

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 86523 / July 31, 2019

Admin. Proc. File No. 3-18546

In the Matter of the Application of

ALLEN HOLEMAN

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY
PROCEEDINGS

Registered principal of FINRA member firm appeals from FINRA disciplinary action finding that he did not timely update his Form U4 to disclose tax liens, that he provided false information in his firm's Annual Compliance Certification, and that he is subject to a statutory disqualification because he acted willfully and because the information that he failed to disclose was material. *Held*, FINRA's findings of violations, finding of a statutory disqualification, and imposition of sanctions are sustained.

APPEARANCES:

Allen B. Holeman, pro se.

Alan Lawhead, Gary Dernelle, and Colleen E. Durbin for FINRA.

Appeal filed: June 18, 2018

Last brief received: October 1, 2018

Allen B. Holeman, a registered principal of David Lerner Associates, Inc., a FINRA member firm, seeks review of FINRA disciplinary action finding that he violated FINRA By-Laws and NASD and FINRA rules by failing to timely update his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to report three federal tax liens, and by failing to disclose the liens in a David Lerner Annual Compliance Certification. FINRA also found that Holeman was subject to a statutory disqualification as a result of his violations because it found he acted willfully and that the information that he failed to disclose was material. For his violations, FINRA suspended Holeman for four months, fined him \$20,000,

and assessed \$4,212.08 in costs. We sustain FINRA's findings of violations, finding that Holeman is subject to a statutory disqualification, and imposition of sanctions.¹

FINRA began its investigation in this case in 2014. At that time, Holeman acknowledged that he was aware that liens had been imposed in 2009 and 2011 but stated that he thought that he did not have to disclose them on his Form U4. Holeman explained that Form U4 required disclosure of any liens against him, and he believed the federal tax liens did not have to be disclosed because they were against his property. Holeman provided this explanation in response to FINRA's requests for information during its investigation, as part of his on-the-record testimony during its investigation, and in response to FINRA's preliminary determination to recommend disciplinary action against him. But at the hearing in this case in 2017, Holeman testified that he was not aware that the liens had been filed until 2015 and that this was the reason that he did not disclose the liens on his Form U4.

The hearing panel found Holeman's testimony not to be credible. We defer to that credibility determination. Because the evidence supports FINRA's determination that Holeman knew about the liens at the time they were filed, and must have known of the risk that failing to disclose the liens would be misleading, we sustain FINRA's disciplinary action.

I. Background

Holeman entered the securities industry in 1966 and first became registered in 1980. Holeman worked in compliance roles at various FINRA member firms until 2003, when he joined Oppenheimer & Co., Inc., as its chief compliance officer, a position he held until April 2013. Since November 2013, he has been the chief compliance officer at David Lerner.²

¹ Holeman has requested oral argument. Commission Rule of Practice 451(a) provides that the Commission will consider an application for review of FINRA disciplinary action "without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument." 17 C.F.R. § 201.451(a). We deny Holeman's request for oral argument because the issues raised in his application for review can be determined on the basis of the record and the papers filed by the parties without oral argument.

² Holeman's role as a chief compliance officer does not affect our analysis in this case. Although we have recognized that "there are circumstances where the role presents difficult challenges," we have also recognized that when a chief compliance officer himself "engages in wrongdoing . . . we would expect liability to attach." *Thaddeus J. North*, Exchange Act Release No. 84500, 2018 WL 5433114, at *9 (Oct. 29, 2018). That is the case here.

A. The IRS recorded three tax liens against Holeman and his wife between 2009 and 2011.

On April 23, 2009, the Internal Revenue Service recorded a \$39,247.89 tax lien against Holeman and his wife (“April 2009 federal tax lien”), resulting from unpaid federal taxes in 2006 and 2007. On October 6, 2009, the IRS recorded a \$58,853.40 tax lien against Holeman and his wife (“October 2009 federal tax lien”), resulting from unpaid federal taxes in 2008. On October 29, 2009, Holeman and his wife entered into an agreement with the IRS to pay off their tax arrears for 2006, 2007, and 2008 in installments (the “2009 Installment Agreement”). The 2009 Installment Agreement stated that, in the event that the Holemans’ “ability to pay changes,” the IRS “may file a federal tax lien to protect the interest of the federal government.” On May 23, 2011, the IRS recorded an \$18,444.42 tax lien against Holeman and his wife (“May 2011 federal tax lien”).

The April 2009 federal tax lien was satisfied on or about April 10, 2013. The October 2009 federal tax lien was satisfied in November 2016. The May 2011 federal tax lien remained in effect as of the underlying litigation, and the record does not indicate that it has been satisfied.

B. Holeman failed to timely disclose the three tax liens on his Form U4 and did not disclose them on David Lerner’s Annual Compliance Certification.

Question 14M on Form U4 asks: “Do you have any unsatisfied judgments or liens against you?” Between August 25, 2010, and August 8, 2012, Oppenheimer filed six amendments to Holeman’s Form U4.³ Holeman answered “no” to Question 14M on each of these amendments. Throughout the time these Form U4 amendments were filed, the April 2009 and October 2009 liens were unsatisfied. Likewise, from May 23, 2011 through the August 8, 2012 amendment (and at least until the hearing in this matter), the May 2011 lien remained unsatisfied. When Holeman joined David Lerner on November 7, 2013, the firm filed a Form U4 in which Holeman did not disclose the pending federal tax liens against him. David Lerner subsequently filed two amendments to Holeman’s Form U4 on September 15, 2014 and December 18, 2014 in which Holeman also did not disclose the liens. At the time of the filing of the David Lerner Form U4 and two subsequent amendments, the October 2009 and May 2011 liens remained unsatisfied.

On December 12, 2014, Holeman completed and submitted to David Lerner an Annual Compliance Certification, in which he stated he had no unsatisfied liens against him. At the time Holeman submitted this certification, the October 2009 and May 2011 liens were unsatisfied.

³ See generally FINRA Rule 1010(c) (providing that generally Form U4 filings made electronically “shall be based on a manually signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed”).

C. FINRA investigated Holeman’s failure to disclose the three tax liens.

In October 2014, FINRA began an investigation and contacted Holeman by telephone to ask about the outstanding liens. On November 5, 2014, FINRA sent Holeman a letter pursuant to FINRA Rule 8210 requesting that he provide a written statement addressing “each judgment and/or lien associated with you” as reflected on “the attached spreadsheet.” FINRA asked Holeman to address the liens, whether they remained outstanding and why he had not disclosed them on his Form U4. On November 13, 2014, Holeman responded that the April 2009 tax lien, October 2009 tax lien, and May 2011 tax lien were “items that were filed against my home.” He added that he was “advised by an IRS agent that the liens were against physical property not against me personally.” In response to the question why he did not disclose the liens on his Form U4, he stated that he “understood these were not against me but against physical property.”

FINRA sent a second Rule 8210 request on November 25, 2014. FINRA asked about both the IRS liens and other (non-IRS) liens and judgments. On December 17, 2014, Holeman responded: “I am not aware of nor recognize these items except for the IRS.” With respect to the IRS liens, FINRA asked: “Approximately when and how were you notified by the IRS agent?” Holeman answered: “I do not recall the date but it was several years ago.” He also stated that he was justified in not disclosing the liens because “[t]he language in Form U4 does not include non-judicial and non-personal liens.” Holeman stated further that he had no documentation related to the liens because he lost those records in Hurricane Sandy.

Holeman gave on-the-record (“OTR”) testimony as part of FINRA’s investigation on March 4, 2015. He testified that an IRS agent had explained to him on the telephone in 2008 or 2009 “that the tax filings they were doing were against [his] property specifically.” Holeman stated further that the IRS agent “advised [him] that these things were going to be filed as against the property. Specifically saying not against [him].”

On June 23, 2015, FINRA notified Holeman of its preliminary determination to recommend disciplinary action against him. Stephen Wexler, Holeman’s attorney at the time, responded by letter on July 17, 2015, in an attempt to explain why “an action should not be brought against Allen Holeman” (the “Wexler Letter”). Wexler stated that “when making arrangements with the IRS” Holeman “was under an understanding that any liens imposed by the IRS were not against him personally and consequently did not believe that question 14M in his Form U4 required a ‘yes’ response.” According to Wexler, because question 14M asks “Do you have any unsatisfied judgments or liens against you?” and “liens are only against property,” Holeman “did not respond ‘yes’ believing that his response was accurate at the time.” Wexler further stated that an IRS agent told Holeman “there would be liens placed on his property in favor of the IRS.” Wexler concluded that any violation committed by not disclosing the liens was “innocent (not willful)” because Holeman had “no intent to deceive.”

D. Holeman amended his Form U4 to disclose the three tax liens in 2015.

On April 8, 2015, approximately one month after his OTR testimony and six months after FINRA first contacted him about the liens, Holeman amended his Form U4 to disclose the October 2009 federal tax lien and May 2011 federal tax lien, but not the April 2009 federal tax lien. In this April 2015 U4 amendment, Holeman reported that he first learned of the liens on October 20, 2014—which was around when FINRA began its investigation. In response to the form’s request for an explanation if Holeman could not provide an exact date he learned of the liens, Holeman stated: “The liens are not against ‘you’ as asked in 14M. The IRS liens are in favor of the United States on all property and rights to property belonging to taxpayer.”

On August 4, 2015, Holeman amended his Form U4 to include for the first time the then-satisfied April 2009 federal tax lien. On that amendment, Holeman answered “4/23/2009” as the date he learned of the April 2009 federal tax lien. On June 30, 2016, Holeman again amended his Form U4 and deleted the entire entry he had added regarding the April 2009 federal tax lien.

Holeman executed his most recent Form U4 amendment on September 27, 2016, after FINRA filed its complaint but before the hearing, in which he changed the date that he became aware of the October 2009 and May 2011 federal tax liens (both of which were still unsatisfied) from October 20, 2014, to February 20, 2015. Although this new date was over four months after FINRA first contacted Holeman about the liens, Holeman testified at the hearing that he did not see the liens until February 20, 2015.

E. FINRA found that Holeman violated FINRA By-Laws and NASD and FINRA rules.

On June 13, 2016, FINRA’s Department of Enforcement filed a two-cause complaint against Holeman. The first cause alleged that Holeman failed to timely amend his Form U4 to disclose three federal tax liens, in violation of Article V, Section 2(c) of FINRA’s By-Laws, NASD IM-1000-1, and FINRA Rules 1122 and 2010; that his failures to timely amend his Form U4 were willful; and that the liens he omitted to disclose were material. The second cause alleged that Holeman violated FINRA Rule 2010 by falsely stating to David Lerner in his Annual Compliance Certification that he had no unsatisfied liens against him.

On January 19, 2017, a Hearing Panel held a hearing at which Holeman and FINRA’s principal investigator in the case testified. Holeman testified that he “was not aware that [the liens] were filed” until he saw them in person in February 2015. When asked about his Rule 8210 written response in November 2014 in which he stated in response to FINRA’s request that he address the liens that “IRS Tax Lien 4/2009, 10/2009, and 5/2011 are items that were filed against my home,” Holeman said “I did say that, yes, but I don’t believe that that’s what I meant.” Holeman claimed that he was “responding that I understood that these liens may have been filed, but I didn’t have any evidence that they were filed at this point.” He also testified that his 2008 or 2009 telephone conversation with the IRS agent pertained only to the 2009 Installment Agreement and that his understanding was that, “if [he] default[ed], they may file a

lien against you,” but that he believed no lien had been filed until he learned otherwise in February 2015. Holeman explained that he did not update his Form U4 until April 2015 because he “didn’t have any evidence” that liens had been filed until he saw them on February 20, 2015. Holeman admitted that he completed the David Lerner Annual Compliance Certification in December 2014 and failed to disclose the liens even after FINRA asked about them. When asked why he did so despite knowing about FINRA’s investigation, Holeman stated that he “answered the question as far as [his] knowledge at the time.”

Because Holeman claimed in his Rule 8210 written responses that records pertinent to his tax liens had been lost in Hurricane Sandy, on July 18, 2016, FINRA asked Holeman to sign a consent granting the IRS permission to provide FINRA “documentation of certified mailings to you.” Holeman refused and testified that “on the advice of counsel . . . such permission to [FINRA] was not considered required.” Holeman now claims that he made his own separate request to the IRS and received unspecified “information.” According to Holeman, he turned over that information to Wexler. But Holeman did not testify about the contents of the information he claimed to have received or introduce that into evidence at the hearing.

FINRA’s principal investigator testified that the IRS was “required to notify taxpayers within five business days after a lien is filed” and that publicly available audit results, using a statistically significant sample size, showed that the IRS had “between 98 and 100 percent compliance” with this notice requirement during the relevant period. The audit results for 2009, 2010, and 2011 were introduced into evidence by FINRA, and Holeman did not contest their authenticity. The principal investigator explained that FINRA was unable to provide “direct evidence” that Holeman specifically received written notice of his liens because, when FINRA “sent a letter to Mr. Holeman requesting that he give [FINRA] a release of tax documents so that we could confirm that he had been notified, . . . FINRA did not receive any response.”

On May 3, 2017, the Hearing Panel issued a decision finding that Holeman had engaged in the alleged violations. The Hearing Panel also found that Holeman was subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 because his Form U4 violations were willful and the omitted information was material.⁴ In reaching its conclusions, the Hearing Panel found that Holeman’s testimony regarding when he learned about the liens was not credible. The Hearing Panel suspended Holeman for thirty days, fined him \$10,000, and assessed hearing costs of \$2,566.19.

Holeman appealed the Hearing Panel’s decision to FINRA’s National Adjudicatory Council (“NAC”). On May 21, 2018, the NAC affirmed the Hearing Panel’s findings of violations and assessment of costs, and assessed an additional \$1,645.89 in appeal costs. The

⁴ 15 U.S.C. § 78c(a)(39)(F).

NAC also affirmed the finding that Holeman was subject to a statutory disqualification. The NAC modified the sanctions to a four-month suspension and \$20,000 fine. The NAC found that Holeman's conduct was egregious and warranted significant sanctions because the undisclosed "information related to his tax liens expressly implicate[s] Holeman's financial stability, judgment, [and] ability to manage his personal finances." This appeal followed.

II. Analysis

In reviewing FINRA's disciplinary action, we must determine whether Holeman 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 Exchange Act.⁵ We base our findings on an independent review of the record and apply a preponderance of the evidence standard.⁶

A. The Form U4 Violations

1. Holeman failed to timely update his Form U4 to disclose the federal tax liens in violation of FINRA By-Laws and NASD and FINRA rules.

Form U4 requires that associated persons of FINRA member firms disclose unsatisfied liens. The record establishes, and Holeman admits, that he did not update his Form U4 until April 2015 to disclose the October 2009 and May 2011 federal tax liens that remained unsatisfied throughout the period he failed to disclose them, and not until August 2015 to disclose the April 2009 federal tax lien (a disclosure he later deleted) that remained unsatisfied until April 2013. In total, Oppenheimer and David Lerner filed one new Form U4 and eight amendments to Form U4 on Holeman's behalf before Holeman ultimately disclosed the liens.⁷

Holeman'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 by supplementary amendments," and directs that such amendments be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Holeman did not keep his registration current because he failed to amend his Form U4 to report the liens

⁵ Exchange Act Section 19(e)(1), 15 U.S.C. § 78s(e)(1).

⁶ 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).

⁷ As discussed below, it was Holeman's responsibility to provide his firms with accurate information so that they could file and update his Form U4 on his behalf. See *infra* text accompanying notes 24-25.

within the requisite thirty days. Holeman’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.”⁸ Holeman’s failure to disclose his tax liens in response to a question asking if there were “any unsatisfied judgments or liens against you” was inaccurate and misleading. Holeman’s conduct further violated FINRA Rule 2010, which requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.⁹

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.”¹⁰ “Form U4 is used to determine and monitor the fitness of securities professionals.”¹¹ By promulgating and applying rules requiring that Form U4 be filled out accurately and completely and kept

⁸ 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), Holeman 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 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.

⁹ *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*, 2018 WL 4492420, 750 F. App’x 821 (11th Cir. 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).

¹⁰ 15 U.S.C. § 78o-3(b)(6).

¹¹ *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 WL 4258143, at *10 (Aug. 12, 2016) (finding FINRA disciplinary action for repeatedly failing to file Forms U4 to be consistent with the Exchange Act), *petition denied*, 719 F. App’x 724 (9th Cir. 2018).

current, FINRA was acting to protect investors and the public interest.¹² FINRA's application of Rule 2010 also implemented Exchange Act Section 15A(b)(6)'s requirement that FINRA rules be designed to "promote just and equitable principles of trade" because Holeman's conduct frustrated FINRA's ability to monitor the fitness of securities professionals.¹³

2. Holeman's contentions that he should not be held liable lack merit.

At the hearing in 2017, Holeman claimed for the first time that he was not aware of the liens until February 2015.¹⁴ Holeman testified that his 2008 or 2009 telephone conversation with an IRS agent pertained to the effect of the 2009 Installment Agreement and did not put him on notice of the liens. But this claim is inconsistent with Holeman's written Rule 8210 responses in November and December 2014, his OTR testimony in March 2015, and the Wexler Letter in July 2015 in which he acknowledged being aware of the liens at the time of their filing but stated that he believed he did not need to disclose them because he understood the liens were against his property and not against him personally. FINRA also found that Holeman's hearing testimony

¹² 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).

¹³ *Id.* (finding FINRA Rule 2010 to be consistent with the purposes of the Exchange Act when applied to untimely Form U4 amendments).

¹⁴ In support of this claim, Holeman cites to a colloquy at the oral argument before the NAC between a NAC Board member and FINRA's attorney. The NAC Board member drew the attorney's attention to a February 2016 installment agreement (that covered Holeman's tax arrears for 2008, 2009, and 2010)—a different one than the 2009 Installment Agreement (that covered Holeman's tax arrears for 2006, 2007, and 2008)—between Holeman and the IRS on which the NAC Board member noted that "there was an opportunity for a check box as to whether there had been a lien filed and it was not checked by the IRS." The FINRA attorney responded that "the IRS made a mistake." This colloquy lends no support to Holeman's claim that he was unaware of the April 2009 tax lien, the October 2009 tax lien, and the May 2011 tax lien. The installment agreement to which the NAC Board member referred was signed on February 1, 2016—after the events at issue here and at a time it is undisputed that liens had been filed. Holeman, through his counsel, stipulated at the hearing that the installment agreement to which the NAC Board member referred was "inaccurate." In any case, Holeman cannot claim that a document from February 2016 shows that he was unaware of tax liens in 2009 and 2011.

on this point was not credible. We grant that determination “considerable deference.”¹⁵ On the basis of Holeman’s written Rule 8210 responses, OTR testimony, and FINRA’s credibility finding, we find that Holeman was aware of the liens around the time of their filing in 2009 and 2011 but decided not to disclose them on his Form U4.

Although Holeman complains that FINRA has no documentary evidence that he received notice of the liens at the time they were filed, he refused to grant FINRA permission to seek such documentation from the IRS. While he claims that he sought such information from the IRS “personally with his attorney and the IRS did not provide any proof of return receipts of certified mailings to him,” he has not produced any evidence related to that request.

Holeman argues that FINRA’s October 2014 contact with him was an “inquiry,” not an “investigation,” and thus not reportable on Form U4. But FINRA did not charge, and we do not find, that Holeman’s violations were based on failing to report FINRA’s inquiry. Rather, the NAC found, and we agree, that FINRA’s inquiry about the liens in October 2014 further contradicts Holeman’s assertion that he did not know about the liens until February 2015.¹⁶

As to Holeman’s argument that he did not think he needed to disclose the liens because they were against his property and not him personally, we find that argument no defense to his liability. We have held that Question 14M is “unambiguous” and “contains no limitations on the kind of [items] required to be disclosed;”¹⁷ that “there is nothing ambiguous about whether an IRS tax lien constitutes a ‘lien’;”¹⁸ and that to the extent an associated person found Question

¹⁵ See, e.g., *William Scholander*, Exchange Act Release No. 77492, 2016 WL 1255596, at *8 & n.45 (Mar. 31, 2016) (citing *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 WL 2597567, at *2 (July 1, 2008) (quoting *Jon R. Butzen*, Exchange Act Release No. 36512, 52 SEC 512, 1995 WL 699189, at *2 & n.7 (Nov. 27, 1995) (“[T]he credibility determination of the initial decision maker [in a FINRA disciplinary proceeding] is entitled to considerable weight and deference, since it is based on hearing the witnesses’ testimony and observing their demeanor.”))), *petition denied sub nom. Harris v. SEC*, 712 F. App’x. 46 (2d Cir. 2017).

¹⁶ Holeman also argues that he should not be held liable because “FINRA was aware of [the federal tax liens] and did not suspend Holeman from being associated with a FINRA member firm, nor require that his employer terminate his employment.” This argument confuses the way FINRA disciplinary proceedings work. Soon after learning of the liens, FINRA commenced its investigation that resulted in the disciplinary action and ultimately the suspension imposed here.

¹⁷ *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at *10 & n.44 (Nov. 9, 2012).

¹⁸ *Scott Mathis*, Exchange Act Release No. 61120, 2009 WL 4611423, at *7 (Dec. 7, 2009), *aff’d*, 671 F.3d 210 (2d Cir. 2012).

14M to be ambiguous it is his “duty to determine whether disclosure was required.”¹⁹ Holeman’s argument is also contrary to the definition of a lien. A lien cannot attach to a person but only to property—a “lien” is a “legal right or interest that a creditor has in another’s property, lasting usually until a debt or duty that it secures is satisfied.”²⁰ We agree with the NAC that the IRS imposed liens against Holeman and that accepting Holeman’s argument would render Question 14M meaningless as applied to liens.

Holeman’s claim that an IRS agent told him the liens attached to his property is also not exculpatory. The IRS agent’s statement simply describes a tax lien. Holeman does not claim the IRS agent told him that the liens did not have to be disclosed on his Form U4.

3. Holeman cannot avoid liability by claiming that he relied on others.

Holeman argues that David Lerner’s actions after learning of FINRA’s investigation support finding him not liable. In support of this argument, Holeman points to a March 15, 2015 email from David Lerner’s general counsel to FINRA, in which the general counsel stated that while David Lerner “believe[d] there [was] potential merit” to Holeman’s position, the firm would instruct him “to update his Form U-4 to provide a ‘yes’ response to Item 14M.” Holeman also relies on affidavits from David Lerner’s general counsel and president stating that Holeman informed them in November 2014 “of the issue raised by FINRA concerning possible IRS liens” and had kept them apprised of “the dollar level of the IRS liens” and “the allegations in FINRA’s complaint.” But these documents were not part of the record before the Hearing Panel, and Holeman provides no explanation for his failure to introduce them at the hearing.²¹

Even were we to accept the documents into evidence, they show David Lerner’s response to FINRA’s investigation and its instruction that Holeman disclose the liens on Form U4 in March 2015. They do not provide any evidence that David Lerner instructed him not to disclose

¹⁹ *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 WL 5001956, at *9 (Oct. 20, 2011) (citing *Mathis*, 2009 WL 4611423, at *7) (stating, in response to applicant’s assertions that the term “unsatisfied judgments or liens” on Form U4 was “unclear and ambiguous,” that he thought individuals were subject to a lien only when “they are denied access to their assets, i.e., an asset attachment,” and that he thought the question was not applicable to him since he had “worked out a payment schedule with the IRS,” that “if [applicant] found [a question on Form U4] to be ambiguous, it was his duty to determine whether disclosure was required”).

²⁰ *Lien*, Black’s Law Dictionary (11th ed. 2019).

²¹ *See* Rule of Practice 452, 17 C.F.R. § 201.452 (stating that parties may seek to adduce evidence not included in the record below provided “that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously”).

the liens before that time. Holeman's attempted reliance on his disclosure of the liens to David Lerner in 2014, moreover, is inconsistent with his claim during the hearing and on appeal to the Commission that he did not learn of the liens until 2015.

Nor is Holeman's failure to disclose the liens excused because David Lerner conducted "a background check and investigation" and "did not report to Holeman any indication of any IRS liens that would need to be addressed." We have repeatedly held that "a registered representative is responsible for his actions and cannot shift that responsibility to [his] firm."²²

Holeman also contends that the Wexler Letter shows that he relied on counsel "in completing the questionnaire and the disclosure of his responses to his employer." In order to establish that he relied on the advice of counsel, Holeman is required to show that he "made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith."²³ Holeman has provided no evidence that he met any of these standards or relied on an attorney's advice in reaching his decision not to disclose the liens. The Wexler Letter was a response to FINRA and not legal advice to Holeman. Indeed, during Holeman's OTR, Wexler explained that, despite Wexler's earlier representations to FINRA's Department of Enforcement that Holeman would soon disclose the liens, they had not been reported because Holeman "advised [Wexler] that he feels to do that would be an admission of wrongdoing from the get-go." Holeman has failed to establish that any aspect of his non-disclosure of the liens was based on reliance on counsel.

Holeman maintains further that he is not responsible for the six Form U4 amendments filed while he was at Oppenheimer because they were "administrative in nature," were handled by Oppenheimer's "Registration Department," and he "did not know that they were being filed." But we have held that delegation of responsibility for filing Form U4 to another employee or department at an applicant's firm does not eliminate the applicant's "obligation to make certain that appropriate filings were made."²⁴ Holeman was "in the best position to provide accurate information" about his liens.²⁵ FINRA's By-Laws and Rules required that Holeman keep his

²² *Guang Lu*, Exchange Act Release No. 51047, 2005 WL 106888, at *6 (Jan. 14, 2005) (citing *Rafael Pinchas*, Exchange Act Release No. 41816, 1999 WL 680044, at *4 (Sept. 1, 1999)), *aff'd*, 179 F. App'x. 702 (D.C. Cir. 2006); *see also Scholander*, 2016 WL 1255596, at *6 (stating that "associated persons are responsible for their own compliance and cannot shift that responsibility to a supervisor"); *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at *21 (Jan. 30, 2009) (same), *aff'd*, 416 F. App'x 142 (3d Cir. 2010).

²³ *Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994).

²⁴ *Elgart*, 2017 WL 4335050, at *5 (citations omitted).

²⁵ *Amundsen*, 2013 WL 1683914, at *7.

Form U4 “current at all times by supplementary amendments,” that such amendments be filed “not later than 30 days after learning of the facts or circumstances giving rise to the amendment,” and that information that was misleading be corrected. It was Holeman’s responsibility to supply current and accurate information to Oppenheimer and David Lerner for his Form U4, and the failure to ensure that his Form U4 was current and accurate was his own.

B. The False Annual Compliance Certification

The record establishes that, on December 12, 2014, Holeman falsely represented to David Lerner in an Annual Compliance Certification that he had no unsatisfied liens against him. In his brief, Holeman asserts that he “reviewed the question ‘do you have any unsatisfied judgments or liens against you’” with David Lerner’s general counsel “and that the response would be ‘no.’” But Holeman cites no evidence to support this assertion. And the affidavit he submitted from David Lerner’s general counsel contains no reference to the certification. At the hearing, when asked about the fact that he said he had no unsatisfied liens against him on the certification, Holeman stated that he “answered the question as far as my knowledge at the time.”

Holeman’s false statements violated FINRA Rule 2010. FINRA Rule 2010 required members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” This rule applies to all business-related misconduct regardless of whether it involves securities.²⁶ The record establishes that Holeman knew about the liens at the time of the Annual Compliance Certification. We have found that Holeman’s claim that he was not aware of the liens at or around the time they were filed is not credible. FINRA also made several inquiries about the liens before Holeman submitted the Annual Compliance Certification. The fact that Holeman notified David Lerner of FINRA’s inquiry regarding the liens around the time that he submitted the Annual Compliance Certification does not excuse his submission of a false, sworn certification to his member firm employer. Holeman’s false response in his firm’s Annual Compliance Certification was inconsistent with just and equitable principles of trade.²⁷

²⁶ See *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (finding that the Commission “correctly found that Vail’s conduct fell within the prohibition of” the predecessor to Rule 2010 when he “misappropriated funds from the Houston Young Professionals Republican Club and misrepresented that the funds were in an account at Cigna” where he worked because Vail’s position as the treasurer “managing the club’s funds constituted business-related conduct”).

²⁷ See *Richard Allen Riemer, Jr.*, Exchange Act Release No. 84513, 2018 WL 5668898, at *5 & n.23 (Oct. 31, 2018) (citing *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)).

We also find that FINRA Rule 2010 is, and was applied in a manner, consistent with the purposes of the Exchange Act. As discussed above, Rule 2010 is 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.”²⁸ Applying Rule 2010 to Holeman’s false Annual Compliance Certification furthered those purposes.

C. The Statutory Disqualification

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 a self-regulatory organization 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.²⁹ We agree with the NAC that the information Holeman omitted was material and that he acted willfully. Accordingly, we sustain the finding of a statutory disqualification.

1. Materiality

Holeman’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.”³⁰ The Second Circuit and the Commission have found the failure to disclose liens 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.³¹ Holeman’s liens totaled \$116,545.71, and the liens remained undisclosed over an approximately six-year period. The obligation to keep Form U4 current “assures regulatory organizations, employers, and members of the public that they have all of the material, current information about the registered representative with whom they are dealing.”³² A substantial likelihood exists that a reasonable

²⁸ See *supra* note 13 and accompanying text.

²⁹ 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).

³⁰ *McCune*, 2016 WL 1039460, at *6.

³¹ See, e.g., *Mathis*, 671 F.3d at 219-20 (five liens totaling \$634,436.28); *Riemer*, 2018 WL 5668898, at *5 (two liens totaling \$33,589.13); *Elgart*, 2017 WL 4335050, at *6 (five liens totaling \$388,755.98); *McCune*, 2016 WL 1039460, at *6 (four liens totaling \$162,374); *Tucker*, 2012 WL 5462896, at *2-3, 11 (liens and judgments totaling \$433,467.52).

³² *McCune*, 2016 WL 1039460, at *4.

employer or regulator or the investing public would have viewed the liens as significant to an assessment of Holeman’s ability to manage his financial obligations.³³

Holeman argues that the liens are not material because FINRA and David Lerner were aware of them, and because he is not licensed to sell any products or have any customers. According to Holeman, “he did not fail to meet his own reporting obligations but ensured that his employer was made aware of the total mix of information relating to the liens.” But FINRA became aware of the liens only because of its own investigation in 2014 and not because of any disclosure by Holeman in 2009 and 2011 when the liens were filed.³⁴ David Lerner became aware of the liens only after FINRA began its investigation, and Oppenheimer was not made aware of the liens during the time that Holeman worked there.³⁵ The investing public was also not made aware of the liens until Holeman’s amendment of his Form U4 in 2015—between four and six years after the liens were filed. Holeman was a principal of the firms for which he worked and a reasonable investor would consider his failure to pay his taxes and satisfy claims against him based on that failure significant regardless of whether he sold the securities or had customers himself.

2. Willfulness

In *Mathis v. SEC*, the Second Circuit considered “the meaning of the word ‘willfully’ in Section 3(a)(39).”³⁶ The petitioner contended that he had not “willfully” omitted to state a material fact in his Form U4 because he was unaware that, by failing to provide accurate

³³ *Elgart*, 2017 WL 4335050, at *6; *see also Mathis*, 671 F.3d at 220 (finding liens material because “Mathis himself acknowledged on the record that he would want to know about an employee’s serious financial problems before hiring him or her because ‘it could be an indication that the broker is under financial pressure,’ as Mathis was at the time he failed to pay his taxes”); *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.”).

³⁴ *See Mathis*, 2009 WL 4611423, at *9 (finding tax liens material to regulators because disclosure of the liens “would have provided them with an early notice about [applicant’s] financial difficulties and information on his ability to manage his financial obligations”).

³⁵ *See id.* (finding tax liens material to applicant’s employers because disclosure of the liens “would have alerted them to the outside financial pressures that [applicant] was facing as he performed his job”).

³⁶ 671 F.3d 210, 216 (2d Cir. 2012).

information in his disclosures, “he was violating a particular rule or regulation.”³⁷ The court disagreed, explaining that “willfulness” does not require awareness that one “is violating one of the Rules or Acts,” and holding that a person may be subject to statutory disqualification under Section 3(a)(39) as long as he “intentionally submitted an application to register with a FINRA member knowing that the application contained material false information.”³⁸

The D.C. Circuit’s recent holding in *Robare v. SEC* takes a similar approach to defining “willfulness.”³⁹ In *Robare*, the court considered the term “willfully” as it is used in Section 207 of the Investment Advisers Act of 1940, which prohibits willfully omitting to state in a Form ADV (an investment adviser registration application) a material fact that is required to be stated therein. Like Section 3(a)(39), Section 207 incorporates the requirement that one have acted “willfully” in the violation itself.⁴⁰ In this context, the D.C. Circuit held, “the statutory text signals that” liability may be imposed only where it is shown that the petitioner “subjectively intended to omit material information from” his required disclosures.⁴¹ The court noted that “‘extreme recklessness’ may constitute ‘a lesser form of intent.’”⁴²

The NAC’s ruling that Holeman acted willfully is consistent with these precedents and confirms that Holeman acted with the requisite level of intent. The NAC found that “the record supports a finding that Holeman’s failures to timely disclose were at least reckless.” We agree and therefore sustain the finding that Holeman acted willfully.

The D.C. Circuit has held that extreme recklessness is “an ‘extreme departure from the standards of ordinary care’” which presents a danger of misleading investors “‘that is either known to the defendant or is so obvious that the actor must have been aware of it.’”⁴³ The NAC determined that Holeman acted recklessly because he “was aware of his federal tax liens,” and as someone with over 40 years in the securities industry “was also surely aware of the meaning of Question 14M on the Form U4 and the importance of timely and truthful disclosures.” We agree

³⁷ *Id.* at 218.

³⁸ *Id.* at 217-18 (quoting *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir.1965)).

³⁹ 922 F.3d 468, 479-80 (D.C. Cir. 2019).

⁴⁰ *Id.* at 479.

⁴¹ *Id.*

⁴² *Id.* (citations omitted).

⁴³ *Dolphin and Bradbury v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (emphasis omitted) (quoting *Sunstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1003, 1045 (7th Cir. 1977)).

with the NAC's findings and with its conclusion that Holeman must have known of the danger that investors, employers, and regulators would be misled by failing to report the liens.⁴⁴

Holeman acted with extreme recklessness despite his contention that he did not disclose the liens because he thought liens against property did not have to be disclosed. To the extent Holeman found Question 14M to be ambiguous, it was his "duty to determine whether disclosure was required."⁴⁵ Indeed, Holeman testified at the hearing that had he known about the liens "it would have been my position at that time to report them or certainly check with counsel about reporting them." Holeman confirmed in response to a question from a hearing panelist that he "would have checked with counsel" even if the lien stated that it attached to property. But the record establishes that Holeman knew about the liens.

To the extent Holeman claims that he did not see the liens until February 2015, that does not mean he was unaware of them before that time. Holeman stated repeatedly before the hearing that he knew about the liens but did not disclose them because he did not think they were against him, and the hearing panel did not credit his contrary testimony at the hearing. Yet Holeman did not consult counsel to determine if the liens needed to be disclosed. Although he attempts to rely on the email from David Lerner's general counsel and the Wexler letter, those communications occurred after FINRA began its investigation. Holeman cannot rely on these communications to justify his failure to disclose the liens until that time. Holeman's failure to take any steps to probe the liens or resolve his apparent confusion about whether the liens needed to be disclosed in response to a question asking whether he had any unsatisfied liens against him

⁴⁴ See, e.g., *Vernazza v. SEC*, 327 F.3d 851, 860-861 & n.8 (9th Cir. 2003) (sustaining Commission's determination that petitioners acted with scienter despite lack of "direct evidence" of their intent because it was "implausible" that petitioners were ignorant of their duty to disclose conflicts of interest, the Commission "correctly determined that the petitioners had a duty to disclose any potential conflicts of interest accurately and completely, and to recognize that [the relevant arrangement] created such a potential conflict," and the Commission was entitled to conclude that any person in petitioners' position "would have recognized that [the relevant arrangement] created such a potential conflict, and that the petitioners' failure to identify the conflict was either knowingly or recklessly in disregard of their duties").

⁴⁵ *Neaton*, 2011 WL 5001956, at *9 (citing *Mathis*, 2009 WL 4611423, at *7).

was such an extreme departure from the standards of ordinary care that the danger of misleading investors by not disclosing the liens was so obvious that he must have been aware of it.⁴⁶

III. Sanctions

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.⁴⁷ In making this assessment, we must consider any aggravating or mitigating factors and whether the sanctions are remedial and not punitive.⁴⁸ While we are not bound by FINRA’s Sanction Guidelines, they serve as a benchmark in conducting our review.⁴⁹

We find the four-month suspension and \$20,000 fine FINRA imposed for Holeman’s violations to be neither excessive nor oppressive.⁵⁰ 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 \$39,000.⁵¹ “Where aggravating factors are present,” the

⁴⁶ See, e.g., *id.* at *7 (finding applicant’s failure to amend his Form U4 was willful and not “merely negligent” despite applicant’s claim that he simply had an “erroneous understanding of [his] duty to amend [his] U4” because applicant knew about his disciplinary history and that Form U4 required disclosure of a disciplinary history and “if he found questions [on the Form U4] to be ambiguous, [applicant] had a ‘duty to determine whether disclosure was required’”).

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

⁴⁸ 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).

⁴⁹ See *Plunkett*, 2013 WL 2898033, at *11.

⁵⁰ See, e.g., *Riemer*, 2018 WL 5668898, at *8 (sustaining FINRA’s six-month suspension and \$5,000 fine for Form U4 and firm compliance questionnaire violations for failure to disclose two liens totaling \$33,589.13 and a bankruptcy); *Elgart*, 2017 WL 4335050, at *1, *7-8 (sustaining FINRA’s six-month suspension and \$15,000 fine for Form U4 violation for failure to disclose five liens totaling \$388,755.98 and additional 30 business-day suspension and \$5,000 fine for false statement to FINRA); *McCune*, 2016 WL 1039460, at *1, *8-10 (sustaining FINRA’s six-month suspension and \$5,000 fine for Form U4 violations for failure to disclose four liens totaling \$162,374); *Tucker*, 2012 WL 5462896, at *1, *14-15 (sustaining FINRA’s two-year suspension and requalification requirement for Form U4 violations for failing to disclose multiple liens and judgments totaling \$433,467.52 and a bankruptcy).

⁵¹ Sanction Guidelines at 71 (2018 ed.), available at http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

Guidelines recommend suspending the responsible individual for ten business days to six months.⁵² “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.”⁵³ 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.⁵⁴

Holeman willfully failed to disclose three tax liens totaling over \$116,000 on his Form U4 and provided false information about them in his firm’s Annual Compliance Certification. The liens were material to the ability of regulators, his employers, and their customers to assess Holeman’s capability to function as an associated person of a FINRA member firm.⁵⁵ Holeman did not disclose the April 2009 federal tax lien while it remained unsatisfied and later deleted the disclosure he made. He did not disclose the October 2009 federal tax lien for nearly six years despite the fact that it remained unsatisfied during that time, and he did not disclose the May 2011 federal tax lien for nearly four years despite the fact that it remained unsatisfied during that time. Holeman’s disclosures were made only after FINRA began investigating the liens, and even then he waited six months to make the disclosures. We agree with the NAC that it is “deeply troubling that Holeman was aware of FINRA’s investigation into his failure to disclose his federal tax liens, yet he failed to timely amend his Form U4.” Indeed, we cannot understand how Holeman can maintain that he did not know about the liens until February 2015 when FINRA asked Holeman about all three liens specifically in November 2014.

Holeman has worked in the securities industry as a registered person and principal for forty years. As a result, he must have been aware of the importance of accurate, current disclosures on Form U4 not only to his employer but also to firm customers and to the investing public.⁵⁶ We have noted that “a representative’s truthfulness in answering the financial disclosure questions on the Form U4 is a particularly critical measure of fitness for the industry because a commitment to accurate, complete, and non-misleading financial disclosure is central

⁵² *Id.* at 71.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See supra* text accompanying notes 30-35.

⁵⁶ Because the David Lerner Annual Compliance Certification was not publicly available and was for the firm’s internal use, and it appears that Holeman disclosed the liens to David Lerner separately, we do not place significant weight on the false statements in the Annual Compliance Certification in assessing FINRA’s sanctions determination.

to any securities professional's responsibilities" and, therefore, "untruthful answers call into question an associated person's ability to comply with regulatory requirements."⁵⁷

The Guidelines instructed FINRA to consider as a potential mitigating factor whether a lien that was not timely disclosed had been satisfied. Although the April 2009 federal tax lien was ultimately satisfied in April 2013, Holeman failed to disclose that lien on six different Oppenheimer Form U4 amendments filed when it was unsatisfied. And both the October 2009 and May 2011 federal tax liens still remained unsatisfied at the time of the complaint in June 2016. The October 2009 federal tax lien has since been satisfied, but the record does not indicate that the May 2011 federal tax lien has been satisfied. We therefore find the fact that Holeman eventually satisfied the April and October 2009 federal tax liens warrants no mitigation of the sanctions.

Holeman claims that it is mitigating that "no customers . . . were impacted because Holeman is not licensed to sell any products and does not have any customers." But his violations harmed the investing public, his firm, and regulators by denying them access to material information about his failure to pay his taxes and satisfy claims against him based on that failure. And, in any event, we have repeatedly held that a lack of customer harm is not mitigating.⁵⁸ Holeman also argues that his lack of a prior disciplinary record is mitigating. We have held repeatedly that this is not the case.⁵⁹ The many aggravating factors and absence of any

⁵⁷ *Tucker*, 2012 WL 5462896, at *9, 8.

⁵⁸ *See, e.g., Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 WL 6044123, at *18 & n.137 (Nov. 15, 2013) ("[T]he absence of . . . customer harm is not mitigating, as our public interest analysis focus[es] . . . on the welfare of investors generally.") (citing *Howard Braff*, Exchange Act Release No. 66467, 2012 WL 601003, at *7 & n.25 (Feb. 24, 2012) (internal quotations omitted)); *accord PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *5 (Apr. 11, 2008) (holding that applicants' failures to comply with NASD rules "are not mitigated because those failures did not, in themselves, produce a monetary benefit to Applicants or result in injury to the investing public"), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009); *Coastline Fin., Inc.*, Exchange Act Release No. 41989, 1999 WL 798874, at *5 (Oct. 7, 1999) (rejecting absence of customer harm as a mitigating factor for sanctions).

⁵⁹ *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.

significant mitigating factors convince us that FINRA's four-month suspension and \$20,000 fine are consistent with FINRA's Sanction Guidelines and are appropriately remedial and neither excessive nor oppressive.⁶⁰

An appropriate order will issue.⁶¹

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

Vanessa A. Countryman
Secretary

⁶⁰ We sustain FINRA's imposition of costs, which Holeman has not challenged.

⁶¹ 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. 86523 / July 31, 2019

Admin. Proc. File No. 3-18546

In the Matter of the Application of

ALLEN HOLEMAN

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION

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

ORDERED that the disciplinary action taken by FINRA against Allen Holeman is sustained.

By the Commission.

Vanessa A. Countryman
Secretary