjudicatory Council ("NAC"). On October 5, 2017, the NAC affirmed the Hearing Panel's findings of violations, imposition of sanctions, and assessment of costs, and further assessed $1,330.69 in appeal costs. This application for review followed.[3]

II. Analysis

In reviewing FINRA's disciplinary action, we must determine whether Riemer engaged in the conduct FINRA found, whether that conduct violates the rules specified in FINRA's determination, and whether those rules are, and were applied in a manner, consistent with the purposes of the Securities Exchange Act of 1934.[4] We base our findings on an independent review of the record and apply a preponderance of the evidence standard.[5]

A. The Form U4 violations

1. Riemer failed to update, and did not timely update, his Form U4 in violation of FINRA By-Laws and NASD and FINRA rules.

Riemer admits, and the record establishes, that he failed to update his Form U4 to disclose the 2002 federal tax lien, and failed to timely update his Form U4 to disclose the 2005 federal tax lien and 2008 bankruptcy. Form U4 requires that associated persons of FINRA member firms disclose unsatisfied liens and bankruptcies. Riemer's conduct violated Article V, Section 2(c) of FINRA's By-Laws, which requires that "[e]very application for registration filed with [FINRA] . . . be kept current at all times," and directs that amendments be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Riemer did not keep his registration current because he failed to amend his Form U4 to report the liens and bankruptcy within the requisite thirty days. Riemer's conduct also violated NASD IM-1000-1 and FINRA Rule 1122, which prohibit members and their associated persons from filing or failing to correct membership or registration information that is "incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead."[6] Riemer's answers to specific

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[3] Riemer's motion to stay the effect of FINRA's decision pending our consideration of his application for review was denied. *See Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 WL 5067462, at *1, *4 (Nov. 3, 2017).

[4] Exchange Act Section 19(e)(1), 15 U.S.C. § 78s(e)(1).

[5] *See Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at *1, *9 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

[6] As a result of the consolidation of the regulatory functions of NASD and NYSE Regulation into FINRA and the development of a new FINRA rulebook, *see* Exchange Act Release No. 56146, 2007 WL 5185331 (July 26, 2007), Riemer was subject to both NASD and FINRA rules during the period at issue, depending on which was in effect at the time of the relevant conduct. *See, e.g., John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *1 nn.3-4 (June 14, 2013) (applying both NASD and FINRA rules, depending on

(*continued . . .*)

questions in the Form U4 were inaccurate so as to be misleading because they stated that he had no outstanding liens or bankruptcies. Riemer's conduct further violated NASD Rule 2110 and FINRA Rule 2010, which require members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.[7]

We find that these rules are, and were applied in a manner, consistent with the Exchange Act's purposes. Exchange Act Section 15A(b)(6) requires FINRA to design rules to "promote just and equitable principles of trade" and "protect investors and the public interest."[8] "Form U4 is used to determine and monitor the fitness of securities professionals."[9] By promulgating and applying rules requiring that Form U4 be filled out accurately and completely and kept current, FINRA was acting to protect investors and the public interest consistent with the Exchange Act.[10] FINRA's application of NASD Rule 2110 and FINRA Rule 2010 also implemented Exchange Act Section 15A(b)(6)'s requirement that FINRA rules be designed, in part, to "promote just and equitable principles of trade" because Riemer's conduct frustrated FINRA's ability to monitor the fitness of securities professionals and was contrary to those principles.[11]

(*continued . . .*)
whether the misconduct occurred before or after consolidation). All NASD and FINRA rules discussed jointly are equivalent for purposes of this case, and quoted language appears in both.

7 *See, e.g.*, *David Adam Elgart*, Exchange Act Release No. 81779, 2017 WL 4335050, at *3-4 (Sept. 29, 2017) (finding that failure to disclose five unpaid tax liens on Form U4 violated Article V, Section 2(c) of NASD and FINRA By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010), *petition denied*, __ F. App'x __ (11th Cir. Sept. 19, 2018); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 WL 1039460, at *3-4 (Mar. 15, 2016) (finding that failure to disclose four tax liens and a bankruptcy on Form U4 violated NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010), *aff'd*, 672 F. App'x 865 (10th Cir. 2016); *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914, at *6-8 (Apr. 18, 2013) (finding that failure to disclose an injunction and the revocation of a CPA license on Form U4 violated NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010), *petition denied*, 575 F. App'x 1 (D.C. Cir. 2014).

8 15 U.S.C. § 78*o*-3(b)(6).

9 *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 WL 4258143, at *10 (Aug. 12, 2016), *petition denied*, 719 F. App'x 724 (9th Cir. 2018).

10 *See id.* (finding NASD and FINRA By-Laws Article V, Section 2(c) to be consistent with the purposes of the Exchange Act when applied to untimely Form U4 amendments).

11 *Id.* (finding NASD Rule 2110 and FINRA Rule 2010 to be consistent with the purposes of the Exchange Act when applied to untimely Form U4 amendments).

2. Riemer is subject to a statutory disqualification because he acted willfully and the information he failed to disclose on his Form U4 was material.

Exchange Act Section 3(a)(39)(F) provides that a person is subject to a statutory disqualification with respect to association with a member of an SRO if the person has willfully omitted to state in an application to become associated with a member any material fact required to be stated in the application.[12] Riemer acted willfully in failing to update, or timely update, his Form U4, and the information he omitted from it was material.

a. Riemer acted willfully.

To act willfully for purposes of the federal securities laws means that a person "intentionally commit[ted] the act which constitutes the violation."[13] Such a finding does not require that the person "also be aware that he is violating one of the Rules or Acts"; rather, it simply requires the voluntary commission of the acts themselves.[14] "A failure to disclose is willful . . . if the [person] of his own volition provides false answers on his Form U4."[15] An "inadvertent filing of an inaccurate form" would not support a finding of willfulness.[16]

Riemer admitted knowing of the liens and bankruptcy when they arose and of his obligation to report those events on his Form U4. Indeed, he previously had disclosed a 1998 Chapter 13 bankruptcy on his first Form U4 to become registered with Equity Services. In addition, Equity Services, through its written supervisory procedures, annual compliance training, and various notices, reminded Riemer and other registered representatives of their ongoing reporting obligations. Nonetheless, Riemer never disclosed the 2002 federal tax lien on his Form U4, and did not update his Form U4 to disclose the 2005 federal tax lien and 2008 bankruptcy within the requisite thirty days. Riemer's duty to disclose the liens and bankruptcy arose when each lien was issued and the bankruptcy petition was filed, yet he failed repeatedly to satisfy this obligation.[17] Instead, over an eleven-year period from 2002 to 2013, Riemer allowed his Form U4 to reflect falsely that he had not had liens levied against him in 2002 and 2005 and had not filed for bankruptcy in 2008. These intentional actions constitute willfulness. Riemer's

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12 15 U.S.C. § 78c(a)(39)(F); *see also*, *e.g.*, *Elgart*, 2017 WL 4335050, at *4-6 (finding respondent to be statutorily disqualified for willfully failing to timely amend Form U4); *McCune*, 2016 WL 1039460, at *4-6 (same); *Amundsen*, 2013 WL 1683914, at *8-9 (finding respondent to be statutorily disqualified for willfully providing false answers on Form U4).

13 *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

14 *Id.*

15 *Amundsen*, 2013 WL 1683914, at *8.

16 *See Mathis v. SEC*, 671 F.3d 210, 218 (2d Cir. 2012).

17 *See Elgart*, 2017 WL 4335050, at *4.

false responses concerning the liens and bankruptcy in his firm's annual compliance certifications are further evidence that his actions were willful.[18]

Riemer asserts that FINRA erred by finding that he acted willfully. But Riemer identifies no purported error in that conclusion, and he conceded before FINRA that he knew of the liens and bankruptcy and intentionally did not disclose them because he feared losing his job. Indeed, Riemer was asked at the hearing if he would "acknowledge that you willfully failed to disclose the liens and the bankruptcy on your Form U4?" Riemer answered, unequivocally, "yes."

b. Riemer omitted material information.

Riemer's omissions on his Form U4 were material. "In the context of Form U4 disclosures, a fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available."[19] The Second Circuit and the Commission have found the failure to disclose liens and bankruptcies on Form U4 to be material omissions after considering the number and dollar amount of the liens and period of time during which the information was not disclosed.[20] Riemer's liens totaled $33,589.13 and the information about the liens and bankruptcy remained undisclosed over an eleven-year period. A substantial likelihood exists that reasonable customers would have viewed the liens and bankruptcy as significant to their assessment of Riemer's ability to provide them with appropriate financial advice, and that a reasonable employer or regulator would have viewed them as significant to an assessment of Riemer's ability to manage his financial obligations.[21] For these reasons, Riemer is subject to a statutory disqualification under Exchange Act Section 3(a)(39)(F).

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18 *See Mathis*, 671 F.3d at 219 (finding that respondent's failure to disclose liens in his firm's annual compliance certification "serves only to corroborate the SEC's conclusion that his failure to amend the Original Form U-4 was intentional"); *McCune*, 2016 WL 1039460, at *5 (finding that respondent's false responses in his firm's annual compliance questionnaires constituted further evidence that he acted willfully in failing to amend his Form U4).

19 *McCune*, 2016 WL 1039460, at *6.

20 *See, e.g.*, *Mathis*, 671 F.3d at 219-20; *Elgart*, 2017 WL 4335050, at *6; *McCune*, 2016 WL 1039460, at *6; *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at *11 (Nov. 9, 2012).

21 *Elgart*, 2017 WL 4335050, at *6; *cf. Tucker*, 2012 WL 5462896, at *11 ("The … liens were significant because they cast doubt on [respondent'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.").

B. The false annual compliance certifications

The record establishes that, between November 2005 and November 2008, Riemer falsely represented to Equity Services in four annual compliance certifications that he had no unsatisfied liens against him and had not filed for bankruptcy. Riemer's false statements violated NASD Rule 2110. NASD Rule 2110 required members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." The standard embodied in NASD Rule 2110 applies to all business-related misconduct regardless of whether it involves securities.[22] Riemer's false responses in his firm's annual compliance certifications were inconsistent with just and equitable principles of trade.[23] We also find that NASD Rule 2110 is, and was applied in a manner, consistent with the purposes of the Exchange Act. As discussed above, we have found Rule 2110 to be consistent with the mandate of Exchange Act Section 15A(b)(6) that FINRA have rules to "promote just and equitable principles of trade" and "protect investors and the public interest."[24] Applying Rule 2110 to Riemer's intentional misrepresentations furthered those purposes.

C. Riemer's motion for a postponement

Riemer argues that the hearing officer erred in denying his motion for a postponement. On May 4, 2016, the hearing officer scheduled a hearing to commence on September 27, 2016. On September 1, 2016, Riemer's counsel moved for a two-month postponement, asserting without evidentiary support that Riemer did not "presently have funds available for the legal fees associated with the hearing" but "believe[d] he will have available funds within two months."

The hearing officer considered Riemer's motion under FINRA Rule 9222(b), which states that a hearing "shall begin" at the time ordered unless, "for good cause shown," the hearing officer postpones its commencement for a "reasonable period of time." It also states that a postponement shall not exceed twenty-eight days unless the hearing officer provides reasons that a longer period of time is necessary. In evaluating a motion for a postponement, Rule 9222(b) directs the hearing officer to consider: (1) the length of the proceeding; (2) the number of prior postponements; (3) the stage of the proceeding at the time of the request; (4) potential harm to the investing public if a postponement is granted; and (5) "such other matters as justice may require." After considering these factors, the hearing officer determined that Riemer had not shown "good cause" for a postponement and denied the motion. At the commencement of the hearing, Riemer renewed his request orally, and the Hearing Panel denied it.

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22 *See Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996).

23 *See Bernard G. McGee*, Exchange Act Release No. 80314, 2017 WL 1132115, at *12-13 (Mar. 27, 2017) (finding that respondent engaged in conduct inconsistent with just and equitable principles of trade when he made false statements in his firm's compliance questionnaires), *petition denied*, 733 F. App'x 571 (2d Cir. 2018).

24 *See supra* notes 8 and 11 and accompanying text.

Riemer appealed the denial of his motion to the NAC as part of his appeal of the Hearing Panel's decision. When questioned during oral argument before the NAC, Riemer stated that he "never really had a problem" with the hearing officer's action. When asked if he thought that the hearing officer abused his discretion in denying the postponement, Riemer answered "no." The NAC determined that the hearing officer acted within his discretion in denying a postponement.

"In [FINRA] proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance."[25] Riemer fails to show that the hearing officer abused this discretion. The parties had stipulated to most of the relevant facts, and the issues to be resolved at the hearing were relatively straightforward and not complex. Riemer was aware of the date of the hearing for four months yet waited until less than a month before the hearing to request a postponement. There was no argument or indication that he lacked adequate time to prepare for the hearing. And during oral argument before the NAC, he admitted that, despite basing his request for a postponement on a lack of funds, he "did have the money." Because Riemer failed to show good cause supporting his motion to postpone the hearing, we conclude that the denial of that motion was not an abuse of discretion.[26]

In any event, Riemer has not shown that the denial prejudiced him. He had ample notice of the hearing and attended and participated in it. Riemer offers no argument or explanation as to how his defense was impeded by not being granted a postponement.

III. Sanctions

A. The sanctions that FINRA imposed are not excessive or oppressive.

Exchange Act Section 19(e)(2) requires that we sustain the sanctions FINRA imposed unless we find that they are "excessive or oppressive" or impose an unnecessary or inappropriate burden on competition.[27] In making this assessment, we must consider any aggravating or mitigating factors, and whether the sanctions are remedial and not punitive.[28] While we are not bound by FINRA's Sanction Guidelines, they serve as a benchmark in conducting our review.[29]

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[25] *Robert J. Prager*, Exchange Act Release No. 51974, 2005 WL 1584983, at *13 (July 6, 2005); *accord Falcon Trading Grp., Ltd.*, Exchange Act Release No. 36619, 1995 WL 757798, at *5 (Dec. 21, 1995), *petition denied*, 102 F.3d 579 (D.C. Cir. 1996).

[26] *See* FINRA Rule 9222(b) (requiring "good cause" to postpone the hearing).

[27] 15 U.S.C. § 78s(e)(2). Our review of the record does not suggest, and Riemer does not argue, that the sanctions imposed an unnecessary or inappropriate burden on competition.

[28] *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

[29] *See Plunkett*, 2013 WL 2898033, at *11.

Although Riemer has not challenged the sanctions FINRA imposed, we address them as part of our review and find the six-month suspension and $5,000 fine for Riemer's violations to be remedial and neither excessive nor oppressive.[30] For late filings of Form U4, failure to file forms or amendments, and false, misleading or inaccurate filings, the Sanction Guidelines recommend a fine of $2,500 to $37,000.[31] "Where aggravating factors are present," the Guidelines recommend suspending the responsible individual for ten business days to six months.[32] "Where aggravating factors predominate," the Guidelines recommend a suspension of up to two years, or, "where the respondent intended to conceal information or mislead, a bar."[33] The Principal Considerations applicable to Form U4 violations include: (1) the nature and significance of the information at issue; (2) the number, nature, and dollar value of the disclosable events at issue; (3) whether the omission of information was an intentional effort to conceal information or an attempt to mislead; and (4) the duration of the delinquency.[34]

While the Guidelines do not specifically address false statements to an employer, FINRA considered the Guidelines' recommendations for recordkeeping violations and falsification of records to be analogous because Riemer's failures to disclose his liens and bankruptcy caused Equity Services to maintain inaccurate books and records. Riemer does not challenge this determination, and we find it to be appropriate.[35] For recordkeeping violations, the Guidelines

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30 *See, e.g.*, *Elgart*, 2017 WL 4335050, at *1, *7-8 (sustaining FINRA's six-month suspension and $15,000 fine for Form U4 violation and additional 30 business-day suspension and $5,000 fine for false statement to FINRA); *McCune*, 2016 WL 1039460, at *1, *8-9 (sustaining FINRA's six-month suspension and $5,000 fine for Form U4 violations); *Tucker*, 2012 WL 5462896, at *1, *14-15 (sustaining FINRA's two-year suspension and requalification requirement for Form U4 violations).

31 Sanction Guidelines at 71 (April 2017 ed.), *available at* http: //www.finra.org/sites/default/files/Sanctions_Guidelines.pdf. The NAC applied the 2017 Guidelines, *see id*. at 8 (stating that the 2017 Guidelines "are effective as of the date of publication, and apply to all disciplinary matters, including pending matters"), and we do the same. Riemer has not challenged the NAC's application of the 2017 Guidelines to this proceeding.

32 *Id.* at 71.

33 *Id.*

34 *Id.*

35 *See, e.g.*, *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 WL 5608531, at *20 & n.65 (Sept. 24, 2015) (applying the Guidelines for forgery or falsification of records to misconduct involving misstatements on firm compliance documents); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *20-21 (Feb. 10, 2012) (applying the Guidelines for recordkeeping requirements to misconduct involving failures to disclose information on firm compliance questionnaires); *Howard Braff*, Exchange Act Release No. 66467, 2012 WL 601003, at *8 & n.33 (Feb. 24, 2012) (finding that "FINRA reasonably

(*continued . . .*)

recommend a fine of $1,000 to $15,000 and a suspension of ten business days to three months.[36] "Where aggravating factors predominate," the Guidelines recommend a fine of $10,000 to $146,000 and a suspension of up to two years or a bar.[37] For falsification of records, the Guidelines recommend a fine of $5,000 to $146,000 and a suspension of up to two years.[38] In egregious cases, the Guidelines recommend consideration of a bar.[39]

Riemer failed to disclose two tax liens totaling $33,589.13 and a bankruptcy on his Form U4 and provided false information about them in his firm's annual compliance certifications. The liens and bankruptcy were material to both customers' and regulators' ability to assess Riemer's fitness to act as an associated person of a FINRA member firm.[40] Riemer never disclosed the 2002 federal tax lien. Riemer did not disclose the 2005 federal tax lien for more than eight years and the 2008 bankruptcy for nearly five years and only after FINRA discovered them.[41] Riemer admitted that he did not disclose the liens and bankruptcy because he feared it "would cause me to lose my job." As a result, his misconduct was intentional.[42] Riemer's false responses in his firm's annual compliance certifications, which specifically asked whether he had any unsatisfied liens or bankruptcies, were an attempt to conceal his misconduct because he admits that he "knew I had to disclose them but I didn't."[43]

Riemer has not argued that any mitigating factors apply beyond noting his lack of a prior disciplinary record. However, the absence of a disciplinary record is not mitigating.[44] Moreover, although FINRA found that Riemer had taken responsibility for his misconduct, we agree with its determination that the numerous aggravating factors described above outweigh his

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(*continued . . .*)
determined that the falsification of records was the most analogous guideline" where applicant failed to provide written notice of his outside brokerage accounts on firm compliance forms).

36 Sanction Guidelines at 29.

37 *Id.*

38 *Id.* at 37.

39 *See id.*

40 *See* text accompanying note 34 (identifying the nature and significance of the information at issue as a principal consideration applicable to Form U4 violations).

41 *See id.* at 7 (Principal Consideration No. 4).

42 *See id.* at 8 (Principal Consideration No. 13).

43 *See id.* at 7 (Principal Consideration No. 10), 71 (Principal Consideration No. 3).

44 *Elgart*, 2017 WL 4335050, at *7 n.41 (citing *Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006)); *McCune*, 2016 WL 1039460, at *9.

contrition.[45] Those factors convince us that FINRA's six-month suspension and $5,000 fine are consistent with FINRA's Sanction Guidelines and are neither excessive nor oppressive.[46]

B. Riemer's other arguments lack merit.

1. FINRA's finding of a statutory disqualification is not a sanction.

Riemer contends that FINRA's finding that he is statutorily disqualified is "a sanction that is the functional equivalent of a bar," that FINRA erred because it did not make sufficient findings to merit a bar under the Sanction Guidelines, and that statutory disqualification is an "excessive and oppressive" punishment that "will end [his] career as an insurance agent."

Riemer acknowledges that these related arguments are contrary to our precedent. He states that we have held that a statutory disqualification "is not a sanction over which a FINRA adjudicator, including the NAC, has any discretion." Indeed, we have held that "FINRA does not subject a person to a statutory disqualification as a penalty or remedial sanction. Instead, a person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)(F) whenever there has been, among other things, a determination that a person willfully failed to disclose material information on a Form U4. Considerations of 'fairness' or policy arguments do not bear upon the automatic statutory disqualification imposed upon [the applicant]."[47] Congress, and not the Commission or FINRA, decided that a willful failure to disclose material information on an application for registration would constitute a disqualifying event for purposes of a person's eligibility to participate in the securities industry.[48] We have reviewed FINRA's determinations that Riemer's failure to disclose information on his Form U4 was willful and that the omitted information was material and found that the record supports these findings.

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45 *See, e.g.*, *McCune*, 2016 WL 1039460, at *8 (crediting respondent's candor in admitting his Form U4 violations but finding that, given the circumstances of respondent's past failures, "his admissions do not outweigh our concern that his conduct presents a continuing threat to investors and that a fine and a suspension from the industry is warranted").

46 We sustain FINRA's imposition of costs, which Riemer has not challenged.

47 *McCune*, 2016 WL 1039460, at *9; *see also*, *e.g.*, *Anthony A. Grey*, Exchange Act Release No. 75839, 2015 WL 5172955, at *11 n.60 (Sept. 3, 2015) (stating that a "statutory disqualification is not a FINRA-imposed penalty or remedial sanction").

48 *See* 15 U.S.C. § 78c(a)(39)(F); *see also* FINRA By-Laws Article III, Sec. 3(b) ("No person shall become associated with a member, continue to be associated with a member, or transfer association to another member, . . . if such person is or becomes subject to a disqualification under Section 4."); FINRA By-Laws Article III, Sec. 4 (providing that a person is subject to a "disqualification" "if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(a)(39) of the [Exchange] Act").

Although Riemer characterizes the statutory disqualification finding as a "death sentence," a person subject to a statutory disqualification may still associate with a FINRA member firm. After FINRA imposes a suspension for conduct that results in a person's statutory disqualification (such as the six-month suspension in this case), the person may, having served the suspension, be permitted to associate with a FINRA member firm if the firm applies to FINRA and is granted permission to remain a member while associating with that person.[49] We have held that such an application may not be denied solely on the basis of the misconduct that led to the original sanction.[50] Consequently, a statutory disqualification "does not necessarily preclude a person from participating in the securities industry."[51]

Riemer's objection centers on his claim that, although he does not wish to return to the securities industry, a statutory disqualification will terminate his employment as an insurance agent. Although Equity Services' CCO testified that a statutory disqualification would have "serious ramifications" for Riemer's employment with National Life because it "could bring on additional regulatory scrutiny" of Equity Services, he declined to say whether Riemer would lose his job because "that's a decision the life insurance company [National Life] would have to make." Moreover, Riemer has not demonstrated that if National Life terminated him, he would be unable to find employment as an insurance agent elsewhere due to the statutory disqualification. In any case, a statutory disqualification follows automatically from findings that a person willfully omitted material information on a Form U4. We have found that the record supports those findings in this case.[52]

Riemer also argues that FINRA "falls short" of satisfying its obligation under the Exchange Act to provide "a fair procedure" for disciplining its members and associated persons.[53] He faults FINRA for "pretending that a statutory disqualification is not a sanction," and "ignor[ing] the Sanction Guidelines," which he contends should apply to FINRA's statutory disqualification finding. Riemer's argument fails because, as explained above, a finding of a statutory disqualification is not a disciplinary sanction.[54] In any event, we have conducted an

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49 *See generally McCune*, 2016 WL 1039460, at *9 n.54.

50 *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 WL 3554584, at *12 (Sept. 13, 2010) (citing *Paul Edward Van Dusen*, Exchange Act Release No. 18284, 1981 WL 315505, at *3 (Nov. 24, 1981)).

51 *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *2 (June 26, 2014).

52 *Cf. McCune*, 2016 WL 1039460, at *9 & n.50 ("[T]he fact that [respondent's] suspension may make it more difficult to find another job in the securities industry is a collateral consequence arising from his misconduct, which we have made clear is not mitigating.").

53 *See* 15 U.S.C. § 78*o*-3(b)(8) (instructing FINRA to promulgate rules that "provide a fair procedure for the disciplining of members and persons associated with members").

54 *See supra* notes 47-48 and accompanying text.

independent review of the record and find that FINRA provided Riemer with a fair proceeding. Riemer "was given appropriate opportunities to present evidence and arguments, to testify, and to cross-examine witnesses. FINRA evaluated his testimony and defenses against the evidence that was introduced and appropriate legal standards."[55] Further, FINRA complied with its obligations to bring "specific charges" against Riemer, notified him of, and gave him an opportunity to defend against, those charges, and kept a record of proceedings and supported its determinations by a sufficient written statement.[56]

2. FINRA was not required to accept Riemer's settlement offer.

We also reject Riemer's argument that FINRA disregarded its Sanction Guidelines by rejecting his contested settlement offer. Riemer relies on Sanction Guidelines General Principle Number 1, which provides that "disciplinary sanctions should be designed to protect the investing public." Riemer explains that he "offered to permanently and irrevocably covenant not to seek registration with a member firm," an obligation he characterizes as "the functional equivalent of a lifetime bar." Because his settlement offer also denied that he acted willfully, Riemer contends that, if accepted, his proposal would have "resolve[d] this matter without a statutory disqualification," which he says would allow him to continue his career in the insurance industry. Riemer asserts that his settlement proposal provided for a sanction "far greater" than his six-month suspension, and thus "provided greater protection for the investing public than the sanction crafted by the Hearing Panel," thereby advancing General Principle Number 1.

Riemer's argument fails. FINRA was not required to accept Riemer's contested offer of settlement. FINRA "had no obligation to settle this proceeding on [Riemer's] terms, and settlement negotiations are irrelevant to the sanctions determination."[57]

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55 *Tucker*, 2012 WL 5462896, at *12.

56 Exchange Act Section 15A(h)(1), 15 U.S.C. § 78*o*-3(h)(1).

57 *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 WL 936398, at *7 (Feb. 20, 2014); *see also, e.g.*, *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 WL 5001956, at *11 (Oct. 20, 2011) ("We have previously held that such negotiations are not relevant to our determination of sanctions in a contested proceeding. Thus, any settlement negotiations are irrelevant to our decision here."); *Clyde J. Bruff*, Exchange Act Release No. 40583, 1998 WL 730586, at *4 (Oct. 21, 1998) ("The NASD is not obligated to accept an offer once made, and if an offer is not accepted, for whatever reason, there is no requirement that an offer be referenced in any decision after litigation."), *petition denied*, 198 F.3d 253 (9th Cir. 1999); *cf., e.g.*, *A.J. White & Co. v. SEC*, 556 F.2d 619, 625 (1st Cir. 1977) (rejecting the argument that it was improper for the Commission to decline to accept respondents' settlement offers and stating that "[l]itigants are never required to accept settlement offers"); *cf. Stonegate Sec., Inc.*, Exchange Act Release No. 44933, 2001 WL 1222203, at *3 (Oct. 15, 2001) ("We do not consider the results of failed settlement negotiations in our determination of the public interest.").

Because FINRA was not required to accept his settlement offer, Riemer's related claim that it was "procedurally unfair in violation of the Exchange Act" for FINRA to "force a plenary hearing on the issue of willfulness" also fails. So does Riemer's claim of bias by Enforcement and unfairness by the Hearing Panel in rejecting Riemer's contested offer of settlement. We have independently reviewed the record and found that it does not support Riemer's claims.

An appropriate order will issue.[58]

By the Commission (Chairman CLAYTON and Commissioners STEIN, JACKSON, PEIRCE and ROISMAN).

Brent J. Fields
Secretary

[58] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84513 / October 31, 2018

Admin. Proc. File No. 3-18262

In the Matter of the Application of

RICHARD ALLEN RIEMER, JR.

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 Richard Allen Riemer, Jr., is sustained.

By the Commission.

Brent J. Fields
Secretary