

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65598 / October 20, 2011

Admin. Proc. File No. 3-14252

In the Matter of the Application of

RICHARD A. NEATON
3071 Rivershore Lane
Port Charlotte, FL 33953

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

Registered representative of member firm of registered securities association willfully submitted Forms U4 that did not disclose, and willfully failed to update Forms U4 to disclose, disciplinary actions and sanctions imposed on him by state bar disciplinary board. *Held*, association's findings of violation and sanction imposed are *sustained*.

APPEARANCES:

Richard A. Neaton, pro se.

Marc Menchel, Alan Lawhead, James Wrona, and Gary Dernelle, for Financial Industry Regulatory Authority, Inc.

Appeal filed: February 8, 2011
Last brief received: April 28, 2011

I.

Richard A. Neaton ("Neaton"), formerly a registered representative of various member firms, seeks review of FINRA disciplinary action.¹ FINRA found that Neaton willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose two suspensions and the subsequent revocation of his license to practice law and willfully failed to disclose the bases for those sanctions, all in violation of NASD Conduct Rule 2110 and Membership Rule IM-1000-1.² For those violations, FINRA barred him from associating in any capacity with any FINRA member firm.³ Because FINRA found that Neaton's failures to disclose were willful, he is also subject to a statutory disqualification.⁴ We base our findings on an independent review of the record.

II.**A. Neaton Enters the Securities Industry**

Neaton practiced law in Michigan from 1973 until 1999, when he gave up his law practice and moved to Florida. Neaton became registered with FINRA through a member firm on March 8, 1995 as an Investment Company and Variable Contracts Products Representative.

¹ On July 26, 2007, the Commission approved a proposed rule change that NASD filed seeking to amend its Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA"), in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. *See* Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. Following the consolidation, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 Fed. Reg. 57,174 (Oct. 1, 2008). FINRA's disciplinary action was instituted after the consolidation of NASD and NYSE, but the conduct at issue took place before the consolidated rules took effect. Accordingly, NASD conduct rules apply and references to FINRA herein include references to NASD.

² NASD Conduct Rule 2110 requires members to observe "high standards of commercial honor and just and equitable principles of trade." NASD Membership Rule IM-1000-1 prohibits the filing, in connection with membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading.

³ FINRA also ordered him to pay costs.

⁴ Securities Exchange Act Section 3(a)(39), 15 U.S.C. § 78c(a)(39) (defining "statutory disqualification").

B. Neaton's Law License Is Suspended for the First Time

On June 5, 1995, the Attorney Discipline Board of the State Bar of Michigan ("Discipline Board")⁵ issued a Notice of Suspension and Restitution against Neaton, suspending his law license for three years with a retroactive start date of December 1, 1993. The Discipline Board found, among other things, that Neaton, while representing a client in a personal injury matter, failed to provide the insurance carrier with documentation of his client's injuries, failed to keep his client reasonably informed and allowed the statute of limitations to expire, falsely advised his client that he had settled her claims, and delivered to his client a draft from his personal account, falsely representing to his client that this constituted her share of the settlement. The Discipline Board further found that Neaton, in a second, unrelated matter, affixed a client's signature to a draft entrusted to him for the client's benefit, failed to deposit the funds into a trust account, commingled the funds by depositing them into his own account, misappropriated the funds by paying them to his client in the personal injury matter, and made numerous false statements to the client concerning the funds. The Discipline Board also ordered Neaton to pay costs and restitution, which Neaton did. Neaton did not amend his Form U4 to disclose this action.

C. Neaton Faces Further Discipline Board Charges, Changes Jobs, and Files a New Form U4

Less than four months after the Discipline Board first suspended Neaton's license to practice law, Neaton decided to change firms and interviewed for a position as a registered representative with Dennis Harrelson, a general agent for Securian Financial Services ("Securian"),⁶ a FINRA member firm. By that time, the Discipline Board had instituted a second action against Neaton.

On October 15, 1995, Neaton executed a Form U4 with Securian. Neaton responded "no" to Form U4 questions 22(E)(1) and 22(E)(6), which asked:

"[h]as . . . any state regulatory agency . . . ever . . . found you to have made a false statement or omission or been dishonest, unfair or unethical?"

"[h]as . . . any state regulatory agency . . . ever . . . revoked or suspended your license as an attorney . . . ?"

⁵ The Discipline Board serves as the adjudicative arm of the Michigan Supreme Court for discharge of its exclusive constitutional responsibility to supervise and discipline Michigan attorneys. Attorney Discipline Board, <http://www.adbmich.org/> (Last visited July 22, 2011).

⁶ During the period at issue, Securian was variously known as MIMLIC Sales Corporation and Ascend Financial Services, Inc.

The Form U4 required that, if the applicant answered "yes" to any question, he or she must provide an explanation. The form further required the applicant to certify that he or she had an obligation to file a timely amendment "whenever changes occur to answers previously reported" and to assure that information "is currently complete and accurate." On October 31, 1995, Neaton became registered with Securian as an Investment Company and Variable Contracts Products Representative.⁷

D. Neaton's Law License Is Suspended a Second Time

Neaton traveled to Michigan to defend himself in the second Discipline Board action. On August 26, 1996, the Discipline Board issued a second Notice of Suspension and Restitution against Neaton, suspending his law license for four years, retroactively from June 1, 1995. The Discipline Board found, among other things, that Neaton had neglected a *habeas corpus* matter; made false representations to his client; affixed, or caused to be affixed, the signatures of two proposed expert witnesses on two affidavits without the witnesses' knowledge or consent; improperly affixed his signature as a notary on one affidavit; affixed, or caused to be affixed, a fictitious name as notary on the other affidavit; and misappropriated client funds.

Neaton did not amend his Form U4 following the Discipline Board's second disciplinary action.

E. Neaton's Law License is Revoked

On February 2, 2001, the Michigan State Bar issued a Notice of Revocation and Restitution against Neaton, instantaneously revoking his law license. The Discipline Board found that Neaton had, among other things, failed to return trust funds to their rightful beneficiaries; commingled trust funds with his own; made misrepresentations as to his investment of the trust funds; and misappropriated funds held in trust as a fiduciary. At the hearing, Neaton admitted that he never disclosed the 2001 disciplinary action to Securian. Again, Neaton did not amend his Form U4 following the actions of the Discipline Board.

F. Neaton Again Changes Firms and Completes a New Form U4

On April 28, 2006, Securian terminated Neaton's registrations through the firm, and Neaton became registered with Mutual Services Corporation ("Mutual") as an Investment Company and Variable Contracts Products Representative and a Corporate Securities Limited Representative.

⁷ In August 1998, Neaton became registered through Securian as a Corporate Securities Limited Representative.

To register with Mutual, Neaton completed a new Form U4, which he signed on January 31, 2006. Neaton answer "no" to whether:

his "authorization to act as an attorney" had ever been "revoked or suspended;" and "any state regulatory agency [had] . . . ever . . . found [him] to have made a false statement or omission or been dishonest, unfair or unethical."⁸

Neaton testified that, when he completed the 2006 Form U4, he thought that, because he had "already disclosed the suspensions to [Securian] and they didn't tell [him that he] needed to change that answer to yes" he should respond "no" to the question regarding suspension of authorization to act as an attorney. He further testified that he answered "no" to question 14D(1)(a) (regarding whether a state regulatory agency had found that he had made a false statement or engaged in dishonest, unfair, or unethical conduct) because he believed the question "applied to investment-related activities." Neaton admitted that he did not disclose the Discipline Board actions against him to anyone at Mutual when he became associated there.

G. Neaton Discloses the Sanctions

After Neaton began working at Mutual, a dispute arose concerning an insurance policy that Neaton originated while registered with Securian. In a May 2006 deposition, Neaton disclosed the Discipline Board's suspensions and revocation of his law license. On May 22, 2007, Securian filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5"), stating Securian intended to conduct an internal review "upon learning that Mr. Neaton's license to practice law in Michigan had been revoked."

Mutual received a copy of the Form U5. Rick Ohlrich, a Mutual Vice President, asked Neaton for a written response on May 29, 2007. Neaton subsequently responded.

H. FINRA Investigation

Shortly after Securian submitted the amended Form U5, FINRA's Department of Enforcement ("Enforcement") commenced an investigation of Neaton. On November 2, 2007,

⁸ While the Form U4 had changed somewhat since 1995 (when Neaton filed with Securian), the questions at issue here remained materially the same. Question 22(E)(1) on Neaton's Securian Form U4 is identical (with the addition of one word) to question 14D(1)(a) on the version that he filed with Mutual.

Question 22(E)(6) on the Form U4 Neaton filed at Securian asks "[h]as . . . any state regulatory agency ever . . . revoked or suspended your license as an attorney?" Question 14F on the Form U4 filed with Mutual asks "[h]ave you ever had an authorization to act as an attorney . . . revoked or suspended?"

after FINRA had begun its investigation, Neaton filed an amended U4, on which he answered "yes" to question 14F:

"[h]ave you ever had an authorization to act as an attorney . . . revoked or suspended?"

However, Neaton once again responded "no" to the question:

"[h]as . . . any state regulatory agency . . . ever . . . found you to have made a false statement or omission or been dishonest, unfair, or unethical?"⁹

On the form's Regulatory Action Disclosure Reporting Page ("DRP"), Neaton disclosed that the Discipline Board had suspended twice and subsequently revoked his law license; Neaton did not provide any additional information about the Discipline Board's findings against him.¹⁰

I. Proceedings Below

On October 8, 2008, Enforcement filed a complaint against Neaton. Before the Hearing Panel, Neaton asserted that he based his responses to the Form U4 questions at issue on a conversation that he had with Harrelson and oral instructions provided by an unidentified Securian employee.

At the hearing, Neaton and Harrelson agreed that, during his interview in September 1995, Neaton had stated that he was involved in an action related to his former law practice. However, Harrelson's and Neaton's accounts of what Neaton said differ. Neaton testified that he disclosed to Harrelson that he did not "have a license anymore" to practice law, that he had "relinquished that license voluntarily, and that [he] had also just recently settled a client complaint, and that [he] also [had] another complaint pending against [him] . . . from the Grievance Commission of the . . . Michigan State Bar." Neaton further testified that Harrelson asked him to "keep [him, Harrelson] posted on . . . what happens on the complaint."

However, Harrelson testified that Neaton did not tell him that he was no longer licensed as an attorney and that Securian "would have never hired [Neaton] had they known" about the suspension of his law license. Harrelson further testified that Neaton told him that he was the subject of a "customer complaint" related to his former law practice and that Neaton had characterized the issue as not being "a big thing at all," "minor," and as a "disagreement with a customer" "over a fee." Harrelson also stated that he "didn't even know that . . . the Bar" was involved and that he thought that Neaton just "had a disagreement with a customer." Harrelson told Neaton to report back to the broker-dealer with the issue's resolution.

⁹ There were no changes to the form itself of the Form U4 between 2006 and 2007.

¹⁰ Mutual terminated Neaton's employment on May 21, 2008 and since then, he has not been associated with any FINRA member firm.

Neaton also testified that he had a conversation with someone working for Harrelson, "probably [Harrelson's] office administrator," the "gist" of which was that he should "complete [the Form U4] like [he] did at" his former firm. Neaton claimed that he understood that he was "being asked to reaffirm [his] initial answers on" his original Form U4 – although he had been the subject of intervening discipline by the Discipline Board. Harrelson testified that it was not part of his job to advise people on how to fill out the Form U4, and that his office "just [passed] them out." Harrelson further testified that he "absolutely [did] not" instruct Neaton not to disclose anything on the Form U4 in relation to the complaint.

Harrelson's and Neaton's accounts further conflict as to what Neaton disclosed following the Discipline Board's second disciplinary action. Neaton testified that he "had a phone conversation with [Harrelson] and told him" that there was "another order of suspension entered against [him]," that Harrelson responded by saying that "everybody deserves a second chance" and that Harrelson "never got back to [him] after that." Harrelson testified that Neaton never disclosed any action against him by the Discipline Board.

The Hearing Panel did not find Neaton credible. The Hearing Panel found that even based on Neaton's testimony, his disclosure "minimized and obfuscated the serious nature of the 1995 suspension" The Hearing Panel held that Harrelson's testimony was credible and that Neaton did not disclose the nature of the 1996 suspension. The Hearing Panel further found that Neaton "was untruthful in his characterization of the pending action [to Harrelson] as 'not serious'" given the nature of the allegations against him.

While registered through Securian, Neaton was required to fill out an annual compliance questionnaire.¹¹ Harrelson testified that it "absolutely" would have been brought to his attention if a representative in his office had given a "yes" answer to any of the questions on the questionnaire, and that, to his knowledge, Neaton never disclosed any of the Discipline Board sanctions against him on these questionnaires. Neaton does not claim that he disclosed any of the Discipline Board sanctions against him on these questionnaires. Finally, Harrelson testified that he had a conversation with Neaton following the 2007 disclosure of the Discipline Board actions. Harrelson asked Neaton why he "didn't . . . divulge all this stuff before." Neaton replied that "had [he] divulged that stuff all those years before, [he] would have lost [his] license already."

¹¹ For example, question 4 on the 2004 Annual Compliance Questionnaire, asked "while at the firm . . . has . . . any . . . state regulatory body sanctioned you?" and question 6 asked "during your association with the firm, have any judgments been entered against you?" Neaton responded "no" to both questions in 2004.

In a decision dated June 5, 2009, a FINRA Hearing Panel found that Neaton had willfully failed to amend his Form U4 to disclose the suspensions and revocation of his license to practice law, in violation of Rules 2110 and IM-1000-1. The Hearing Panel fined Neaton \$5,000 and suspended him from associating with a member firm in any capacity for one year. Neaton appealed the Hearing Panel decision to FINRA's National Adjudicatory Council ("NAC"), which affirmed the Hearing Panel's findings but barred him in all capacities for his misconduct. This appeal followed.

III.

NASD Membership Rule IM-1000-1 prohibits the filing, in connection with membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading. This rule applies to Form U4, which is used by FINRA and other self-regulatory organizations to determine the fitness of applicants for registration as securities professionals.¹² We have repeatedly stated, "[t]he candor and forthrightness of [individuals making these filings] is critical to the effectiveness of this screening process."¹³ Because "[r]egistration of broker-dealers is a means of protecting the public,"¹⁴ 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 also violates NASD Rule 2110, requiring adherence to just and equitable principles of trade to which every person associated with a FINRA member is held.¹⁵

A. Neaton Violated Membership Rule IM-1000-1 and Conduct Rule 2110

Article V, Section 2(c) of the NASD By-Laws provides that every Form U4 filed with FINRA be kept current at all times by supplementary amendments that must be filed within thirty days of learning of the facts or circumstances giving rise to the amendment. The duty to

¹² *Scott Mathis*, Exchange Act Rel. No. 61120 (Dec. 7, 2009), 97 SEC Docket 23228, 23235, *appeal docketed*, No. 10-429 (2d Cir. Feb. 5, 2010); *Timothy H. Emerson, Jr.*, Exchange Act Rel. No. 60328 (July 17, 2009), 96 SEC Docket 18882, 18885 n.8; *Jason A. Craig*, Exchange Act Rel. No. 59137 (Dec. 22 2008), 94 SEC Docket 12694, 12698; *Douglas J. Toth*, Exchange Act Rel. No. 58074 (July 1, 2008), 93 SEC Docket 7380, 7387-88, *petition denied*, 319 F. App'x 184 (3d Cir. 2009).

¹³ *Mathis*, 97 SEC Docket at 23235; *Emerson*, 96 SEC Docket at 18889; *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (quoting *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995)) (sustaining denial of association where statutorily disqualified person had failed to amend his Form U4 to disclose statutorily disqualifying event).

¹⁴ *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

¹⁵ *Alton*, 52 S.E.C. at 382 (citing *Kauffman*, 51 S.E.C. 838, 840 (1993); *Roy Ray Seaton*, 47 S.E.C. 131, 133-34 (1979)).

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. On his Forms U4, Neaton certified that he had an obligation to keep his Form U4 current at all times and file timely supplementary amendments.

Neaton does not challenge FINRA's finding that he failed to disclose the Discipline Board's disciplinary actions against him on two initial Forms U4 and failed timely to amend his Forms U4 to disclose those actions. On June 5, 1995, the Discipline Board suspended Neaton's law license for the first time. However, although a registered representative since March 8, 1995, Neaton did not amend his Form U4 to reflect the imposition of the sanction. On October 15, 1995, Neaton executed a new Form U4 with Securian. Because the Discipline Board had, by that time, suspended his law license for making misstatements to clients, commingling and misappropriation of client funds, and ethical violations, Neaton provided false answers by responding "no" to two questions: "[h]as . . . any state regulatory agency . . . ever . . . found you to have made a false statement or omission or been dishonest, unfair or unethical?" and "[h]as...any state regulatory agency . . . ever . . . revoked or suspended your license as an attorney . . . ?" Following the Discipline Board's second suspension of his law license on August 26, 1996 for professional negligence, misrepresentations, forgery, and misappropriation, Neaton did not amend his Form U4. Again, following the Discipline Board's revocation of his license on February 2, 2001, Neaton did not amend his Form U4. Thus, his false "no" responses remained on file with FINRA, Securian, and the Central Registration Depository.

Continuing this pattern of behavior, when Neaton executed a new Form U4 with Mutual on January 31, 2006, he falsely responded "no," failing to disclose the Discipline Board's findings and sanctions – important information about his disciplinary history explicitly sought by the form's questions. While Neaton eventually amended his Form U4 on November 2, 2007, he did so only after FINRA began an investigation, and then only disclosed the Discipline Board's sanctions, not the bases for its several actions against him. Thus, Neaton's repeated false answers and failures to amend his Forms U4 to disclose the Discipline Board's disciplinary actions over the course of nearly twelve years are clear violations of Membership Rule IM-1000-1 and Conduct Rule 2110.

B. Neaton's Violations Were Willful

Neaton challenges only FINRA's finding that his failures to disclose were willful, a finding that results in his statutory disqualification. A person is deemed to be subject to a "statutory disqualification" under Section 3(a)(39) of the Securities Exchange Act of 1934¹⁶ if, among other things, "such person . . . has willfully made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any

¹⁶ See *supra* note 4.

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 in any such application . . . any material fact which is required to be stated therein."

As the United States Court of Appeals for the District of Columbia stated, "willfully" under the federal securities laws means that the respondent "intentionally committ[ed] the act which constitutes the violation."¹⁷ It does not require that the person "also be aware that he is violating one of the Rules or Acts."¹⁸

The evidence shows that Neaton voluntarily provided false answers on his Forms U4 and thus willfully violated Membership Rule IM-1000-1 and Conduct Rule 2110. Neaton does not suggest that he was unaware of the Discipline Board's findings and sanctions. Indeed, Neaton admittedly paid the costs imposed upon him concurrent with the 1995 suspension and traveled to Michigan to testify in the 1996 action. Thus, he was aware of the Discipline Board's findings and that the sanctions were serious. Even so, he voluntarily answered "no" to the Form U4 questions soliciting the disclosure of disciplinary actions of the type taken against him by the Discipline Board.

Neaton contends that the NAC erred in its finding of willfulness because he "did not intend to furnish a false answer about [his] attorney discipline history." He makes several arguments to support this contention.

1. Neaton asserts his actions were not willful but merely negligent. He contends that he relied on "the words and actions of [his] compliance officers and supervisors," attempting to shift the responsibility for his false Form U4 responses to others. For example, Neaton asserts that, once he declared his attorney disciplinary history to Mutual in 2007 (after Securian had filed its amended Form U5), Mutual's "silence reinforced my erroneous understanding of my duty to amend my U4." He contends that Mutual's failure to advise him "should vitiate Enforcement's claim of willfulness." However, securities industry registrants "must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these

¹⁷ *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (citing *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 802-03 (D.C. Cir. 1965)); see also *Maria T. Giesige*, Investment Advisers Act Rel. No. 2886 (May 29, 2009), 95 SEC Docket 17154, 17161 n.10; *Brendan E. Murray*, Advisers Act Rel. No. 2809 (Nov. 21, 2008), 94 SEC Docket 11961, 11967-68 n.10.

¹⁸ *Wonsover*, 205 F.3d at 414.

requirements."¹⁹ Accordingly, if he found questions to be ambiguous, Neaton had a "duty to determine whether disclosure was required."²⁰

2. Neaton asserts that he disclosed the 1995 Discipline Board suspension and the then-pending 1996 action to Harrelson. Neaton asserts that his violations were not willful because "it is clear that before [he] signed [his] Form U4 on October 15, 1995, [he] was not trying to conceal from [Harrelson his] problems with the State Bar of Michigan."

As discussed above, Harrelson testified that Neaton merely told him that "he had a complaint with a customer over a fee." Neaton continues to dispute Harrelson's testimony that he did not disclose the suspensions of his law license. Neaton claims that he "told [Harrelson] about [his] law license issues" and that he was "not instructed to place anything into writing."

The Hearing Panel found that, even accepting Neaton's version of events, he "obfuscated" the seriousness of the 1995 Discipline Board suspension and was "untruthful in his characterization of the pending [1996] action." The Panel further found that Harrelson's testimony was credible and that "[Neaton] did not disclose the nature of the 1996 Suspension."²¹ "Credibility determinations of an initial fact finder are entitled to considerable weight because they are based on hearing the witnesses' testimony and observing their demeanor."²² Such determinations "can be overcome only where the record contains substantial evidence for doing

¹⁹ *Guang Lu*, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 84 SEC Docket 2639, *aff'd*, 179 F. App'x 702 (D.C. Cir. 2006).

²⁰ *Mathis*, 97 SEC Docket at 23237. See *Jason A. Craig*, Exchange Act Rel. No. 59137 (Dec. 22, 2008), 94 SEC Docket 12694, 12698 (holding that registered representative has a "duty to determine whether the information he was providing on Form U4 was complete and accurate").

²¹ Neaton cites to *Dept. of Enforcement v. Kelsey*, 2004 WL 3031423 (N.A.S.D.R. June 29, 2004) for the proposition that evidence of willfulness in providing false answers on Forms U4 is insufficient if it supports a finding of negligence. We believe this cite is inapposite. In that proceeding, the Hearing Panel found that, unlike Neaton, Kelsey disclosed his felony charge to his supervisor in 1998. Moreover, the *Kelsey* Hearing Panel "did not find it necessary to make willfulness findings" with regards to the 1998 Form U4 since it found that the Respondent willfully omitted information on a subsequent Form U4. We also note that the *Kelsey* determination was not appealed to the Commission, and it did not express a view as to the result.

²² *Janet Gurley Katz*, Exchange Act Rel. No. 61449 (Feb. 1, 2010), 97 SEC Docket 25094 n.22, *appeal filed*, No. 10-1068 (D.C. Cir. Mar. 26, 2010); see also *Laurie Jones Canady*, 54 S.E.C. 65, 78 n.24 (1999).

so."²³ Because we see no reason to overturn the Hearing Panel's credibility findings, we find no merit to Neaton's assertion that he disclosed to Harrelson the Discipline Board's actions against him.

In any event, even if Neaton had disclosed to Harrelson, that disclosure would not relieve Neaton of the obligation to provide correct answers on the Form U4. The Form U4 is designed to provide information about an applicant's fitness to be in the securities industry to the member firm, FINRA, other regulators, and potential customers.²⁴ Neaton admitted that he did not disclose the 2001 revocation to Securian, nor did he disclose any of the disciplinary actions to Mutual when he began work there.

In an attempt to refute Harrelson's testimony, Neaton attached to his brief a September 10, 2007 letter from Harrelson to Patricia Bourgeois, a FINRA examiner ("Attachment A"). Neaton claims that Attachment A proves that Harrelson "knew that [Neaton] faced a client complaint concerning [his] law license."

Neaton did not introduce Attachment A before FINRA. Under Commission Rule of Practice 452, we may admit additional evidence where the evidence is material and where there exist reasonable grounds for failing to produce the evidence earlier.²⁵ However, Neaton has failed to show that Attachment A meets either of these requirements. The information contained in the letter is not material. It merely duplicates Harrelson's testimony. In Attachment A, Harrelson stated that "[i]n the initial hiring process, it was discovered that Mr. Neaton had a customer complaint related to his law license in the State of Michigan." This statement is consistent with Harrelson's testimony that Neaton told him that "[Neaton] had a customer complaint from Michigan with his law practice." Moreover, Attachment A is dated well over a year before the Panel Hearing date of February 19, 2009. Neaton has offered no explanation for not introducing it earlier and we find no reasonable grounds for his failure to adduce Attachment A before FINRA.²⁶ Therefore, we decline to admit Attachment A.

²³ *Id.* at 78 (citing *Anthony Tricarico*, 51 S.E.C. 457, 460 (1993)).

²⁴ *Craig*, 94 SEC Docket at 12702.

²⁵ 17 C.F.R. § 201.452. Neaton did not file a motion with us seeking to adduce additional evidence.

²⁶ See *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 95 SEC Docket 13802, 13809 n.20 (Jan. 30, 2009) (determining not to adduce into the record documents proffered by applicants not admitted into the record before FINRA and unaccompanied by motion showing, as Rule 452 requires, "with particularity that the evidence is material and that there were reasonable grounds for the failure to adduce such evidence previously").

3. Neaton further asserts that "this woman" working for Harrelson told him to fill out the Form U4 "like [he] did before at [his previous employer]." Neaton claims that he understood her instructions to mean that he was "to reaffirm [his] initial answers on" his earlier Form U4. Such faulty logic would allow an applicant to "freeze" his/her background at a favorable point in time and avoid disclosure of subsequent negative events relevant to the applicant's fitness to remain in the securities industry. This assertion is wholly at odds with the requirement of NASD By-Law Article V, Section 2(c), which requires that information be accurate and updated timely. Neaton had notice of this requirement from the Form U4, where he certified to his "continuing obligation to amend and update information required by Form [U4]."

4. Neaton suggests that he determined not to disclose the Discipline Board actions on the Mutual Form U4 in 2006 because he "was already unauthorized to practice law before any of the disciplinary orders were entered," since he voluntarily gave up his license in 1993. However, his voluntary withdrawal from the practice of law did not prevent the Discipline Board from suspending and then revoking his authority to practice. Neaton's interpretation of this Form U4 question is contrary to its plain language (*i.e.*, whether the applicant's authority to practice law had "ever" been suspended or revoked). And, as stated above, if he found questions to be ambiguous, Neaton had a "duty to determine whether disclosure was required."²⁷ Similarly, the language of neither the Form U4 asking whether the applicant had ever been found to have engaged in dishonest or unethical conduct nor Securian's 2004 questionnaire suggests that those questions were limited to findings arising from investment activity.

5. Neaton testified that when he "was told to update [his] U4" at Mutual in 2006, he thought that this construction meant that he was "to provide information that [he] hadn't provided already to anybody else in the past." Even if Neaton had fully disclosed to Harrelson the sanctions against him, that disclosure could not absolve him from disclosing that information to an entirely different firm. As discussed above, the suspensions and revocation of Neaton's law license were relevant to Mutual's and FINRA's determination of his fitness. There was no indication that anyone at Mutual was notified of the Discipline Board actions until after Securian filed the amended Form U5 in May 2007. And as Neaton acknowledged at the hearing, FINRA did not have notice of his history with the Michigan Bar until he amended his Form U4 in 2007.

6. Neaton argues that the length of time before which he amended his U4 is somehow consistent with a finding of negligence. We disagree that his conduct demonstrates negligence. Neaton was subject to a series of disciplinary actions and yet, although he changed firms twice, he failed to make the required disclosure. Not only did Neaton fail to disclose the sanctions on his new Forms U4, he failed to disclose the sanctions on Securian's annual compliance questionnaires.²⁸ We conclude that Neaton's conduct was willful.

²⁷ Mathis, 97 SEC Docket at 23237; *see Craig*, 94 SEC Docket at 12700 (holding that a registered representative has a "duty to determine whether the information he was providing on Form U4 was complete and accurate").

C. The Discipline Board's Actions and Sanctions Were Material

Neaton does not dispute that the Discipline Board disciplinary findings and sanctions were material. The test of materiality is whether the omitted information would have "significantly altered the total mix of information made available."²⁹ Information about the Discipline Board's actions would have alerted Neaton's potential employers to his history of defying professional rules and standards, and engaging in dishonest and fraudulent activities. Indeed, Harrelson testified that Securian would not have hired Neaton if the firm had been informed that his license to practice law was suspended. This information was also material to investors to assess whether, given Neaton's problematic history, they should engage in transactions with him and to regulators in assessing Neaton's fitness because it would have provided them notice of his history of disobedience and client abuse.

Neaton himself recognized the importance of this information. As Harrelson testified, he asked Neaton why he had not disclosed the suspensions and revocation of his license. Neaton responded "had I divulged that stuff all those years before, I would have lost my license already." In his brief, Neaton disputes Harrelson's recollection of this conversation, claiming he had told Harrelson "that given Securian's current position about the service agreement, it is clear that had [he] disclosed the revocation in 2001, [he] would have been terminated." Neaton did not testify to that version of events before the Hearing Panel. However, even his current interpretation of the conversation – that disclosure would have terminated his service agreement – confirms that the information was material.

* * *

Accordingly, we find that Neaton's failure to disclose on his Form U4 the Discipline Board's disciplinary findings and the resulting suspensions and revocation of his law license willfully violated Membership Rule IM-1000-1 and Conduct Rule 2110.³⁰

²⁸ See *supra* note 11.

²⁹ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (holding that, in the context of determining materiality under the antifraud provisions of the Exchange Act § 10(b) and Rule 10b-5 thereunder, to fulfill the materiality requirement "there must be 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") (internal citation omitted).

³⁰ Neaton complains that FINRA cited his experience and training as a lawyer as evidence of why he should have known that he had to disclose the Discipline Board disciplinary actions against him. Our decision does not rely on Neaton's legal background. Neaton's violations are based on his failure to comply with the high standards to which FINRA holds all registered representatives.

IV.

Neaton argues FINRA's disciplinary proceedings denied him due process and were unfair. We conclude that the Hearing Panel's actions did not deprive Neaton of a fair proceeding.

A. Neaton complains that the Hearing Panel wrongly struck affirmative defenses alleging that FINRA staff prevented him from settling this matter before the issuance of a complaint and failed to provide him notice that he was entitled to have counsel present at an on-the-record interview ("OTR").

FINRA is not a state actor and thus, traditional Constitutional due process requirements do not apply to its disciplinary proceedings.³¹ Rather, FINRA is required to "provide a fair procedure for the disciplining of members and persons associated with members" under Exchange Act Sections 15A(b)(8) and 15A(h)(1). Thus, Neaton's arguments with regards to the alleged denial of 5th Amendment due process are inapplicable.

As a general matter, Neaton's affirmative defenses relate primarily to "the conduct of Enforcement during the *investigation*" (emphasis added). Exchange Act Section 15A(b)(8) requires SROs to provide a "fair procedure" in an adjudicatory proceeding. This statutory requirement does not extend to investigations. The purpose of an investigation is to "determine whether the [SRO's] investigation has produced evidence meriting further proceedings"³² – not to determine whether a violation has actually occurred.

Neaton specifically complains about Enforcement's refusal to engage in settlement negotiations with him following an Enforcement attorney's "promise" to send Neaton a draft settlement document. FINRA staff had discretion to enter into settlement negotiations.

³¹ See, e.g., *Desiderio v. Nat'l Ass'n of Sec. Dealers, Inc.*, 191 F.3d 198, 206 (Sept. 22, 1999) (rejecting due process claim by concluding "NASD is a private actor, not a state actor" in the context of a due process challenge); *Craig M. Biddick*, Exchange Act Rel. No. 63453 (Dec. 7, 2010) 99 SEC Docket 35510 A1, 35510 A17 ("self-regulatory organizations such as FINRA are not state actors for purposes of due process claims"); *Emerson, Jr.*, 96 SEC Docket at 18892 (noting that "as a general matter, self-regulatory organizations ('SROs') are not state actors and thus are not subject to the Constitution's due process requirements").

³² *David C. Ho*, Exchange Act Rel. No. 54481 (Sept. 22, 2006), 88 SEC Docket 3194, 3200, *aff'd*, 2007 WL 1224027 (7th Cir. 2007) (unpublished).

However, under FINRA's rules no settlement is effective until accepted by the NAC.³³ We have previously held that such negotiations are not relevant to our determination of sanctions in a contested proceeding.³⁴ Thus, any settlement negotiations are irrelevant to our decision here.

Neaton also asserts that, when Enforcement sent him notice of an OTR, it failed to include so-called "Addendum A," which provided notice that a witness is entitled to request counsel from his firm. However, at the beginning of the OTR, Enforcement provided Neaton with a copy of Addendum A and asked him if he had any questions before the OTR began. Neaton said that he did not, and he did not ask for counsel during the OTR. We conclude that Neaton waived this objection.

B. Neaton complains that the Hearing Panel found that he submitted false and forged affidavits "to a court." He also asks that the Hearing Panel decision be set aside. However, it is "the decision of the NAC, not the decision of the Hearing Panel, that is the final action of FINRA which is subject to Commission Review."³⁵

C. Neaton claims that the hearing officer's sanctions were somehow motivated by his attempts to contact FINRA's Ombudsman. We find nothing in the record to support this assertion. He further complains that the hearing officer "conducted a personal conversation with her former colleagues" in Enforcement after the hearing. We do not believe this conversation is sufficient evidence of bias by the hearing officer. In any event, our *de novo* review of evidence cures whatever incidence of bias, if any, that may have existed.³⁶

³³ Rules 9270(e)(2), 9270(f)(2). A self regulatory organization "is not obligated to accept an offer once made . . ." *Clyde J. Bruff*, 53 S.E.C. 880, 886 (1998), *aff'd*, 198 F.3d 253 (9th Cir. 1999).

³⁴ *Graham Loving & Co.*, 46 S.E.C. 269, 272 (1976); *see also Justin F. Ficken*, Exchange Act Rel. No. 58802 (Oct. 17, 2008), 94 SEC Docket 10887, 10893 n.31 (and cases cited therein).

³⁵ *Harry Friedman*, Exchange Act Rel. No. 64486 (May 13, 2011), __ SEC Docket __, __ n.21 (quoting *Glodek*, 97 SEC Docket 22035 n.16), 2011 WL 1825025, at *7 (May 13, 2011).

³⁶ *Richard G. Cody*, Exchange Act Rel. No. 64565 (May 27, 2011), __ SEC Docket __, __ n.79, 2011 WL 2098202, at *19 (May 27, 2011).

V.

Pursuant to Exchange Act Section 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.³⁷ FINRA fined Neaton \$5,000 and barred him. We sustain the sanction imposed by FINRA because, as explained below, we believe that it is neither excessive nor oppressive in light of Neaton's violative conduct and that it will adequately serve the public interest and protect investors.

FINRA's decision to fine and suspend Neaton is consistent with FINRA Sanction Guidelines.³⁸ For filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine between \$2,500 and \$50,000 and a suspension for five to thirty business days. In egregious cases, the Guidelines recommend consideration of a longer suspension of up to two years or a bar.³⁹ In evaluating the appropriate sanction to impose for this violation, the Guidelines provide three "Principal Considerations," only one of which – the "[n]ature and significance of [the] information at issue" – is relevant here.⁴⁰

We conclude, as did FINRA, that Neaton's failure to disclose the bases of the Discipline Board's actions and the resulting two suspensions and revocation of his law license was egregious. Neaton's omissions were significant. The Discipline Board's actions were based on a wide range of dishonest conduct and ethical violations, including misappropriation of client funds, forgery, misstatements to clients, and neglect of his professional duties, resulting in suspensions and the revocation of his license to practice law. Each of these findings and sanctions suggested Neaton's lack of fitness to be in the securities industry. For example, Harrelson testified that he never would have hired Neaton had he known about the suspensions of his law license.

³⁷ 15 U.S.C. § 78s(e)(2). Neaton does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

³⁸ FINRA promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in the sanctions that are imposed for violations. Although the Sanction Guidelines do not bind the Commission, they serve as a benchmark in reviewing sanctions under Exchange Act Section 19(e)(2). *Craig*, 94 SEC Docket at 12701 n.27.

³⁹ FINRA Sanction Guidelines at 73-74.

⁴⁰ FINRA Sanction Guidelines at 73.

The omissions occurred over a long period of time – nearly twelve years.⁴¹ The suspensions and revocation of his license were highly relevant to investors, employers, and regulators. Thus, we disagree with Neaton's assertion that "no one was harmed by [his] failure to amend [his] U4 in a timely manner." 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. Moreover, Neaton has not demonstrated that the violations would cease in the future. When Neaton amended his Form U4 in 2007, following the commencement of Enforcement's investigation, he continued to respond "no" to Question 14(D)(1)(a) (asking whether he had been found to have made a false statement or omission or to have engaged in dishonest, unfair or unethical conduct) and failed to disclose the bases for the Discipline Board's several actions against him.

Neaton also demonstrates that he does not understand his responsibilities as a securities professional. He attempts to excuse his violations by asserting that the "process of completing [his] October 1995 U4 was bifurcated," *i.e.*, he initially filled out the form in September 1995 and then executed it in October 1995. We note that either date is after the first Discipline Board action in June 1995. In any event, the responsibility for supplying accurate information on the Form U4 lay with Neaton. He had the obligation to review his responses before signing the form, particularly when he certified that he had "read and [understood] the items and instructions on [the] form and that [his] answers . . . [were] true and complete to the best of [his] knowledge."

Neaton claims that he relied on the "silence" of Harrelson and Mutual. Neaton reiterates that "Harrelson knew that [he] no longer had a law license." The Forms U4 did not ask whether he had a law license but whether that license had "ever" been suspended or revoked and whether he had been found to have been unethical or dishonest. In any event, we have found that Neaton did not make full disclosures to Harrelson in 1995, never disclosed his 2001 revocation to Harrelson, and did not disclose any of the Discipline Board's actions or sanctions to Mutual until 2007.

Neaton also takes issue with FINRA's statement that he "should not have relied upon [his] firms for direction in filling out and amending the U4." Neaton's assertion suggests that he did not, and does not, understand his obligations as a participant in the securities industry. As discussed above, Neaton, as a registered representative, and not his supervisors, had the affirmative duty to fill out his forms accurately and completely, and to amend them in a timely fashion.

⁴¹ The Sanctions Guidelines set forth "Principal Considerations in Determining Sanctions," applicable to all violations, including "[w]hether the respondent engaged in the misconduct over an extended period of time" and "[w]hether the respondent engaged in numerous acts and/or a pattern of misconduct." FINRA Sanction Guidelines at 6.

Neaton complains about what he characterizes as FINRA's "administrative arrogance."⁴² He claims that "the NAC . . . [commented] upon the merits of [the Discipline Board] cases without their full records in evidence." Neaton stipulated to the Discipline Board's findings. This proceeding was directed to Neaton's failure to disclose these actions. He is not entitled to level a collateral attack against the Discipline Board's proceedings here.

Neaton states that he had no "investment related [sic] customer complaint alleging fraud, deceptive sales practices, or mishandling of any customer funds."⁴³ He also has "never been arrested or convicted of a crime." However, we have stated that the absence of a disciplinary history is not mitigative.⁴⁴

We find that the fine and bar imposed in this case are remedial and not punitive. The information Neaton failed to disclose was material in determining whether he could fulfill the high standards of conduct demanded of associated persons. By not disclosing the information, Neaton demonstrated his inability to fulfill this high standard. In addition, the fine and bar will serve as a deterrent to others in the industry by encouraging them to be forthright in their responses to questions on their Forms U4, even where detection of dishonest responses seems

⁴² As part of this claim, Neaton renews the procedural arguments discussed in Section III *supra*.

⁴³ He states that he received a written reprimand in 1997 in connection with advertising for a seminar and a customer complaint about a sales commission.

⁴⁴ *See, e.g., Kevin Glodek*, Exchange Act Rel. No 60937 (Nov. 4, 2009), 97 SEC Docket 22027, 22038 n.24 (and cases cited therein), *aff'd*, 416 F. App'x 95 (2d Cir. 2011).

unlikely.⁴⁵ Accordingly, we sustain this sanction because it is neither excessive nor oppressive, is remedial, and will protect investors and the public interest.

An appropriate order will issue.⁴⁶

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

Elizabeth M. Murphy
Secretary

⁴⁵ See *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.")

⁴⁶ 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
Rel. No. 65598 / October 20, 2011

Admin. Proc. File No. 3-14252

In the Matter of the Application of

RICHARD A. NEATON
3071 Rivershore Lane
Port Charlotte, FL 33953

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, and the costs imposed, by FINRA against Richard A. Neaton be, and they hereby are, sustained.

By the Commission.

Elizabeth M. Murphy
Secretary