BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Michael Earl McCune Overland Park, KS, Respondent.	DECISION Complaint No. 2011027993301 Dated: July 27, 2015

Respondent willfully failed to timely disclose material information on his Form U4. Held, findings and sanctions affirmed.

For the Complainant: Lane Thurgood, Esq., and Robert Floyd, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Michael Earl McCune ("McCune") appeals an April 23, 2014 Hearing Panel decision pursuant to FINRA Rule 9311. The Hearing Panel found that McCune willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose a state tax lien, three federal tax liens and one bankruptcy, in violation of NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010.[1] The Hearing Panel also concluded that McCune is subject to a statutory disqualification because his actions were willful and involved the failure to disclose material information that concerned his myriad financial problems. The Hearing Panel fined McCune $5,000, suspended him for six months, and ordered him to pay hearing costs of $1,522.94. After an independent review of the record, we affirm the Hearing Panel's findings and sanctions.

[1] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

I. McCune's Background

McCune attended the University of Kansas where he earned a bachelor's degree in economics in 1982 and a Juris Doctor degree in 1986. He began his career in the securities industry in 1987. From December 1996 until May 2011, McCune was registered through FINRA member firm Royal Alliance Associates, Inc. ("Royal Alliance" or "Firm").

II. Factual Background

The parties entered into a stipulation of the underlying facts and therefore the facts are not in dispute.

A. McCune's Cognizance of His Disclosure Obligations

In 1989, the IRS sought to collect unpaid federal income taxes from McCune. In February 1989, McCune filed for Chapter 13 bankruptcy protection. The bankruptcy was converted to a Chapter 7 bankruptcy, and McCune's debts were discharged in October 1990. McCune did not amend his Form U4 to disclose this bankruptcy until December 27, 1996, when he joined Royal Alliance. McCune's disclosure required him to explain the bankruptcy on the Disclosure Reporting Pages ("DRPs"), the final section of the Form U4. There, McCune explained that an outside business failure, taxes, and debts acquired while he was in school caused him to file for bankruptcy, but subsequent to the filing his financial situation improved. On the DRPs, McCune maintained that he had omitted by mistake the bankruptcy from earlier iterations of his Form U4. McCune admits that he failed to amend his Form U4 to make a timely disclosure.

B. Royal Alliance's Disclosure Requirements

Royal Alliance required McCune and all of its registered representatives to complete an annual compliance questionnaire that contained specific reminders of their obligation to update their Form U4 and to include information about lien and bankruptcy filings. McCune completed the questionnaires during each year of his employment with Royal Alliance. In addition, the firm's Sales Practice Manual, a copy of which McCune received upon joining the firm, provided that representatives were to review their Forms U4 on at least an annual basis to ensure that they were accurate:

> Failure to amend Form-U4 when there is a change in the information required is considered by the NASD to be a material omission and may result in severe sanctions. The RR must disclose on a new Form-U4, or amend the old U-4, when there are affirmative responses to the questions in Item 22 regarding past or pending legal or regulatory proceedings.

C. McCune's Failures to Disclose Bankruptcies and Liens

Contrary to the representations made on his DRPs, McCune continued to experience financial problems after joining Royal Alliance. On October 11, 2002, he filed his second

petition for bankruptcy in federal court. On October 23, 2003, while the bankruptcy was pending, McCune signed a Form U4 that was submitted to FINRA by Royal Alliance. In response to the question, "Within the past 10 years . . . have you . . . filed a bankruptcy petition?" McCune answered "No." This petition for bankruptcy was dismissed by the bankruptcy court in 2005 without a discharge.[2] In May 2005, three months after the dismissal of his 2002 bankruptcy petition, McCune filed for bankruptcy a third time and McCune's debts were discharged in May 2006 (the "2005 bankruptcy").

In addition to his bankruptcy issues, McCune was unable to pay his federal income taxes for several years. Consequently, on March 10, 2009, the IRS filed a tax lien against McCune for $157,685. McCune received IRS notices of the lien and understood that he needed to report the lien within 30 days of receiving notice of the filing. On May 3, 2010, the IRS notified McCune of the filing of another federal income tax lien for $258.[3] McCune also received notice that on March 4, 2011, the IRS filed yet another lien, this one for $2,559. In addition to the federal tax liens, the state of Kansas filed a tax lien for $1,872 against McCune on March 31, 2009.

McCune concedes that he understood his responsibility to update his Form U4, and to inform his firm promptly of every bankruptcy or lien filing. Despite receiving notice of these reportable events, McCune failed both to inform his Firm and to make timely amendments to his Form U4.

D. Royal Alliance Discovers McCune's Failures to Disclose

In March 2011, in connection with its annual audit, Royal Alliance's independent auditor informed McCune's supervisor that McCune may have disclosure problems on his Form U4. Royal Alliance conducted a credit check, which revealed the liens and bankruptcies that McCune had neither disclosed to the Firm nor on his Form U4. McCune made the disclosures on April 7, 2011. McCune was then permitted to resign the following month, in May 2011.

III. Procedural Background

Enforcement initiated this action on January 13, 2013, with a complaint alleging McCune's willful failure to disclose the 2005 bankruptcy and four lien filings and failure to amend Form U4.[4] The parties executed joint stipulations of fact on June 4, 2013, in which McCune stipulated to liability. A hearing was held on July 23, 2013.

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[2] The failure to disclose this bankruptcy filing is not one of the enumerated disclosure deficiencies relied on by Enforcement in its complaint.

[3] The Hearing Panel decision incorrectly listed the amount of this lien as $258,000. We find, however, that this discrepancy does not impact our findings or sanctions.

[4] The complaint initially contained a second cause of action for McCune's false completion of Royal Alliance's annual compliance questionnaire, but Enforcement withdrew this cause of action prior to the hearing.

The Hearing Panel issued its decision on April 23, 2014, finding that McCune violated NASD Rule 2110 and IM-1000-1, and FINRA Rules 1122 and 2010 by willfully failing to timely amend his Form U4 to disclose the 2005 bankruptcy, three federal tax liens, and a state tax lien. The Hearing Panel suspended McCune in all capacities for six months and fined him $5,000. The Hearing Panel also determined that McCune was subject to statutory disqualification. McCune appealed.

IV. Discussion

For the reasons discussed below, we affirm the Hearing Panel's findings that McCune violated NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010[5] by failing to timely amend his Form U4 to disclose the 2005 bankruptcy, three federal tax liens, and a state tax lien. We also affirm the Hearing Panel's finding that McCune is subject to statutory disqualification.

A. McCune's Failures to Timely Amend Violated NASD and FINRA Rules

There is no dispute that McCune failed to timely amend his Form U4 until April 2011. Interpretative Material 1000-1 requires FINRA members and their associated persons to file, in connection with membership or registration as a registered representative, complete and accurate information. *See Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994). FINRA Rule 1122 provides that "[n]o member or person associated with a member shall file with FINRA 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, or fail to correct such filing after notice thereof." This rule applies to the Form U4, which FINRA uses to screen applicants and monitor their fitness for registration within the securities industry. *See Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008). The information contained on the Form U4 is also important to the investing public and FINRA firms that are evaluating whether to hire an employment applicant. Once filed, a registered representative or associated person is under a continuing obligation to timely update information required by the Form U4 as changes occur.[6] *See Dep't of Enforcement v. Mathis*, Complaint No. C10040052, 2008 FINRA Discip. LEXIS 49, at *13-14 (FINRA NAC Dec. 12, 2008), *aff'd*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009). Filing a misleading Form U4, or failing to timely amend a Form U4 when required, violates IM-1000-1 and FINRA Rule 1122 and the high standards of commercial

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[5] It is well settled that a violation of another FINRA rule is a violation of FINRA Rule 2010. *See William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *26 (July 2, 2013), *aff'd sub nom. Birkelbach v. SEC*, 751 F.3d 472 (11th Cir. 2014).

[6] Article V, Section 2(c) of the FINRA By-Laws requires member firms and associated persons to report certain disclosable events on Forms U4 and to keep the form updated and accurate. The By-Laws further require that these reportable events be reported accurately no later than 30 days after the member firm learns of the facts or circumstances giving rise to a reportable event.

honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under NASD Rule 2110 and FINRA Rule 2010.[7] *See Craig*, 2008 SEC LEXIS 2844, at *8; *see also Mathis*, 2009 SEC LEXIS 4376, at *18 (finding that the failure to file timely Form U4 amendments is a violation of NASD Rule 2110 and IM-1000-1).

Over a period of six years, McCune failed to amend his Form U4 to reflect his 2005 bankruptcy filing. He did not amend his Form U4 to reflect the $157,685 federal tax lien and his state tax lien for two years, did not amend his Form U4 to reflect the $258 federal tax lien for 11 months, and did not amend his Form U4 to reflect the $2,559 federal tax lien for more than a month. These intentional inaccuracies on his Form U4 are in direct contravention of high standards of commercial honor and just and equitable principles of trade. We therefore affirm the Hearing Panel's findings that McCune violated NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010.

B. McCune Is Statutorily Disqualified

A person is subject to a statutory disqualification under Article III, Section 4 of FINRA's By-Laws and Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") if he, among other things:

> has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

15 U.S.C. § 78c(a)(39)(F).

The Hearing Panel determined that McCune is subject to statutory disqualification for his failures to timely update his Form U4 and because his failure to disclose the bankruptcy and liens were willful and constituted material information. We agree.

1. McCune's Failures to Disclose Were Willful

We agree with the Hearing Panel that McCune' failures to disclose the bankruptcy and liens were willful. In order to find a willful violation of federal securities law we must find "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). We need not find that McCune intentionally violated FINRA rules, only that

[7] NASD Rule 2110 and FINRA Rule 2010 state that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110 and FINRA Rule 2010 apply with equal force to FINRA members and their associated persons. *See* NASD Rule 0115(a); FINRA Rule 0140(a).

McCune knew what he was doing when he did not timely amend the forms to disclose the bankruptcy and tax liens. *See Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens). Here, the record demonstrates conclusively that McCune knew about the bankruptcy and liens, yet he failed to amend his Form U4 for periods of two months up to six years. Thus, our finding that McCune acted willfully is predicated on his intent to commit the act that constitutes the violation—failing to amend his Form U4. McCune stipulated that he was aware of the bankruptcy and each of the liens and that he did not amend his Form U4 until 2011. McCune therefore acted willfully.

2. The Information Was Material

Having found that McCune acted willfully, we turn next to the question of whether the bankruptcy and federal and state tax liens were material for purposes of disclosure on McCune's Form U4.

"[B]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material." *Dep't of Enforcement v. Tucker*, Complaint No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *20-21 (FINRA NAC Oct. 4, 2011) (quoting *Dep't of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NASD NAC Apr. 27, 2004)), *aff'd*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496 (Nov. 9, 2012), appeal dismissed, (2d Cir. Sept. 24, 2013). In the context of Exchange Act Rule 10b-5, a fact is material if a reasonable investor would view the disclosure of the omitted information as "significantly alter[ing] the total mix of information made available." *Mathis*, 2009 SEC LEXIS 4376, at *29 (*quoting TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Applying this materiality standard to the circumstances here, we find that a reasonable investor, employer, or regulator would have viewed the tax liens and bankruptcy as extremely significant. *See, e.g., Dep't of Enforcement v. Toth*, Complaint No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (NASD NAC July 27, 2007), *aff'd*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *aff'd*, 319 F. App'x 184 (3d Cir. 2009).

In this case, the materiality of information about the bankruptcy and liens is particularly evident because the disclosure was required by specific questions on the Form U4. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *41 (Apr. 18, 2013), aff'd, 575 F. App'x 1 (D.C. Cir. 2014). Moreover, the "bankruptcies . . . and liens [McCune] failed to disclose . . . constituted serious financial problems critical to evaluating his fitness to associate in the securities industry." *Tucker*, 2012 SEC LEXIS 3496, at *32. We find that McCune's failures to disclose the bankruptcy and liens significantly altered the total mix of information available. This information constituted material information that should have been disclosed.

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Because we find that McCune willfully failed to timely disclose material information on

his Form U4, McCune is statutorily disqualified.

V. Sanctions

The Hearing Panel fined McCune $5,000 and suspended him for six months for his failures to timely amend his Form U4. The Hearing Panel found McCune's misconduct to be egregious. We find the sanctions imposed by the Hearing Panel for this violation appropriately remedial and, as explained in further detail below, we affirm the Hearing Panel's sanction determination.

The FINRA Sanction Guidelines ("Guidelines") for misconduct involving the late filing of amendments to Form U4 recommend a fine of between $2,500 and $25,000.[8] In egregious cases, such as those involving repeated failures to file, untimely filings, or false, inaccurate, or misleading filings, the Guidelines recommend considering a longer suspension of up to two years or a bar.[9] In evaluating the appropriate sanctions to impose, the Guidelines provide three principal considerations specific to Form U4 violations, only one of which—the nature and significance of the information at issue—is relevant here.[10] These considerations are in addition to the principal considerations contained within the Guidelines that apply in every disciplinary case.[11]

First, we consider the nature of the information that McCune failed to disclose. The information related to his tax liens and 2005 bankruptcy filing expressly implicate McCune's financial stability, judgment, ability to manage his personal finances, and:

> constituted serious financial problems critical to evaluating his fitness to associate in the securities industry and the firm's ability to assess his business judgment. These serious financial problems raise concerns about whether [McCune] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional . . . These . . . bankruptcies and liens also reflected significant outside financial pressures that could affect his judgment when providing financial services.

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8 *FINRA Sanction Guidelines*, at 69 (2013).

9 *Id*. at 70.

10 *Id*. at 69 (Principal Considerations in Determining Sanctions, No. 1). McCune's failure to disclose information in this case does not implicate the other two principal considerations applicable to Form U4 violations: whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and whether a firm's misconduct resulted in harm to a registered person, another member firm, or any person or entity. *Id*. Because these considerations do not apply, we do not consider them either aggravating or mitigating.

11 *Id*. at 6-7.

Tucker, 2012 SEC LEXIS 3496, at *32 (footnotes omitted)(citing *Mathis*, 2009 SEC LEXIS 4376, at *29). The Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm. *See Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996). The information on the Form U4 also is important to member firms when evaluating the fitness of an employment applicant, and the investing public, who have access to certain disclosures on FINRA's BrokerCheck, when evaluating a broker. *See, e g*., *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011); *Mathis*, 2009 SEC LEXIS 4376, at *29. We conclude that the non-disclosed information is crucially important to regulators, member firms, and the investing public, and McCune's repeated failure to disclose this information in a timely manner was egregious.

Next, we consider that McCune's failures to amend spanned a period of approximately six years for the 2005 bankruptcy filing, two years for the $157,685 federal tax lien and his state tax lien, 11 months for the second federal tax lien in the amount of $258, and over a month for the $2,559 federal tax lien—a lengthy period of time.[12] Moreover, we note that McCune did not disclose the February 1989 bankruptcy until 1996—seven years late, and upon this seriously delinquent disclosure, he offered the excuse that he had mistakenly omitted to disclose the bankruptcy promptly. We find that McCune was acutely aware of his disclosure obligations yet chose to ignore them. His misconduct was not the result of a momentary lapse of judgment or negligence that could establish mitigation.[13]

Finally, we find McCune's continued attempts to minimize the importance of his disclosure obligations and the seriousness of his violations disconcerting. The securities industry "presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants." *Bernard D. Gorniak*, 52 S.E.C. 371, 373 (1995). True and complete answers to Form U4 questions are therefore "essential to a meaningful system of self-regulation" and "vital to determining the fitness of an applicant for registration as a securities professional." *Craig*, 2007 FINRA Discip. LEXIS 16, at *25.

We agree with the Hearing Panel that McCune's misconduct was egregious and that it demands meaningful sanctions. The securities laws require individuals to make truthful and accurate disclosures in numerous and varied situations. McCune's repeated failures to amend his Form U4 to disclose material information about his financial problems demonstrate that he is currently unable to meet the high standards required of those employed in the securities industry. We therefore believe that the six month suspension and $5,000 fine imposed by the Hearing Panel will deter McCune from engaging in similar misconduct and are appropriately remedial sanctions for this violation.

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12 *Id*. at 6 (Principal Considerations in Determining Sanctions, No. 9).

13 *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

VI. McCune's Defenses and Arguments for Mitigation

McCune makes several arguments on appeal in an attempt to lessen his culpability and the sanctions imposed by the Hearing Panel.[14] First, McCune argues that he was unaware that Royal Alliance had conducted a credit check in preparation for the Firm's audit. Rather, McCune argues that he had volunteered the information concerning his bankruptcy and liens to his manager in March 2011 before the audit, the implication being that McCune did not try to conceal or deceive Royal Alliance as to the existence of his financial difficulties. However, whether McCune volunteered this information or whether he was forced to "come clean" after the credit check is beside the point. McCune was already aware of the existence of the bankruptcy and liens prior to Royal Alliance's audit. McCune also was aware of his obligations to timely amend his Form U4 to reflect the bankruptcy and liens yet did not do so. Regardless of whether McCune self-corrected after six years of failing to amend his Form U4 or was compelled into amending because his Firm discovered his financial difficulties, McCune violated NASD and FINRA rules through a course of conduct over an extended period of time.

McCune contends that upper management at Royal Alliance did not take such disclosure obligations seriously and that this dismissive view permeated firm culture. Regardless of whether McCune's claims are true or not, "a member firm's own interpretations of the securities laws and rules do not protect associated persons. To hold otherwise would permit every broker-dealer to interpret the laws and rules to its liking and would result in enormous inconsistency of enforcement." *Thomas R. Alton*, 52 S.E.C. 380, 383 n.12 (1995); *see also Barry C. Wilson*, 52 S.E.C. 1070, 1073 (1996) (noting that "failings on the part of certain firm personnel do not excuse misconduct by others"). Accordingly, any alleged laxity on the part of Royal Alliance does not excuse McCune's obligations under FINRA rules.

McCune also argues that he did not understand how important FINRA's disclosures requirements are. This is no defense. "Participants in the securities industry must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements." *Thomas C. Kocherhans*, 52 S.E.C. 528, 531 (1995); *see also Guang Lu*, 58 S.E.C. 43, 61 (2005) (barring respondent who, even if motivated by honorable intentions to assist a fellow immigrant, exhibited a failure to appreciate the gravity of his misconduct and an indifference to NASD rules); *Dep't of Enforcement v. Van Dyk*, Complaint No. C3B020013, 2004 NASD Discip. LEXIS 12, at *27-28 (NASD NAC Aug. 9, 2004) (finding respondent's indifference to keeping abreast of applicable rules aggravating).

Next, McCune maintains that taking great financial care of his customers was paramount to his disclosure obligations and removing him from the industry through a suspension or statutory disqualification would harm his clients. We disagree with McCune's view that allowing him to remain in the industry with no period of suspension would serve the interest of

[14] McCune's brief on appeal discusses the error in the Hearing Panel decision with respect to the amount of the May 2010 tax lien. We addressed this error above in footnote 6 and find it harmless.

his customers. His actions evidenced a lack of appreciation for the requirements he is subject to as a FINRA member. *See Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *20 (May 9, 2007) (rejecting argument that respondent's bar from the industry is not in his customers' best interests); *see also Harry W. Hunt*, Exchange Act Release No. 68755, 2013 SEC LEXIS 297, at *10-11 (Jan. 29, 2013) (rejecting a customer's loss of his broker's services as sufficient to warrant a stay, particularly where an applicant has abdicated his obligation to observe the high standards of commercial honor and just and equitable principles of trade). Customers, and the industry as a whole, do not benefit from the presence of a registered person who is dismissive of his disclosure obligations, particularly when the disclosure deficiencies involve serious financial issues that call into question the fitness of that registered individual to handle other people's money.

In addition, McCune argues that a statutory disqualification designation is essentially a lifetime bar and is overly burdensome in light of the fact that McCune has a clean disciplinary record and has a long-standing client base who would suffer if he were out of the industry. As an initial matter, the "lack of disciplinary history is not mitigating for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional." *Dep't of Enforcement v. Craig*, Complaint No. E8A2004095901, 2007 FINRA Discip. LEXIS 16, at *24 (FINRA NAC Dec. 27, 2007) (rejecting argument that absence of disciplinary history and prior customer complaints deserved mitigation), *aff'd*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844 (Dec. 22, 2008). Moreover, the statutory disqualification designation is not a FINRA sanction over which we have any discretion. Rather, statutory disqualification constitutes an encumbrance to FINRA membership imposed by the Exchange Act, not FINRA, when persons or firms have engaged in certain types of misconduct. *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *26 (July 17, 2009) (explaining that when FINRA denies a request to continue to associate with a firm notwithstanding a statutory disqualification, it is not imposing a penalty or sanction). Thus, any policy arguments related to the fairness of McCune's statutory disqualification and any subsequent FINRA proceeding related to that disqualification are not relevant to this appeal.

Finally, McCune cites to several of FINRA's Letters of Acceptance Waiver and Consent ("AWCs") in support of his argument that the sanctions imposed are far too severe for his misconduct.[15] We note at the outset that the Guidelines "do not prescribe fixed sanctions for particular violations" and "are not intended to be absolute." *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 SEC LEXIS 863, at *12 (Feb. 20, 2014); *Guidelines*, at 1 (Overview of FINRA Sanction Guidelines). "[T]he appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases." *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at *41 (Sept. 16, 2011). Moreover, "comparisons to sanctions in settled cases are inappropriate because pragmatic considerations justify the acceptance of lesser sanctions in negotiating a settlement such as the avoidance of time-and-manpower-consuming

[15] An AWC is a letter executed by FINRA and a member firm or associated person in which that firm or person accepts a finding of a violation of FINRA rules or federal securities laws, consents to the imposition of sanctions, and agrees to waive the right to a hearing or an appeal. *See* FINRA Rule 9216.

adversary proceedings." *Houston*, 2014 SEC LEXIS 863, at *33 (internal quotation marks omitted). Therefore, McCune's sanction comparison argument holds no weight.

VII. Conclusion

McCune failed to timely amend his Form U4 to disclose his 2005 bankruptcy, three federal tax liens, and one state tax lien, in violation of NASD Rule 2110 and IM-1000-1, and FINRA Rules 1122 and 2010. For this violation, we suspend McCune in all capacities for six months and fine him $5,000. We also affirm the Hearing Panel's imposition of hearing costs in the amount of $1,522.94.[16] McCune's failures to disclose were willful, and the omitted information was material; thus, McCune also is statutorily disqualified.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith, Senior Vice President
and Corporate Secretary

[16] Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.