BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

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| In the Matter of<br><br>Department of Enforcement,<br><br>Complainant,<br><br>vs.<br><br>Todd B. Wyche<br>Corvallis, MT,<br><br>Respondent. | DECISION<br><br>Complaint No. 2015046759201<br><br>Dated: January 8, 2019 |

**Respondent willfully failed to amend his Form U4 to disclose a federal tax lien. Held, findings affirmed and sanctions modified.**

## Appearances

For the Complainant: Leo F. Orenstein, Esq., Gary A. Cohosh, Esq., Kevin Hartzell, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Alan M. Wolper, Esq., Christopher D. Seps, Esq.

## Decision

Todd B. Wyche appeals a February 2, 2018 Hearing Panel decision. The Hearing Panel found that Wyche failed to timely amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose a federal tax lien, in willful violation of Article V, Section 2(c) of FINRA By-Laws and FINRA Rules 1122 and 2010. For his misconduct, the Hearing Panel suspended Wyche from associating with any FINRA member firm in any capacity for six months and fined him $10,000.

The primary issue on appeal is when Wyche learned of the federal tax lien. Wyche contends, as he did before the Hearing Panel, that he did not learn about the lien until FINRA staff questioned him about it six months after it was filed. After an independent review of the record, we reject Wyche's contention and affirm the Hearing Panel's findings. For the reasons explained herein, we modify the sanctions the Hearing Panel imposed.

## I. Facts

### A. Background

Wyche entered the securities industry in 1992 and registered with numerous FINRA members during his career. Among other firms, Wyche was registered with Wyche Securities, Inc. ("Wyche Securities") from February 1996 to June 2017, and Meyers Associates, L.P. ("Meyers Associates") from August 2013 to October 2016. Wyche owned Wyche Securities, was the firm's chief executive officer, president, and chief compliance officer, and filed Forms U4 for those persons associated with the firm.

Wyche currently is associated with IFS Securities and is registered as a general securities principal, investment banking principal, general securities representative, investment banking representative, securities trader, and operations professional.

### B. Wyche's Federal Tax Deficiency and Federal Tax Lien

In November 2012, Wyche filed his 2011 federal tax return and owed the Internal Revenue Service ("IRS") money. In a letter dated April 12, 2013, the IRS wrote to Wyche that it accepted Wyche's proposal to pay the amount owed—$409,545—by August 1, 2013. Wyche failed to pay the amount due as agreed. On or about January 9, 2014, Wyche entered into an installment payment agreement with the IRS. According to Wyche, the IRS told him that, if he entered into an installment agreement with the IRS and kept current with payments, the IRS would suspend "all collection and enforcement activity."[1]

On January 14, 2014, the IRS issued a Notice of Federal Tax Lien against Wyche and his wife for $230,265 in unpaid taxes. The Notice of Federal Tax Lien lists the correct residential address for Wyche at the time.[2] On January 24, 2014, the IRS filed and recorded the lien against Wyche with the Office of the City Register of the City of New York.[3]

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[1] Wyche testified that he spent more than 100 hours on the telephone with the IRS discussing his 2011 tax obligation.

[2] The parties stipulated that Wyche lived at this residential address from January 2013 to April 2014. Wyche also confirmed this fact during an on-the-record interview with FINRA staff.

[3] At the hearing, Wyche introduced an account transcript generated by the IRS showing activity with respect to Wyche's 2011 tax obligation (the "IRS Account Transcript"). The IRS Account Transcript provides that an "[i]nstallment agreement [was] established" on January 9, 2014, that a "[l]ien was placed on assets due to balance owed" on January 17, 2014, and that the IRS "[i]ssued notice of lien filing and right to Collection Due Process hearing" on January 23, 2014.

C. Wyche Emails About the Lien

Although Wyche asserts that he did not learn about the tax lien until August 2014, he sent two emails about "the lien" in January and February 2014. On January 29, 2014—five days after the lien was filed—Wyche's wife emailed him with the name and phone number of an individual named "Shay" and the question "Tax service?" Wyche's wife's email did not mention the word "lien." Wyche responded to his wife:

> Shay seems to be calling from here: http://mdataxservices.com/index.html. My assumption is that they monitor when tax liens are filed and then call to see if we need help resolving the lien. I'm assuming we'll get more calls like this from other folks who provide tax services.

On February 5, 2014, Wyche emailed his accountants about his personal and business tax returns and the lien. He wrote:

> In addition to being anxious to get any refunds due to me, I'm also anxious to get the tax lien removed that the IRS filed last month regarding the amount due from 2011. The tax lien causes a host of additional issues.

Wyche and his accountants continued to correspond about the logistics of preparing Wyche's tax returns, but the lien was not further discussed.

D. Wyche's Interactions with FINRA and His Firm About the Lien

In July 2014, in connection with an examination of Meyers Associates, FINRA staff asked Wyche to complete a personal activity questionnaire. The questionnaire asked: "Do you have any unsatisfied judgments or liens against you? If yes, provide detail as to each." Wyche responded, "n/a."

On August 7, 2014, FINRA staff sent Wyche a letter pursuant to FINRA Rule 8210 informing him that staff had learned about a federal tax lien filed against him on January 24, 2014, in the amount of $230,265. Staff requested that Wyche provide information related to the lien, including: the date on which Wyche was notified of the lien and the manner in which he was notified; whether Wyche disclosed the lien to Meyers Associates and, if not, why; and whether Wyche disclosed the lien on his Form U4 and, if not, why.

After Wyche received FINRA staff's Rule 8210 request, Wyche disclosed the lien to compliance personnel at Myers Associates. On August 15, 2014, Wyche emailed the compliance department the information necessary to complete the disclosure reporting page for question

14M of the Form U4.[4] Wyche wrote that the amount of the lien was $230,265, and that the current balance of the lien was $17,503. Although the disclosure reporting page requested both the date the lien was filed and the date the individual learned of the lien, Wyche provided only one date—January 24, 2014—in his email to the compliance department for that subsection of the disclosure reporting page.

Wyche filed an amended Form U4 through Myers Associates on August 15, 2014, and through Wyche Securities on August 20, 2014, to disclose the lien. In his Form U4 amendments, the disclosure reporting page provides that the lien was filed on January 24, 2014, and that he learned about the lien on August 7, 2014.

On August 20, 2014, Wyche responded by letter to FINRA staff's Rule 8210 request. In his response to staff's question about the date and manner in which he was notified of the lien, Wyche wrote, "I received a letter from the IRS on or around January 24, 2014 notifying me of the lien." He explained that he only recently disclosed the lien to Meyers Associates because:

> Until I received your letter, I was not aware that overdue taxes are required to be disclosed. I now understand that because the overdue situation rose to the level of the IRS filing a lien, that a disclosure should have been made at the time I was notified that the lien was filed.

In his response to staff's request for an explanation as to why the lien was disclosed untimely, Wyche wrote, "I was not aware that a disclosure needed to be made until receiving your letter of August 7, 2014."

On October 25, 2016, Wyche appeared at an on-the-record interview with FINRA staff. At the on-the-record interview, Wyche testified that he learned about the tax lien on August 7, 2014.

## II. Procedural History

On January 27, 2017, Enforcement filed a single-cause complaint alleging that Wyche willfully failed to amend his Form U4 to disclose the federal tax lien. After a one-day hearing in which Wyche was the only witness, the Hearing Panel issued its decision on February 2, 2018, finding that Wyche engaged in the misconduct as alleged. For his misconduct, the Hearing Panel suspended Wyche in all capacities for six months and fined him $10,000. As a result of the

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[4] Question 14M of the Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" If the question is answered affirmatively, the following details must be disclosed on the disclosure reporting page: (1) lien amount; (2) lien holder; (3) type of lien (civil or tax); (4)(A) date filed with court (and if not exact, an explanation) and (B) date the individual learned of the lien (and if not exact date, an explanation); (5) where the court action was brought; and (6) whether the lien is outstanding.

Hearing Panel's findings that Wyche's actions were willful, and the information he failed to disclose was material, the Hearing Panel also concluded that Wyche is subject to statutory disqualification.

Wyche appealed the decision.

## III. Discussion

We affirm the Hearing Panel's findings that Wyche failed to timely amend his Form U4 to disclose the tax lien, in willful violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

### A. Wyche Failed to Timely Amend His Form U4

"Every person submitting registration documents has the obligation to ensure that the information printed therein is true and accurate." *Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994). Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Forms U4 "current at all times by supplementary amendments," which must be filed "not later than 30 days after learning of the facts or circumstances giving 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." "FINRA Rule 2010 . . . require[s] associated persons to observe the high standards of commercial honor and just and equitable principles of trade, which includes disclosing accurately and fully information required in the Form U4 such as a federal tax lien."[5] *North Woodward Fin. Corp.*, Complaint No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *17 (FINRA NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *aff'd*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

Question 14M of the Form U4 requires associated persons to disclose any unsatisfied judgments or liens against them. It is undisputed that the IRS filed a tax lien against Wyche on January 24, 2014, but Wyche did not disclose the lien on his Form U4 until August 15, 2014. The primary issue on appeal is when Wyche learned about the tax lien, thereby triggering his obligation under FINRA rules to file an amended Form U4 within 30 days to disclose it. Based on our review of the record, we agree with the Hearing Panel that Wyche learned about the tax lien on or about January 24, 2014. Wyche's contemporaneous emails around the time the lien was filed against him, and Wyche's August 20, 2014 written response to FINRA staff's Rule 8210 request, establish that Wyche learned about the lien on or about January 24, 2014.

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[5] FINRA rules apply with equal force to all members and associated persons. *See* FINRA Rule 0140(a) ("Persons associated with a member shall have the same duties and obligations as a member under the Rules.").

Although Wyche contends that he did not learn about the tax lien until August 7, 2014, when FINRA staff questioned him about it, we find this contention unpersuasive. Two contemporaneous emails written by Wyche show that he was aware of the tax lien on or around the time it was filed. First, on January 29, 2014—five days after the lien was filed—Wyche's wife emailed him with the name and phone number of an individual named "Shay" and the question "Tax service?" Wyche responded by email within 20 minutes. He wrote that Shay was calling from a particular tax services company and "*my assumption is that they monitor when tax liens are filed* and then call to see if we need help resolving the lien. I'm assuming we'll get more calls like this from other folks who provide tax services" (emphasis added). Second, on February 5, 2014, Wyche emailed his tax accountants about the lien. In a string of emails discussing Wyche's personal tax return and the tax return for Wyche Securities, Wyche wrote, "I am anxious to get *the tax lien* removed that the IRS filed last month regarding the amount due from 2011" (emphasis added). One of the accountants responded later that same day, but he did not refer to the lien and instead wrote that he had uploaded documents related to Wyche's tax preparation to their client portal.

At the hearing, Wyche testified that he "mistakenly repeated some of the language [Shay] used" in his emails. Wyche, however, does not express in his reply email to his wife any alarm or surprise about a lien that he allegedly knew nothing about. Instead, he matter of factly says that he and his wife should expect future calls from other tax service providers, like Shay. A week later, Wyche mentioned in an email to his accountant that he wanted to get "the tax lien removed." Wyche testified that the call from Shay caused "a fair amount of anxiety in [his] house," but he assumed that, after receiving no response from his accountant about the lien, and knowing that he was current on his installment plan with the IRS, Shay was either a high pressure salesman or conducting a scam.[6] When pressed by the Hearing Panel to explain what in his accountant's reply email gave him comfort, Wyche testified: "Let me review that email. I am not sure about that email." We find Wyche's explanation about his emails not credible.

Further, Wyche's actions belie his assertions that Shay's call caused "a fair amount of anxiety." Wyche does not explain why he waited a week to email his accountant to inquire about a lien he allegedly knew nothing about and which was causing him anxiety. Wyche also testified that he never asked his accountant to investigate whether a lien was filed against him. Wyche testified that the IRS told him that its "collection activities and efforts" would be suspended as a result of entering into an installment agreement with the IRS. Wyche admitted at the hearing, however, that he never discussed liens with the IRS but instead assumed that any lien would be included in the IRS's suspended collection activities. Wyche also testified he never discussed liens with the IRS even after receiving Shay's voicemail, "because [he] had prior conversations with the IRS about collection efforts and activities." Wyche's actions do not support his assertion that Shay's call caused alarm.

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[6] Neither Wyche nor his wife ever spoke directly with Shay. To best of Wyche's recollection, Shay left a voicemail, which both he and his wife listened to.

In addition to the contemporaneous emails, Wyche admitted to FINRA in writing that he learned about the lien on or about January 24, 2014. In his August 20, 2014 response to FINRA staff's Rule 8210 request for information seeking the date he was notified about the lien, and the manner in which he was notified, Wyche wrote, "I received a letter from the IRS on or around January 24, 2014 notifying me of the lien." Wyche explained that he did not disclose the lien to Meyers Associates previously: "I was not aware that overdue taxes are required to be disclosed. I now understand that because the overdue situation rose to the level of the IRS filing a lien, that a disclosure should have been made at the time I was notified that the lien was filed."

On appeal, Wyche asserts that his written statements in his Rule 8210 response were not based on his recollection of events but rather were reiterations of what he learned in FINRA staff's Rule 8210 request and from his conversations with the IRS after receiving the request. Wyche argues that "a key piece of information that [he] disclosed about the lien is that it was filed on January 24, 2014," but the only document which Enforcement alleged Wyche received that contained the January 24, 2014 date was FINRA staff's Rule 8210 request.[7] Relying on the IRS Account Transcript, Wyche argues that, if he had received the Notice of Federal Tax Lien, he would have told FINRA that the tax lien was filed on January 14, 2014. He also argues that, if he had received some other notice issued on January 23, 2014, he would not have learned that the tax lien was recorded on January 24, 2014, because the filing had yet to happen as of January 23, 2014.

We find Wyche's argument unconvincing. First, Wyche did not disclose to FINRA staff in his August 20, 2014 response when the lien was filed but rather when he "received a letter from the IRS . . . notifying [him] of the lien." Moreover, when asked in the Rule 8210 request to explain why he had not previously disclosed the lien to Meyers Associates, Wyche did not write that he was unaware of the lien until August 7, 2014. Rather, Wyche wrote that "[he] was not aware that overdue taxes are required to be disclosed," but he now understood "that a disclosure should have been made *at the time he was notified that the lien was filed*" (emphasis added).

Wyche's contemporaneous emails and August 20, 2014 written response to FINRA establish that he learned about the lien on or about January 24, 2014.[8] By failing to disclose the

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[7] The Notice of Federal Tax Lien against Wyche is dated January 14, 2014, and the recording document for the lien was prepared January 23, 2014, and recorded January 24, 2014. The IRS Account Transcript provides that IRS "[i]ssued notice of lien filing and right to Collection Due Process hearing" on January 23, 2014.

[8] The Hearing Panel, relying on the "mailbox rule" and the entry in the IRS Account Transcript stating the IRS "[i]ssued notice of lien filing and right to Collection Due Process hearing" on January 23, 2014, presumed that Wyche received the Notice of Federal Tax Lien. In this case, we do not to reach whether Wyche received the Notice of Federal Tax Lien, or a different notice from the IRS, or determine the method of service that the IRS used in order to establish that Wyche learned about the lien on or about January 24, 2014. Wyche admitted to FINRA staff in writing that he learned about the lien in a letter he received from the IRS on or

[Footnote continued on next page]

tax lien within 30 days of learning of it, Wyche violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

B. Wyche Is Statutorily Disqualified by Willfully Failing to Amend His Form U4

We next consider whether Wyche willfully failed to disclose material information on his Form U4, thereby subjecting him to statutory disqualification. A person is subject to a statutory disqualification under Article III, Section 4 of FINRA's By-Laws and Exchange Act Section 3(a)(39)(F) if he:

> has willfully made or caused to be made in any application . . . to become associated with a member of . . . a self-regulatory organization, [or] report required to be filed with 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). We find that Wyche willfully failed to amend his Form U4 to disclose material information and, as a result, is subject to statutory disqualification.

A willful violation of the securities laws means that "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 citation omitted). "A failure to disclose is willful . . . if the respondent of his own volition provides false answers on his Form U4." *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012); *accord Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *13-14 (Mar. 15, 2016) (finding that respondent acted willfully where he knew about a bankruptcy and liens but failed to amend his Form U4 to disclose them), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). We find that Wyche was aware of the tax lien on or around January 24, 2014. Despite being aware of the lien, Wyche voluntarily failed to amend his Form U4 to disclose it.

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around January 24, 2014, which is consistent with Wyche's contemporaneous emails to his wife and accountants. Thus, contrary to Wyche's arguments on appeal, the absence in the record of an IRS document either dated or definitively received on January 24, 2014, is not dispositive because a preponderance of other direct evidence—comprised of Wyche's own statements—demonstrates that Wyche knew of the lien on or about January 24, 2014.

It is well established that liens are material in the context of disclosure on the Form U4. *See, e.g.*, *McCune*, 2016 SEC LEXIS 1026, at *21-22 (finding undisclosed tax liens on Form U4 are material); *Tucker*, 2012 SEC LEXIS 3496, at *47 (same). 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." *McCune*, 2016 SEC LEXIS 1026, at *21-22. Information about Wyche's tax lien would have alerted regulators, his member firm, and his customers about the potential financial pressures he was facing and affected customers' assessment of his ability to appropriately provide financial advice.[9] *See id.*; *Dep't of Enforcement v. Holeman*, Complaint No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at *25 (FINRA NAC May 21, 2018), *appeal docketed*, SEC Admin. Proceeding No. 3-18546 (June 18, 2018); *Dep't of Enforcement v. Riemer*, Complaint No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at *16 (FINRA NAC Oct. 5, 2017), a*ff'd*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct 31, 2018).

In sum, Wyche willfully failed to update his Form U4 to disclose material information. As a result, Wyche is statutorily disqualified.

## IV. Sanctions

The Hearing Panel suspended Wyche from associating with any FINRA member in any capacity for six months and fined him $10,000. For the reasons discussed below, we modify these sanctions.

The FINRA Sanction Guidelines ("Guidelines") for filing false, misleading, or inaccurate Form U4 amendments, or failing to file a required amendment, recommend a fine of $2,500 to $37,000.[10] In a case where aggravating factors are present, adjudicators are advised to consider suspending the individual for a period of 10 business days to six months.[11] In a case where aggravating factors predominate, adjudicators are advised to consider a longer suspension of up to two years or, where the respondent intended to conceal information, a bar.[12] The relevant 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 was in an intentional effort to conceal information; (4) the

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[9] At the hearing, Wyche testified that the tax liability for 2011 did not put him "under great financial stress." For a finding of materiality, it is not necessary that we conclude that Wyche was under financial pressure. Rather, the inquiry is whether a reasonable regulator, employer, or customer would have viewed the existence of the lien as significantly altering the total mix of information available.

[10] *See FINRA Sanction Guidelines* 71 (2017), http://www.finra.org/sites/default/files/2017_Sanction_Guidelines.pdf [hereinafter *Guidelines*].

[11] *Id.*

[12] *Id.*

duration of the delinquency; and (5) whether the lien that was not timely disclosed has been satisfied.[13] These considerations are in addition to the principal considerations of the Guidelines applicable in every disciplinary case.[14]

Wyche failed to disclose on his Form U4 a federal tax lien. We agree with the Hearing Panel that he acted intentionally.[15] Wyche testified that he was aware, in 2013, that FINRA rules required Forms U4 to be kept current at all times by supplementary amendments filed with FINRA within 30 days of learning of a reportable event.[16] Despite knowing about the lien on or about January 24, 2014, and his obligation to disclose it, Wyche failed to amend his Form U4. He then intentionally and affirmatively concealed the lien again when he falsely responded to the FINRA personal activity questionnaire.[17] He also hindered FINRA's investigation by falsely reporting on his Form U4, and by falsely testifying to FINRA at his on-the-record interview, that he learned about the lien on August 7, 2014.[18] In addition, the initial amount of the lien—$230,265—was significant.[19] These factors aggravate Wyche's misconduct.

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13 *Id*.

14 *See id*. at 7-8.

15 *See id.* at 8 (Principal Considerations In Determining Sanctions, No. 13), 71.

16 Meyers Associates' written supervisory procedures required employees to promptly report to the compliance department any unsatisfied liens. Wyche acknowledged that he received and reviewed the procedures on November 3, 2013, and December 23, 2013. Wyche was the chief compliance officer at Wyche Securities. Wyche Securities' written supervisory procedures stated that FINRA rules required Forms U4 to be kept current at all times by supplementary amendments filed with FINRA within 30 days of learning of the reportable event. Wyche testified that he did not specifically remember the relevant provision of the firm's written supervisory procedures, but he believed he understood at the time his obligation to disclose on the Form U4 reportable events.

17 *See id.* at 71.

18 *See id.* at 8 (Principal Considerations In Determining Sanctions, No. 12).

19 *See id.* at 71. We note that by August 2014, when Wyche amended his Forms U4 to disclose the lien, he owed the IRS only $17,502 because he had made payments under the installment agreement and his balance was adjusted based on loss and other carryovers. Notwithstanding the reduction in his federal tax liability, the lien remained in effect until April 2017. *Id.* Wyche requested that the lien be withdrawn in March 2017, marking on the withdrawal application form that "[t]he taxpayer entered into an installment agreement to satisfy the liability for which the lien was imposed and the agreement did not provide for a Notice of Federal Tax Lien to be filed" and "[t]he taxpayer . . . believes withdrawal is in the best interest of the taxpayer and government."

We note, however, Wyche failed to disclose a single lien, the short duration of the delinquency, and the fact that he had paid down, and had otherwise worked with the IRS to reduce, the amount of lien significantly during the delinquency.[20]

Wyche argues that the Hearing Panel failed to consider several other factors that support mitigation. First, Wyche maintains that he did not engage in numerous acts or a pattern of misconduct.[21] While we agree that Wyche failed to disclose only one lien, we reject the characterization that his misconduct was isolated. Despite being aware of the lien, he falsely answered FINRA staff's personal activity questionnaire and filed two Forms U4 amendments during the five-month span in which he falsely answered question 14M that he did not have any outstanding liens. Even after he disclosed the lien on his Form U4, Wyche falsely stated on his Form U4 and testified that he learned about the lien on August 7, 2014. We do not find Wyche's misconduct consistent with an aberrant lapse in judgment.[22]

Wyche argues that he should be awarded mitigation because he reasonably relied on assurances from the IRS and his accountant that no lien was filed in January 2014.[23] We disagree. Wyche did not reasonably rely in good faith, following full disclosure of all of the relevant facts, on accounting advice. According to Wyche, Shay's call caused him distress, but he took comfort in the fact that his accountants did not address the lien in response to his email. But Wyche did not ask his accountant anything about an allegedly unknown lien, ask his accountant to investigate whether a lien was filed against him, or seek any advice with respect to it.[24] Accordingly, we award no mitigation for Wyche's reliance on professional advice. *Cf. Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 4131, at *40-41 (Nov. 14, 2008) ("We believe that the respondent asserting such reliance must provide sufficient evidence . . . . that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice."), *aff'd*, 347 F. App'x 692 (2d Cir. 2009).

Advice from the IRS is not contemplated by this principal consideration in the Guidelines. Even if it was, Wyche could not have reasonably relied on any advice from the IRS that it did not file a lien in January 2014 because, as he testified, he never discussed liens with

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20 *See id*. Wyche failed to amend his Form U4 to disclose the tax lien for only five months, but Wyche only amended it after FINRA wrote to him despite our finding that he was aware of the lien the prior six months.

21 *See id*. at 7 (Principal Considerations In Determining Sanctions, No. 8).

22 *See id*. at 7-8 (Principal Considerations In Determining Sanctions, Nos. 8, 15).

23 *See id*. at 7 (Principal Considerations In Determining Sanctions, No. 7).

24 In fact, Wyche wrote that he was "anxious to get the tax lien removed that the IRS filed last month."

the IRS. Rather, he allegedly assumed liens would be included in the IRS's suspended collection activities. We do not find this assumption to constitute "reasonable reliance," as contemplated by the Guidelines.

Finally, Wyche argues that he has no disciplinary history and zero customer complaints spanning a 25-year career in the industry.[25] But the "lack of a disciplinary history is not a mitigating factor." *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *65 n.77 (Nov. 12, 2010), *aff'd*, 449 F. Appx. 886 (11th Cir. 2011). Wyche also argues that no customers were harmed and that his customers are corporate entities, not the retail public. "[T]he absence of customer harm is not a mitigating factor." *See McCune*, 2016 SEC LEXIS 1026, at *35. More importantly, Wyche's argument ignores the fact that the omission of material information from his Form U4 potentially may have harmed third parties deprived of important disclosures, even absent specific evidence of customer harm. *See id.*

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." *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *23-26 (Apr. 18, 2013), *aff'd*, 575 F. App'x 1 (D.C. Cir. 2014). Failure to comply with Form U4 disclosure obligations "call[s] into question an associated person's ability to comply with regulatory requirements." *Tucker*, 2012 SEC LEXIS 3496, at *26. Based on this record, and taking into consideration both the aggravating and mitigating factors, we find that a four-month suspension in all capacities and $10,000 fine is appropriately remedial to address Wyche's misconduct.[26]

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[25] *See Guidelines*, at 7 (Principal Considerations In Determining Sanctions, No. 1).

[26] While addressing the sanctions imposed by the Hearing Panel, Wyche asserts that the statutory disqualification resulting from his willful failure to amend his Form U4 is a "draconian penalty." Wyche's statutory disqualification is a consequence imposed by operation of Exchange Act Section 3(a)(39)(F) and is not a sanction or penalty imposed by FINRA. *See McCune*, 2016 SEC LEXIS 1026, at *37; *Anthony A. Grey*, Exchange Release No. 75839, 2015 SEC LEXIS 3630, at *47 n.60 (Sept. 3, 2015). Thus, whether Wyche is subject to statutory disqualification is not relevant in our sanctions analysis.

V. Conclusion

Wyche failed to amend his Form U4 to disclose a federal tax lien, in willful violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. For his misconduct, we fine Wyche $10,000 and impose a four-month suspension in all capacities. As a consequence of Wyche's willful violation, he is subject to statutory disqualification. We also affirm the Hearing Panel's order that Wyche pay $3,077.94 in hearing costs.[27]

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

[27] Pursuant to FINRA Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, 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.