

Celia L. Passaro
Assistant General Counsel

Direct: (202) 728-8985
Fax: (202) 728-8264

February 1, 2018

VIA MESSENGER AND FACSIMILE

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

HARD COPY

RE: In the Matter of the Application for Review of Richard Allen Riemer, Jr.
Administrative Proceeding No. 3-18262

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Brief in Opposition to the Application for Review in the above-captioned matter.

Please contact me at (202) 728-8985 if you have any questions.

Very truly yours,

/s/ Celia L. Passaro

Celia L. Passaro

Enclosures

cc: Richard Riemer (via FedEx and Email)

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of
Richard Allen Riemer, Jr.
For Review of Disciplinary Action Taken by
FINRA
File No. 3-18262

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

Alan Lawhead
Vice President and
Director – Appellate Group

Andrew Love
Associate General Counsel

Celia L. Passaro
Assistant General Counsel

FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8985

February 1, 2018

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. FACTUAL BACKGROUND | 2 |
| A. Richard Riemer | 2 |
| B. Riemer’s Tax Liens | 3 |
| C. Riemer’s Bankruptcy | 4 |
| D. Riemer’s Annual Compliance Certifications and Compliance Training | 4 |
| III. PROCEDURAL HISTORY | 6 |
| IV. ARGUMENT | 7 |
| A. Riemer Violated FINRA Rules by Failing to Disclose and Timely Disclose Federal Tax Liens and a Bankruptcy and by Providing False Responses on Firm Compliance Questionnaires | 7 |
| B. Riemer’s Form U4 Violations Were Willful | 10 |
| C. Riemer’s Statutory Disqualification Is Not a Sanction | 11 |
| D. Riemer’s Procedural Arguments Are Baseless | 12 |
| 1. The Denial of Riemer’s Motion for a Continuance Was Not an Abuse of Discretion | 12 |
| 2. The Denial of Riemer’s Contested Offer of Settlement Is Not Appealable | 14 |
| E. The Sanctions Imposed By FINRA Are Consistent With the Sanction Guidelines and Are Neither Excessive Nor Oppressive | 15 |
| V. CONCLUSION | 17 |

TABLE OF AUTHORITIES

| | <u>Pages</u> |
|---|--------------|
| <u>Federal Decisions</u> | |
| <i>Northwestern Indiana Tel. Co. v. FCC</i> , 872 F.2d 465 (D.C. Cir. 1989) | 13 |
| <i>Wonsover v. SEC</i> , 205 F.3d 408 (D.C. Cir. 2000) | 11 |
| <u>SEC Decisions and Releases</u> | |
| <i>Nicholas T. Avello</i> , Exchange Act Release No. 51633, 2005 SEC LEXIS 98 (Apr. 29, 2005) | 13 |
| <i>Joseph S. Amundsen</i> , Exchange Act Release No. 69406, 2013 SEC LEXIS 1148 (Apr. 18, 2013) | 8, 10 |
| <i>Howard Bruff</i> , Exchange Act Release No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012) | 16 |
| <i>Clyde J. Bruff</i> , 53 S.E.C. 880 (1998) | 14 |
| <i>Anthony A. Grey</i> , Exchange Release No. 75839, 2015 SEC LEXIS 3630 (Sept. 3, 2015) | 12 |
| <i>Harold B. Hayes</i> , 51 S.E.C. 1294 (1994) | 12 |
| <i>Michael Earl McCune</i> , Exchange Act Release No. 77375, 2016 SEC LEXIS 1026 (Mar. 15, 2016) | 9, 11, 12 |
| <i>Blair C. Mielke</i> , Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015) | 16 |
| <i>John Edward Mullins</i> , Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012) | 9 |
| <i>Richard A. Neaton</i> , Exchange Act Release No. 65598, 2011 SEC LEXIS 3719 (Oct. 20, 2011) | 16 |
| <i>Order Approving Proposed Rule Change To Adopt FINRA Rule 1122</i> (<i>Filing of Misleading Information as to Membership or Registration</i>) <i>in the Consolidated FINRA Rulebook</i> , 74 FR 18767 (Apr. 24, 2009) | 8 |
| <i>PAZ Securities, Inc.</i> , Exchange Act Release No. 57656, 2008 SEC LEXIS 820 (Apr. 11, 2008) | 13 |

| | |
|--|---------------|
| <i>Robert J. Prager</i> , 58 S.E.C. 634 (2005) | 12 |
| <i>Jack H. Stein</i> , 56 S.E.C. 108 (2003) | 15 |
| <i>Robert D. Tucker</i> , Exchange Act Release No. 68210,..... | 8, 11, 16, 17 |
| 2012 SEC LEXIS 3496 (Nov. 9, 2012) | |

FINRA Decisions

| | |
|---|----|
| <i>Dep't of Enforcement v. U.S. Rica Fin., Inc.</i> , Complaint No. C01000003,..... | 14 |
| 2003 NASD Discip. LEXIS 24 (NASD NAC Sept. 9, 2003) | |

Federal Statutes and Codes

| | |
|--------------------------------|----|
| 15 U.S.C § 78c(a)(39)(F) | 10 |
| 15 U.S.C § 78s(e)(2) | 15 |

FINRA Rules, Interpretive Materials, and Guidelines

| | |
|---|---------|
| FINRA By-Laws Article III, Section 3 | 10 |
| FINRA By-Laws Article III, Section 4 | 10 |
| FINRA By-Laws Article V, Section 2(c) | 6, 7, 9 |
| FINRA Rule 0140 | 9 |
| FINRA Rule 1122 | 6, 8, 9 |
| FINRA Rule 2010 | 6, 9 |
| FINRA Rule 9222 | 12 |
| FINRA Rule 9268 | 15 |
| FINRA Rule 9269 | 15 |
| FINRA Rule 9270 | 14, 15 |
| FINRA Rule 9311 | 15 |

FINRA Sanction Guidelines (2017)16, 17
NASD IM-1000-16, 8, 9
NASD Rule 01159
NASD Rule 21106, 9, 10

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of
Richard Allen Riemer, Jr.
For Review of Disciplinary Action Taken by
FINRA
File No. 3-18262

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

I. INTRODUCTION

This appeal results from the applicant's fundamental misunderstanding of the nature of the sanctions imposed upon him by FINRA for his admitted misconduct, and the statutory disqualification that results from that misconduct as an operation of federal law.

The facts in this case and Richard Riemer's violations are not in dispute. Indeed, Riemer stipulated to all the relevant facts and repeatedly admitted his violations—failures to disclose and timely disclose two federal tax liens and a bankruptcy filing and his false responses concerning these same financial events on compliance questionnaires submitted to his member firm. Based on his stipulations and admissions, FINRA's National Adjudicatory Council ("NAC") found in an October 5, 2017 decision (the "NAC Decision") that Riemer violated various FINRA rules. For these violations, the NAC imposed a six-month suspension and a \$5,000 fine. Riemer does not challenge these findings of violation or the sanctions imposed.

Riemer's main challenge on appeal is to the NAC's finding that his violations were willful and to the resulting statutory disqualification. Riemer claims that if he is statutorily disqualified, his insurance-company employer will terminate him and, because of this, the statutory disqualification results in an excessive and punitive sanction. Riemer's argument is meritless and flies in the face of Commission precedent. The Commission should therefore reject it.

Riemer's statutory disqualification is not a sanction imposed by FINRA; it is a consequence of Riemer's admitted violations that results by operation of federal law. Nor can Riemer argue that his violations were not willful. Riemer repeatedly admitted that he was aware of his obligations to disclose the liens and bankruptcy and knew about these matters at or around the time they arose, but intentionally did not disclose them because he feared he would be terminated and was embarrassed by them. Riemer's admissions more than meet the applicable standard for establishing that his violations were willful. Consequently, the Commission should dismiss the application for review.

II. FACTUAL BACKGROUND

The facts in this case are undisputed and the key facts were the subject of the parties' joint stipulations. (R. at 237-241.)¹

A. Richard Riemer

Riemer has worked as an insurance agent with National Life of Vermont ("National Life") since 1998. (R. at 421.) In late 2000, Riemer associated with National Life's broker-

¹ "R. at ___" refers to the page number in the certified record. "Riemer Br. ___" refers to Riemer's December 27, 2017 brief in support of his application for review. "Stip. No. ___" refers to the Joint Proposed Stipulations dated August 23, 2016. (R. at 237-241.)

dealer affiliate, Equity Services, Inc. (“Equity Services”), and registered with FINRA as an investment company and variable contracts products representative in January 2001. (R. at 237 (Stip. Nos. 1, 3), 434.)

On March 17, 2014, Equity Services permitted Riemer to resign. (R. at 423.) Equity Services filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”), which stated that Riemer was “permitted to resign in relation to lack of timely financial disclosures.” (*Id.*) Riemer currently is not registered with any FINRA member firm, but is still employed by National Life. (R. at 237 (Stip. No. 1), 421, 423.)

B. Riemer’s Tax Liens

On or about July 2, 2002, the Internal Revenue Service (“IRS”) filed and recorded a tax lien against Riemer of \$7,752.13 (the “2002 federal tax lien”). (R. at 237 (Stip. No. 4), 805.) Riemer admitted during his testimony that he knew about the 2002 federal tax lien around the time it was filed and recorded. (R. at 340.) The 2002 federal tax lien was satisfied on or about February 9, 2006. (R. at 237 (Stip. No. 5), 805.) Riemer never disclosed the 2002 federal tax lien on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”). (R. at 238 (Stip. No. 6), 425-426.)

On or about March 7, 2005, a second federal tax lien of \$25,837 was filed and recorded against Riemer (the “2005 federal tax lien”). (R. at 238 (Stip. No. 7), 804.) Riemer admitted that he knew about the 2005 federal tax lien around the time the lien was filed and recorded. (R. at 341.) Riemer did not disclose the 2005 federal tax lien on his Form U4 until June 11, 2013, after FINRA had discovered the lien and inquired about it. (R. at 238 (Stip. No. 8), 425.)

C. Riemer's Bankruptcy

On August 4, 2008, Riemer voluntarily filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey (the "2008 bankruptcy"). (R. at 238 (Stip. Nos. 10-11), 815-850.) Riemer did not disclose the 2008 bankruptcy at the time he filed it. Riemer acknowledged that he did not disclose the bankruptcy because he feared being fired. (R. at 240.) Riemer disclosed the 2008 bankruptcy on his Form U4 on June 11, 2013, after FINRA had discovered the filing and inquired about it.² (R. at 238 (Stip. No. 12), 425.)

D. Riemer's Annual Compliance Certifications and Compliance Training

For the years 2005 through 2008, Riemer completed and submitted to Equity Services a firm document entitled, "Annual Representative Certification Form" ("annual certification").³ (R. at 238-239 (Stip. Nos. 13-16).) On each of these annual certifications, Riemer stated that he had no unsatisfied judgments or liens against him. (R. at 238-239 (Stip. Nos. 13-16), 706-714.) On the November 25, 2008 annual certification, Riemer falsely stated that he had not filed for bankruptcy in the year since the previous annual certification even though he had in fact filed for bankruptcy on August 4, 2008, less than four months earlier. (R. at 239 (Stip. No. 16), 707.)

Riemer attended annual compliance trainings provided by Equity Services for the years 2005 through 2006 and 2008 through 2013. (R. at 239 (Stip. No. 20), 1148, 1172, 1183, 1197, 1201, 1258, 1260, 1263-1264, 1267, 1272, 1277, 1278.) These trainings included written

² Riemer also filed a previous petition for bankruptcy in 1998, prior to registering with FINRA. (R. at 237.) Riemer disclosed this bankruptcy filing on his first Form U4. (R. at 237, 426, 433, 440, 445.)

³ Riemer completed annual certifications on November 28, 2005, November 10, 2006, November 1, 2007, and November 25, 2008. (R. at 238-239 (Stip. Nos. 13-16), 706-714.)

materials provided to representatives reminding them of their obligation to report any bankruptcies or liens to Equity Services and to update their Forms U4. (R. at 240 (Stip. No. 22), 749-765.)e

In addition to providing annual training that included information on timely disclosing liens and bankruptcies, Equity Services' written supervisory procedures ("WSPs") instructed registered representatives like Riemer to timely update their Forms U4, including "promptly" to disclose bankruptcies. (R. at 239-240 (Stip. No. 21), 1036-1038, 1048-1051, 1063-1065, 1080-1083, 1098-1101, 1119-1125.)

Equity Services also provided registered representatives like Riemer with a number of other reminders of their reporting obligations. For example, on May 9, 2005, Equity Services' chief compliance officer distributed a document to all representatives entitled, "Important Notice," which reminded representatives of their responsibility to update their Forms U4 with any bankruptcy filings or liens. (R. at 240 (Stip. No. 23), 729-730.) On January 16, 2008, Equity Services' Licensing Department issued a notice to registered representatives entitled, "Late Disclosure Filings." (R. at 240 (Stip. No. 24).) The notice reminded registered representatives that bankruptcies, judgments, and liens "must be reported to FINRA via the Form U4 within 30 days of the event." (*Id.*) Finally, on December 4, 2012, Equity Services' Compliance Department issued a notice entitled, "Changes to FINRA Fees and Review of Reporting Obligations," which reminded registered representatives of their obligation to "immediately report" a bankruptcy filing or unsatisfied lien to the firm. (R. at 240 (Stip. No. 25).)

III. PROCEDURAL HISTORY

In December 2013, FINRA initiated an investigation into Riemer's failures to make required disclosures on his Form U4. (R. at 567-71.) The parties stipulated that, during a January 9, 2014 telephone call, Riemer told FINRA staff that he had not reported the 2005 federal tax lien and the 2008 bankruptcy because "he feared losing his job and he was embarrassed." (R. at 240 (Stip. No. 26).)

On March 24, 2016, FINRA's Department of Enforcement ("Enforcement") filed a two-cause complaint against Riemer. (R. at 6-13.) The first cause of action alleged that Riemer violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010 by willfully failing to timely amend his Form U4 to disclose the 2002 and 2005 federal tax liens and the 2008 bankruptcy. (R. at 8-10.) The second cause of action alleged that Riemer violated NASD Rule 2110 by submitting false responses on four Equity Services compliance questionnaires, which falsely certified that he had no unsatisfied liens against him and had not filed for bankruptcy. (R. at 10-11.)

A one-day hearing was held on September 27, 2016, at which Riemer and his former Equity Services supervisor testified. (R. at 315-418.) On November 4, 2016, the Hearing Panel issued a decision finding that Riemer violated FINRA rules as alleged. (R. at 1293-1305.) The Hearing Panel suspended Riemer in all capacities for six months and imposed a \$5,000 fine for his violations. (R. at 1293, 1301-1305.) The Hearing Panel also found that Riemer's violations were willful and the information he failed to disclose was material and, as a result, he was subject to statutory disqualification. (R. at 1299-1301.)

Riemer appealed the Hearing Panel's decision to the NAC. (R. at 1307-1309.) On appeal, Riemer again admitted his violations, but argued that the finding of willfulness and the

resulting statutory disqualification resulted in an excessive and punitive sanction. (R. at 1307-1309, 1377-1408.) Riemer also appealed the Hearing Officer's denial of his motion for a continuance of the hearing and his denial of Riemer's contested offer of settlement. (*Id.*)

The NAC conducted a de novo review, affirmed the Hearing Panel's findings of violations and the sanctions it imposed, and rejected Riemer's procedural arguments.⁴ (R. at 1421-1431.) The NAC affirmed the finding that Riemer's violations were willful and rejected Riemer's argument that the resulting statutory disqualification constituted a sanction. (R. at 1426-1427, 1430-1431.) This appeal followed.

IV. ARGUMENT

Riemer concedes his liability for violating FINRA rules as found by the NAC. Instead, on appeal Riemer: (1) challenges the NAC's finding that his violations were willful because, he claims, the resulting statutory disqualification constitutes an excessive and punitive sanction; (2) argues that the Hearing Panel wrongly rejected his offer of settlement; and (3) claims that the Hearing Officer abused his discretion by denying his motion for a continuance. All of Riemer's arguments are baseless and the Commission should dismiss the application for review.

A. Riemer Violated FINRA Rules by Failing to Disclose and Timely Disclose Federal Tax Liens and a Bankruptcy and by Providing False Responses on Firm Compliance Questionnaires

Article V, Section 2(c) of FINRA's By-Laws provides that a registered representative's application for registration "shall be kept current at all times by supplementary amendments," which must be filed "not later than 30 days after learning of the facts or circumstances giving

⁴ During oral argument before a subcommittee of the NAC, Riemer withdrew his appeal of the denial of his motion for a continuance. (R. at 1407.) The NAC nonetheless reviewed the Hearing Officer's denial of Riemer's motion to continue the hearing. (R. at 1427-1428.)

rise to the amendment.” FINRA Rule 1122 prohibits the filing with FINRA of “information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead.”⁵

The “Form U4 is a critically important regulatory tool,” and “[t]he duty to provide accurate information and to amend the Form U4 to provide current information assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing.”⁶ *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *24-26 (Apr. 18, 2013), *aff’d*, 575 F. App’x 1 (D.C. Cir. 2014). Information disclosed on the Form U4 is used by FINRA, other self-regulatory organizations, and state regulators to determine the fitness of individuals seeking to join and remain in the securities industry. *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012). It is also used by the public in deciding whether to entrust their money to a registered representative. *Id.* A violation of any FINRA Rule, including the rules concerning Form U4 disclosures, violates

⁵ Riemer’s failures to disclose his tax liens and bankruptcy occurred over the period from June 2002 through June 2013 and, accordingly, both FINRA Rule 1122 and NASD IM-1000-1 are applicable. FINRA Rule 1122 replaced former NASD IM-1000-1 effective August 17, 2009. *See Order Approving Proposed Rule Change To Adopt FINRA Rule 1122 (Filing of Misleading Information as to Membership or Registration) in the Consolidated FINRA Rulebook*, 74 FR 18767 (Apr. 24, 2009). IM-1000-1 provided that filing of information by a registered representative which is “incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead . . . may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.”

⁶ Question 14M of the Form U4 requires registered representatives to disclose any unsatisfied judgments or liens against them. (R. at 456.) Question 14K asks registered representatives whether they filed a bankruptcy petition in the past ten years. (*Id.*)

NASD Rule 2110 and FINRA Rule 2010, which require associated persons to observe high standards of commercial honor and just and equitable principles of trade.⁷ *See Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

Riemer stipulated to all the facts establishing his violation of these rules. *See supra* Part II. Riemer's failure to disclose the 2002 federal tax lien and failures to timely disclose within 30 days the 2005 federal tax lien and 2008 bankruptcy violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010.

Riemer also stipulated to the facts establishing his violation of NASD Rule 2110 by providing false responses on Equity Services' annual compliance questionnaires. *See supra* Part II.D. NASD Rule 2110 required all persons associated with member firms to observe high standards of commercial honor and just and equitable principles of trade. This standard includes the obligation to truthfully disclose material information to an associated person's firm. *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012) (stating that "it is a basic duty of all securities professionals to respond truthfully and accurately to their firm's requests for information, and that the failure to do so can be inconsistent with just and equitable principles of trade, especially when the purpose of the information request is to help ensure that the associated person is in compliance with applicable laws, rules, and policies").

⁷ NASD Rule 2110 applied until December 15, 2008, when FINRA Rule 2010, which is identical, became effective. NASD Rule 0115 provided and FINRA Rule 0140 provides that all FINRA and NASD rules apply to FINRA members and all persons associated with members.

By submitting false responses to his firm on four annual compliance questionnaires, Riemer violated NASD Rule 2110.

B. Riemer's Form U4 Violations Were Willful

Riemer's primary challenge on appeal is to the NAC's finding that his violations were willful and that the resulting statutory disqualification is punitive. Riemer, however, has repeatedly conceded that he intentionally failed to disclose his liens and bankruptcy, an admission that exceeds the standard for establishing a willful violation. Moreover, the law is clear that a statutory disqualification is not a sanction. A statutory disqualification is a consequence of Riemer's willful violations that results from operation of federal law.

Under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (the "Exchange Act"), a person is subject to statutory disqualification if, among other things, he "has willfully made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state . . . any material fact which is required to be stated therein." 15 U.S.C. § 78c(a)(39)(F). FINRA's By-Laws define a person's "disqualification" as meeting any definition in Section 3(a)(39). *See* FINRA By-Laws, Art. III, Sec. 4. FINRA's By-Laws further provide that a person subject to a statutory disqualification cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for, and is granted by FINRA, relief from the statutory disqualification. *See* FINRA By-Laws, Art. III, Sec. 3; *see also Amundsen*, 2013 SEC LEXIS 1148, at *35.

It is firmly established that a willful violation of the securities laws means "the person charged with the duty knows what he is doing" and does not require that he also "be aware that

he is violating one of the Rules or Acts.” *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (internal quotation marks and citation omitted). “A failure to disclose is willful . . . if the respondent of his own volition provides false answers on his Form U4.” *See Tucker*, 2012 SEC LEXIS 3496, at *41; *see also McCune*, 2016 SEC LEXIS 1026 (finding that respondent acted willfully where he knew about a bankruptcy and liens but failed to amend his Form U4 to disclose them).

The undisputed facts here are that Riemer knew about and did not disclose his bankruptcy and federal tax liens. Indeed, he has repeatedly admitted that he intentionally did not disclose the liens and bankruptcy because he feared disclosing these events would result in his termination and because he was embarrassed. (R. at 240 (Stip. No. 26), 333.) During his testimony at the hearing, Riemer also admitted he knew he was obligated to disclose the liens and bankruptcy (R. at 337-338, 340-342.) Riemer stated unequivocally that he “knew [he] had an obligation to report this stuff.” (R. at 343.) Given Riemer’s admissions, there is no question his violations were willful and the NAC’s finding was correct.⁸

C. Riemer’s Statutory Disqualification is Not a Sanction

Riemer’s primary argument on appeal is contrary to federal law and Commission precedent. The statutory disqualification is not a sanction or punishment imposed by FINRA, but a consequence of Riemer’s willful violations that results under federal law. *See supra* Part IV.B; *see also McCune*, 2016 SEC LEXIS 1026, at *37 (stating that “FINRA does not subject a

⁸ Riemer does not argue that the information about his liens and bankruptcy are not material. Nor could he. It is well established that information about bankruptcies and liens is material. *See McCune*, 2016 SEC LEXIS 1026, at *21-22 (finding that the tax liens and bankruptcy that respondent failed to disclose were material).

person to statutory disqualification as a penalty or remedial sanction”); *Anthony A. Grey*, Exchange Release No. 75839, 2015 SEC LEXIS 3630, at * 47 n.60 (Sept. 3, 2015) (explaining that a “statutory disqualification is not a FINRA-imposed penalty or remedial sanction”). The imposition of the statutory disqualification is “automatic” where a respondent has willfully failed to disclose material information of a Form U4. See *McCune*, 2016 SEC LEXIS 1026, at *37. Moreover, there is nothing in the record to support Riemer’s claim that the statutory disqualification will result in his termination or that the statutory disqualification process is impractical for him. But even assuming this were true, the statutory disqualification is a still a collateral consequence of Riemer’s willful misconduct that arises by operation of the Exchange Act.

D. Riemer’s Procedural Arguments Are Baseless

Riemer argues that the Hearing Officer wrongly denied his motion for a continuance, forcing him to proceed without an attorney, and wrongly rejected Riemer’s contested offer of settlement. Neither of these arguments has any merit.

1.e The Denial of Riemer’s Motion for a Continuance Was Note an Abuse of Discretion

Riemer has failed to demonstrate that the Hearing Officer abused his discretion in denying the request for a continuance.⁹ It is well established that a hearing officer has “broad discretion as to whether or not a continuance should be granted.” *Harold. B. Hayes*, 51 S.E.C.

⁹ Under FINRA Rule 9222(b), a hearing officer may postpone a hearing “for good cause shown.” The rule directs the hearing officer to consider: (1) the length of the proceeding; (2) the number of previous postponements; (3) the stage of the proceedings at the time of the request; (4) potential harm to the investing public from the postponement; and (5) “such other matters as justice may require.”e

1294, 1303 (1994); *see also Robert J. Prager*, 58 S.E.C. 634, 664 (2005) (explaining that in “NASD proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance”). The record shows that the Hearing Officer issued an order on May 4, 2016, which, among other things, scheduled the hearing for September 27-28, 2016. (R. at 79-85.) On September 1, 2016, Riemer filed a motion for a continuance claiming that he did not have the funds to pay his attorney to attend the hearing—a claim he subsequently acknowledged was not true during oral argument before the NAC. (R. at 255-257, 1403-1404, 1407.) He claimed, without providing any support, that he would have the funds in two months and asked that the hearing be postponed. (R. at 255-257.) The Hearing Officer denied Riemer’s motion, explaining that he had known about the hearing dates for four months and had not shown “good cause” for the postponement.¹⁰ (R. at 267-269.) Under these circumstances, Riemer has failed

¹⁰ Riemer has also waived his right to appeal the denial of his motion for a continuance. During oral argument on appeal before a subcommittee of the NAC, Riemer withdrew his appeal with respect to the Hearing Officer’s denial of his motion for a continuance. Riemer stated that he “never really had a problem” with the denial of his motion for a continuance. (R. at 1407.) When asked directly by a subcommittee member whether he thought the hearing officer abused his discretion in denying the motion, Riemer replied “no.” (*Id.*) Moreover, Riemer conceded that his reason for requesting the continuance—that he did not have the money to pay an attorney—was not true. (*Id.*) He stated, “I did have the money,” but explained that he appeared without an attorney because his attorney believed his presence was unnecessary given the stipulated facts in the case. (R. at 1403-04, 1407.) Having abandoned the issue of the continuance on appeal before the NAC, Riemer cannot now raise it before the Commission. *See, e.g., PAZ Securities, Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *25-26 (Apr. 11, 2008), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009) (noting that where an issue is not raised in a first appeal, it is inappropriate to consider it in a second appeal) *citing Northwestern Indiana Tel. Co. v. FCC*, 872 F.2d 465 (D.C. Cir. 1989); *Nicholas T. Avello*, Exchange Act Release No. 51633, 2005 SEC LEXIS 98, at *8 (Apr. 29, 2005), *aff’d*, 454 F.3d 619 (7th Cir. 2006) (finding that applicant waived four arguments on appeal before the Commission where he did not raise them in his initial appeal).

to demonstrate that the Hearing Officer abused his discretion and the Commission should reject this claim.

2. The Denial of Riemer's Contested Offer of Settlement Is Not Appealable

Riemer also appeals the Hearing Panel's rejection of the contested offer of settlement that he made prior to the hearing. (R. at 153-154.) But Riemer's ability to present a proposed settlement to the Hearing Panel does not create an appealable issue.

Riemer proposed that he agree not to seek registration with FINRA. (R. at 121-133.) Enforcement did not agree to Riemer's proposal and the Hearing Panel rejected Riemer's contested offer, finding that a hearing was necessary to determine the issue of willfulness. (R. at 153-154.) He now argues that the settlement offer he made—an agreement to never seek registration with FINRA again—provided even greater investor protection than the statutory disqualification and that FINRA should have accepted his offer. FINRA, however, is not required to accept any settlement offer. *See, e.g., Clyde J. Bruff*, 53 S.E.C. 880, 886 (1998), *aff'd*, 1999 U.S. App. LEXIS 27405 (9th Cir. 1999) (explaining that the "NASD is not obligated to accept an offer"); *Dep't of Enforcement v. U.S. Rica Fin., Inc.*, Complaint No. C01000003, 2003 NASD Discip. LEXIS 24, at *31 (NASD NAC Sept. 9, 2003) (same). Nor was Riemer's offer necessarily enforceable or as proportionate as a six-month suspension and a fine.

Additionally, FINRA's rules do not permit a party to appeal a rejected contested offer of settlement. FINRA Rule 9270(f) provides that when a respondent makes an offer of settlement that is rejected by Enforcement, the respondent may submit a written offer of settlement to the Hearing Panel. Under FINRA Rule 9270(h), if the Hearing Panel rejects a contested offer of settlement, "the [r]espondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn" and the "rejected offer and proposed

order of acceptance shall not constitute a part of the record in any proceeding against the [r]espondent making the offer.” There is no provision for appeal of a rejected offer of settlement.¹¹ That rejected contested offers of settlement are not appealable is consistent with the principle that FINRA is under no obligation to accept an offer of settlement and the directive that rejected offers of settlement shall not be included in the record of the proceeding.

The Commission should find no merit in Riemer’s challenge to the rejection of his offer of settlement.

E. The Sanctions Imposed By FINRA Are Consistent With the Sanction Guidelines and Are Neither Excessive Nor Oppressive

Riemer does not challenge the sanctions of a six-month suspension and \$5,000 fine that the NAC imposed for his violations. We nevertheless address these sanctions briefly here.

Exchange Act Section 19(e)(2) directs the Commission to sustain the sanctions imposed by FINRA unless it finds, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.¹² See 15 U.S.C. § 78s(e)(2); *Jack H. Stein*, 56 S.E.C. 108, 121 (2003). The Commission considers the principles articulated in FINRA’s Sanction Guidelines (the “Guidelines”) persuasive and uses them as a benchmark in conducting its review

¹¹ Under FINRA Rule 9311, decisions issued pursuant to FINRA Rules 9268 and 9269 are appealable to the NAC. Rule 9268 requires the issuance of final written decisions of hearing panels in disciplinary proceedings. Rule 9269 provides for final decisions in disciplinary decisions where the respondent has defaulted. With respect to offers of settlement, FINRA Rule 9270 provides that the NAC shall review both uncontested and contested offers of settlement that are *accepted*, but contains no similar review for offers of settlement that are *rejected*.

¹² Riemer does not claim, nor does the record show, that FINRA’s action imposed an unnecessary or inappropriate burden on competition.

under Exchange Act Section 19(e)(2).¹³ See *Tucker*, 2012 SEC LEXIS 3496, at *62 (explaining that the Guidelines serve as a benchmark); *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *39 (Oct. 20, 2011) (same).

The NAC properly applied the Guidelines, including the Principal Considerations in Determining Sanctions (“Principal Considerations”), and the sanctions imposed are neither excessive nor oppressive. The Guidelines for filing false, misleading, or inaccurate Form U4 amendments, or for failing to file a required amendment, recommend a fine of \$2,500 to \$37,000. *Guidelines*, at 71. In a case where aggravating factors predominate, the Guidelines also recommend a suspension of 10 business days to six months. *Id.* The Principal Considerations specifically 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 was in an intentional effort to conceal information; and (4) the duration of the delinquency. *Id.*

While there is no Guideline specifically for false statements to an employer, the Commission has sustained sanctions where FINRA applied the Guidelines for falsification of records in cases of false statements on firm compliance documents. See, e.g. *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *65 (Sept. 24, 2015); *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at *31 (Feb. 24, 2012) (explaining that Guidelines “encourage adjudicators to look at analogous guidelines to determine sanctions for violations that are not addressed specifically”). For falsification of records, the

¹³ See *FINRA Sanction Guidelines* (2017), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

Guidelines recommend a fine of \$5,000 to \$146,000 and a suspension in any and all capacities of up to two years. *Guidelines* at 37.

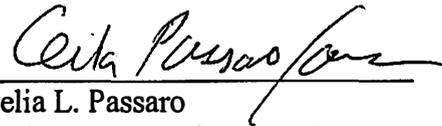
Under the circumstances, a six-month suspension and \$5,000 fine are within the Guidelines' recommended ranges. Riemer failed to disclose on his Form U4 two tax liens and a bankruptcy filing. (R. 237-238.) As discussed above, the information at issue was important to regulators, Riemer's member firm, and customers in assessing Riemer's fitness as a securities professional. *See Tucker*, 2012 SEC LEXIS 3496, at *26. Riemer acknowledged that he did not disclose the bankruptcy and liens to his firm because he believed he would be terminated and was embarrassed; accordingly, his misconduct was intentional and he attempted to conceal his misconduct from his firm. (R. 240, 333, 337-338, 340-343.) Riemer's failures to disclose the liens and bankruptcy continued for an extended period, ranging from almost five to more than eight years and he did not disclose either the 2005 federal tax lien or the 2008 bankruptcy until it was discovered by FINRA. *Guidelines* at 7 (Principal Considerations, Nos. 4, 9.) The sanctions imposed by the NAC for Riemer's serious, intentional misconduct are supported by the record and appropriately remedial. The Commission should affirm them.

V. CONCLUSION

The Commission should affirm the NAC's decision. Riemer has unequivocally acknowledged his violations, admitted that they were intentional, and does not challenge the actual sanctions imposed by FINRA. Riemer's appeal is based on his fundamental misunderstanding of the nature of the statutory disqualification that results from his admitted misconduct. Riemer's repeated admissions demonstrate that his violations were willful.

Accordingly, he is statutorily disqualified. The Commission should dismiss the application for review.

Respectfully submitted,



Celia L. Passaro
Assistant General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8985

February 1, 2018

CERTIFICATE OF COMPLIANCE

I, Celia L. Passaro, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 6,011 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

Respectfully submitted,



Celia L. Passaro
Assistant General Counsel
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8985 – Telephone
202-728-8264 – Facsimile

CERTIFICATE OF SERVICE

I, Celia L. Passaro, certify that on this 1st day of February 2018, I caused a copy of the foregoing FINRA's Brief in Opposition to the Application for Review, In the Matter of Richard Allen Riemer, Jr., Administrative Proceeding File No. 3-18262 to be served by messenger and facsimile on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

and via FedEx on:

Richard Riemer

████████████████████
Clifton, NJ ██████████
████████████████████

Service was made on the Commission by messenger and on the Applicant by overnight delivery service due to the distance between FINRA's offices and the Applicant.



Celia L. Passaro
Assistant General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8985