

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN D. RAUSCH
(CRD No. 1587767),

Respondent.

Disciplinary Proceeding
No. 2009017918001

Hearing Officer—Andrew H. Perkins

HEARING PANEL DECISION

May 10, 2012

Respondent is barred from associating in any capacity with any FINRA-registered firm for (1) failing to respond timely and completely to requests for information and documents, and failure to appear for an OTR, in violation of FINRA Rules 8210 and 2010; and (2) engaging in unapproved outside business activities and submitting a false annual compliance certification to conceal this activity from his firm, in violation of NASD Rules 3030 and 2110. In addition, Respondent is ordered to pay costs.

Appearances

For the DEPARTMENT OF ENFORCEMENT, Complainant, Dale A. Glanzman, Esq., and Mark A. Koerner, Esq., Chicago, IL.

John D. Rausch, Respondent, pro se.

DECISION

I. INTRODUCTION

Respondent John D. Rausch was a registered representative with UVEST Financial Services Group, Inc. from June 2001 until April 17, 2009. UVEST discharged Rausch on April 17, 2009. The Uniform Termination Notice for Securities Industry Registration (Form U5) UVEST filed on Rausch's behalf stated that he was discharged because he failed to respond to inquiries from the firm's compliance department.

Following receipt of the Form U5, FINRA opened an investigation into the circumstances surrounding his discharge from UVEST. The investigation ultimately led to the Department of Enforcement initiating this disciplinary proceeding.

The Department of Enforcement filed the Complaint on April 15, 2011. The Complaint charges Rausch with the following four violations.

- Willful failure to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose federal tax liens, in violation of NASD Conduct Rule 2110, FINRA Conduct Rule 2010, and Interpretive Material (“IM”) 1000-1 (Filing of Misleading Information as to Membership or Registration);
- Engaging in unapproved outside business activities, in violation of NASD Conduct Rule 3030 and FINRA Conduct Rule 2010;
- Submitting false annual compliance questionnaires to UVEST, in violation of NASD Conduct Rule 2110; and
- Failing to respond timely to requests for information issued by FINRA staff, and failure to appear for an on-the-record interview (“OTR”), in violation of FINRA Rules 8210 and 2010.¹

On June 17, 2011, Rausch filed an Answer with the Office of Hearing Officers.

Rausch generally denied the charges in the Complaint although he did not request a hearing.

¹ On July 26, 2007, the Securities and Exchange Commission approved a proposed rule change that NASD filed seeking to amend its Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc. (“FINRA”), in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. *See* Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522, 523. Following the consolidation, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 Fed. Reg. 57,174 (Oct. 1, 2008). FINRA’s disciplinary action was instituted after the consolidation of NASD and NYSE, but some of the conduct at issue took place before the consolidated rules took effect. Accordingly, NASD conduct rules apply to conduct that occurred before December 15, 2008, and FINRA conduct rules apply to conduct after that date. FINRA’s procedural rules apply. References to FINRA include references to NASD.

On July 5, 2011, the Hearing Officer held an initial pre-hearing conference in this proceeding. During the conference, the parties agreed that a hearing would be set for January 18-19, 2012, in Chicago. Because Rausch raised a concern about the cost of travel to Chicago, the Hearing Officer left open the possibility of moving the hearing to a location closer to Rausch's home if he provided the Department of Enforcement with financial information that supported his claim of financial hardship. Rausch did not follow through with the Department of Enforcement.

On January 12, 2012, FINRA's Office of Hearing Officers received a letter from Rausch that stated that he was "suspending any further defense" of the charges against him. Upon receipt of the letter, the Hearing Officer entered an order setting a conference with the parties the following day and indicating that he intended to cancel the hearing in light of Rausch's letter.

At the conference on January 13, 2012, Rausch confirmed that he did not want a hearing. Accordingly, without objection, the Hearing Officer canceled the hearing and ordered that the case would be decided by the Hearing Panel on the record pursuant to Rule 9221(c). In addition, the Hearing Officer directed the Department of Enforcement to supplement the record with affidavits or declarations from two of its proposed witnesses listed on the Department of Enforcement's witness list. The Hearing Officer granted Rausch until February 13, 2012, to file a narrative summary of his defense and any response to the Department of Enforcement's supplemental affidavits or declarations. The Department of Enforcement filed the required affidavits. Rausch filed a letter response in which he acknowledged that he had made some mistakes, for which he was "deeply sorry." Rausch did not submit any other evidence in his defense.

The Hearing Panel, which is composed of the Hearing Officer and two current members of FINRA's District 8 Committee, carefully considered the record,² and determined by a preponderance of the evidence that Rausch committed the violations alleged in the Complaint. For the reasons discussed below, the Hearing Panel barred Rausch from associating in any capacity with any FINRA-registered firm.

II. JURISDICTION

FINRA has jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws. Enforcement filed the Complaint within two years after FINRA terminated Rausch's registration, and the Complaint charges Rausch with misconduct that occurred while he was associated with a FINRA-registered firm.³

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Rausch's Background

Rausch has been in the securities business for more than 20 years. He began his career in 1987, at which time he registered with FINRA as a General Securities Representative. Between 1985 and 2001, Rausch was associated with a number of FINRA-registered firms. In 2001, Rausch joined UVEST. Rausch was associated with UVEST and registered with FINRA as a General Securities Representative from June 18, 2001, until April 17, 2009.⁴ Currently, he is not associated with a FINRA-registered firm.

² The Department of Enforcement's exhibits (CX-1 through CX-11) were admitted into evidence.

³ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁴ CX-1, at 2.

B. Willful Failure to Amend his Form U4 to Disclose Tax Liens

1. Requirement to Accurately Amend Form U4

At all relevant times, FINRA has required any person who works in the investment banking or securities business of a FINRA member to register as a securities representative or principal, among other categories.⁵ To register, applicants must complete a Form U-4, in which they provide detailed information about their personal, employment, disciplinary, and financial background. FINRA and other self-regulatory organizations use Form U4 to determine the fitness of applicants for registration as securities professionals.⁶

During the relevant period, Article V, Section 1(c) of FINRA By-Laws provided that every Form U4 filed with FINRA be kept current at all times by supplementary amendments that must be filed within 30 days of learning of the facts or circumstances giving rise to the amendment. “The 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.”⁷ Failing to file prompt amendments to a Form U4 violates NASD Conduct Rule 2110 (now FINRA Conduct Rule 2010).⁸

IM-1000-1 prohibits the filing, in connection with membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading.

⁵ NASD Membership and Registration Rules 1021(a), 1031(a).

⁶ See, e.g., *Timothy H. Emerson*, Exchange Act Rel. No. 60328, 2009 SEC LEXIS 2417, at *7 n.8 (July 17, 2009).

⁷ *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011).

⁸ *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012), 2012 U.S. App. LEXIS 2907, at *6 (Feb. 14, 2012).

IM-1000-1 applies to Form U4. “Every person submitting Form U4 has the obligation to ensure that the information provided on the form is true and accurate.”⁹ “A person who willfully makes a false or misleading statement or a material omission in a Form U4 is subject to the penalty of statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange of 1934.”¹⁰

2. Rausch Failed to Report Tax Liens

In separate written notices between February and October 2008, the Internal Revenue Service (“IRS”) informed Rausch that he had four unsatisfied tax liens against him, totaling \$286,248.68, due to his failure to pay personal income taxes in full for tax years 2002, 2003, 2004, 2005, 2006, and 2007.¹¹ In addition, in November 2008, the State of Michigan informed Rausch that he had an unsatisfied tax lien against him in the amount of \$4,974.02, due to his failure to pay his state personal income tax in full.¹² The five liens were as follows: (1) a \$218,693.55 lien entered January 8, 2007, in connection with his unpaid taxes for 2002, 2003, and 2004; (2) a \$23,854.37 lien entered August 11, 2008, in connection with unpaid taxes for 2006; (3) a \$22,386.51 lien entered August 4, 2008, in connection with unpaid taxes for 2005; (4) a \$21,315.25 lien entered June 2, 2008, in connection with unpaid taxes for 2007; and (5) a \$4,974.02 lien entered August 1, 2008, in connection with unpaid state income taxes. Each of the federal notices advised Rausch that the IRS had “made a demand for payment” of the unpaid tax liability and informed him that, as a consequence of his nonpayment, “there is a lien in favor of the

⁹ *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *16 (Dec. 7, 2009), *aff’d sub nom.*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

¹⁰ 15 U.S.C. § 78c(a)(39)(F).

¹¹ CX-2, at 6-9.

¹² CX-2, at 5.

United States on all property and rights to property belonging to [Rausch] for the amount of these taxes” Similarly, the lien notice from the State of Michigan advised Rausch that, as a consequence of his nonpayment, “[a] lien in favor of the State of Michigan exists on all [Rausch’s] property and rights to property”

Rausch first provided UVEST with copies of the tax lien notices on March 19, 2009,¹³ after UVEST learned of their existence from a review of Rausch’s credit report in connection with a branch office audit. UVEST prepared an amended Form U4, which UVEST sent to Rausch on March 31, 2009.¹⁴ Rausch refused to sign the amended Form U4. Accordingly, on April 7, 2009, UVEST filed the amended Form U4 without Rausch’s signature.¹⁵

Although the IRS and State of Michigan notices alone provide substantial evidence that Rausch was aware of the unsatisfied tax liens, Rausch confirmed in correspondence with UVEST in March 2009 that he had known about the liens for some time. On March 2, 2009, he sent an email to UVEST in response to the Compliance Department’s review of his credit report.¹⁶ Rausch stated that the tax liens “came about in the past year from old [tax] returns that had taxes due around the time of my wife’s retirement.”¹⁷ Rausch further explained that he and his wife had been working with the IRS through a tax attorney and that they were current on their agreement with the IRS.¹⁸

¹³ CX-3, at 16-21.

¹⁴ CX-2, at 51, 54.

¹⁵ CX-1, at 8-25. Rausch completed the original Form U4 to associate with UVEST in June 2001. (CX-5, at 13).

¹⁶ CX-2, at 20, 23.

¹⁷ CX-2, at 20.

¹⁸ *Id.*

Rausch also admitted in a letter to FINRA Senior Examiner Lisa D. Schaeffer dated November 18, 2009, that he did not report the tax liens when they were filed.¹⁹ Rausch stated that he had not reported the liens because he did not believe they had to be disclosed “until they were resolved.”²⁰

On October 31, 2008, Rausch completed a 2008 Annual Compliance Questionnaire (“Annual Certification”) for UVEST.²¹ Rausch responded that he understood that he had an ongoing obligation to promptly notify UVEST’s registration department of any updates to his Form U4 as soon as a material change occurred.²² When asked on the Annual Certification whether in the last two years he had a tax lien, Rausch answered “No.”²³ At the time Rausch completed the Annual Certification, he had five tax liens pending against him. This intentional inaccuracy on the Annual Certification is in direct contravention of high standards of commercial honor and just and equitable principles of trade.

Based on the evidence in the record, the Hearing Panel finds that Rausch violated NASD Rule 2110, FINRA Conduct Rule 2010, and IM-1000-1.

3. Rausch is Statutorily Disqualified

Rausch is statutorily disqualified.²⁴ A person is subject to “statutory

¹⁹ CX-7, at 18.

²⁰ *Id.*

²¹ CX-4, at 12-26.

²² *Id.* at 19.

²³ *Id.* at 20.

²⁴ Under the FINRA By-Laws, as a person subject to statutory disqualification, Rausch cannot become associated with any FINRA-registered firm unless the member firm applies to FINRA and is granted permission for Rausch to be associated with the firm. FINRA By-Laws, Art. III, §§ 3(b) & (d).

disqualification” from associating with a FINRA-registered firm under Article III, Section 4 of FINRA By-Laws and Section 3(a)(39)(F) of the Exchange Act if the person, 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 ... 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 ... any material fact which is required to be stated therein.²⁵

Rausch willfully failed to disclose the tax liens within the meaning of Section 3(a)(39)(F) because he intentionally failed to amend his Form U4 to disclose the tax liens. Several factors compel the conclusion that Rausch’s failure to amend his original form was not innocent oversight. First, as the court noted in *Mathis v. SEC*,²⁶ Form U4 warns applicants that they are “under a continuing obligation to disclose changes to previously reported answers, including those related to any unreported liens in order to ensure that the information on the form remained ‘currently accurate and complete.’”²⁷ Second, Rausch submitted an inaccurate Annual Certification in 2008, which required him to disclose any tax liens that occurred within the last two years. Rausch answered falsely that no tax liens had occurred. The fact that Rausch lied on the Annual Certification evidences that his failure to amend Form U4 was intentional.²⁸

²⁵ 15 U.S.C. § 78c(a)(39)(F).

²⁶ 2009 SEC LEXIS 4376, at *25.

²⁷ *Id.* at *25-26.

²⁸ *See Id.* at *26.

In addition, the tax lien information was material. The “proper and familiar” test for materiality is set forth in *TSC Industries, Inc. v. Northway, Inc.*²⁹ “[T]here must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”³⁰ Taking into consideration the large dollar amount of the tax liens, the number of liens, and the length of time Rausch failed to disclose them, the Hearing Panel finds the tax liens were a material fact. Rausch’s omissions significantly altered the total mix of information made available to FINRA, other regulators, employers, and investors. Moreover, as FINRA’s National Adjudicatory Council has stated repeatedly, “[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material.”³¹

C. Unapproved Outside Business Activities

NASD Rule 3030 prohibits any person associated with a member firm from being “employed by, or accept[ing] compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.” The member firm determines the form of the requisite written notice.³² The rule was “intended to improve the supervision of registered personnel by providing information to

²⁹ *Mathis*, 2009 SEC LEXIS 4376, at *28.

³⁰ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

³¹ *Dep’t of Enforcement v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *41 n.23 (NAC July 28, 2011) (quoting *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004)).

³² NASD Rule 3030.

member firms concerning outside business activities of their representatives.”³³ Member firms are to receive “prompt notification of *all outside business activities* of their associated persons so that the member’s objections, if any, to such activities [can] be raised at a meaningful time and so that appropriate supervision [can] be exercised.”³⁴

The record shows, and Rausch has not disputed, that he engaged in several outside business activities while he was associated with UVEST.³⁵ Before June 1, 2007, Rausch had permission to buy and sell items on eBay and to use direct selling agreements with fixed only insurance companies.³⁶ On June 1, 2007, UVEST issued a letter to Rausch, directing that he “cease and desist [his] participation” in his direct selling activities with fixed only insurance companies.³⁷ Rausch was granted permission to continue his activities on eBay. Rausch signed the letter on June 25, 2007, indicating that he would cease his outside business activities on behalf of insurance companies and that he would henceforth submit all insurance business (fixed and variable) to UVEST for review and approval.³⁸

Despite UVEST’s June 1, 2007 directive that Rausch immediately cease using direct selling agreements with fixed only insurance companies, Rausch continued this unapproved outside business activity with OM Financial Life Insurance Company.

³³ NASD Notice to Members 88-86 (Nov. 1988).

³⁴ *Id.* (emphasis added); NASD Notice to Members 01-79 (Dec. 2001) (emphasizing that under NASD Rule 3030, associated persons are required to report any kind of outside business activity); *see also Dep’t of Enforcement v. Schneider*, No. 010030088, 2005 NASD Discip. LEXIS 6, at *13 (NAC Dec. 7, 2005) (NASD Rule 3030 extends to all outside business activity, not just securities-related activity).

³⁵ CX-5, at 18-19.

³⁶ CX-3, at 36.

³⁷ *Id.* UVEST also disapproved his request to act as an employee of a mortgage broker.

³⁸ CX-6.

Rausch's tax records reflect that he earned \$57,166.02 in 2008 from sales of fixed insurance products on behalf of OM Financial Life Insurance Company.³⁹ Rausch failed to disclose his sales of fixed insurance products that he engaged in through OM Financial Life Insurance Company after June 25, 2007.⁴⁰ In addition, Rausch concealed this activity from UVEST. Rausch omitted his sales activities on behalf of OM Financial Life Insurance Company on his 2008 Annual Certification that asked him to disclose all of his outside business activities in 2007 and 2008.⁴¹

Based on the evidence in the record, the Hearing Panel finds that Rausch violated NASD Rule 3030 and FINRA Rule 2010, by engaging in unapproved outside business activities.⁴²

D. Failure to Disclose Material Information on Compliance Questionnaire

As discussed above, Rausch failed to disclose five tax liens and his outside business activities with OM Financial Life Insurance Company on his Annual Certification in October 2008 that he submitted to UVEST. Rausch thereby violated NASD Rule 2110. "A registered representative's failure to disclose material information to his firm violates NASD Rule 2110, and calls into question the registered

³⁹ CX-7, at 61.

⁴⁰ Affidavit of Christine Daigle ¶ 6.

⁴¹ *Id.* ¶ 7; CX-4, at 20.

⁴² See *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *19 & n.28 (July 1, 2008) (holding that a violation of NASD Rule 3030 is also a violation of NASD Rule 2110 (now FINRA Rule 2010)).

representative's 'ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.'"⁴³

E. Failure to Respond to Rule 8210 Requests for Information and Documents and Failure to Appear for an On-The-Record Interview

1. Failure to Respond Timely to First Set of Rule 8210 Requests

After UVEST terminated Rausch, FINRA staff began an investigation into his possible misconduct at the firm. FINRA staff first obtained information through a series of Rule 8210 requests for information FINRA staff sent to UVEST.⁴⁴ Based on UVEST's responses, in September, October, November, and December 2009, and in January 2010, pursuant to FINRA Rule 8210, FINRA staff sent a set of information requests to Rausch, seeking information about his credit report, the federal and state tax liens, and his outside business activities.⁴⁵

Rausch responded to the first request dated September 29, 2009, but he did not provide any of the requested information or documents. Rausch stated in a letter dated October 7, 2009, that he needed additional time to gather the requested documents. Rausch further stated that he would "work through these issues," but he was unsure as to

⁴³ *Dep't of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA LEXIS 70, at *30 (NAC Feb. 24, 2011) (quoting *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (NAC May 7, 2003)); *see also Dep't of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (NAC Apr. 23, 2010) (holding that registered representative's submission of false and misleading forms to his member firm violated NASD Rule 2110); *James A. Goetz*, 53 S.E.C. 472, 477-78 (1998) (holding that registered representative's false statements on firm's forms reflect directly on his ability to comply with regulatory requirements fundamental to the securities industry).

⁴⁴ CX-2; CX-3; CX-4; CX-5; CX-6.

⁴⁵ CX-7.

how long it would take him to respond due to his travel requirements, lack of a compliance department to assist him in his response, and medical issues.⁴⁶

Because Rausch did not provide the requested information, FINRA staff sent him another Rule 8210 request dated October 19, 2009, seeking the same information and documents. Rausch responded by letter dated November 2, 2009, but he did not provide any of the requested information or documents.⁴⁷

FINRA staff sent the third request on November 4, 2009, requesting the same information and documents.⁴⁸ Rausch responded by letter dated November 18, 2009, in which he admitted that the tax liens were filed on or about the dates shown, and that he had mistakenly believed that he did not have to update his Form U4 until the liens were resolved.⁴⁹ Rausch failed to respond to FINRA staff's questions about his outside business activities or supply any of the requested documents. Rausch advised FINRA staff that he would not provide any information regarding his finances unless FINRA first provided him with a written assurance that the information would not be made public.⁵⁰

On December 16, 2009, FINRA staff sent Rausch the fourth 8210 request for information.⁵¹ FINRA staff renewed its previous requests for information and requested additional information and documents. Rausch responded by letter dated January 8, 2010, but he did not provide any of the requested information or documents.⁵² Rausch indicated

⁴⁶ *Id.* at 1-4.

⁴⁷ *Id.* at 4-5.

⁴⁸ CX-7, at 12.

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 19.

⁵¹ *Id.* at 20.

⁵² *Id.* at 23.

that he had received the December 16 request and that he would need additional time to respond.

FINRA staff sent a fifth request for information on January 11, 2010, which requested the same information and documents requested in the letter dated December 16, 2009.⁵³ Rausch finally produced the requested information and documents by letter dated January 25, 2010.⁵⁴

2. Failure to Respond Completely to Second Set of Rule 8210 Requests

FINRA staff issued Rule 8210 information requests to Rausch in April, May, June, and July 2010, to gather more information about his tax liens and his outside business activities with OM Financial Life Insurance Company. Rausch responded to these requests, but he did not provide all of the requested information and documents.

Rausch responded to the Rule 8210 request dated April 9, 2010, which sought information and documents regarding his failure to disclose material information on his Form U4.⁵⁵ In his letter dated April 22, 2010, Rausch provided an explanation of why he did not report the tax liens and other information on his Form U4.⁵⁶ Rausch did not provide the requested documents.

Because FINRA did not consider Rausch's response to be complete, it sent another request on May 19, 2010.⁵⁷ FINRA staff requested:

⁵³ *Id.* at 24.

⁵⁴ *Id.* at 27.

⁵⁵ CX-8.

⁵⁶ CX-9.

⁵⁷ CX-10, at 1.

- A copy of any selling agreement with OM Financial Life Insurance Company;
- The types of products sold;
- The names of the customers to whom products were sold; and
- Whether he disclosed his compensation from OM Financial Life Insurance Company to UVEST, and if so, how he disclosed it to UVEST.

Rausch responded by letter dated June 2, 2010, but he did not provide any of the requested information or documents. Rausch complained that the request was onerous and stated that he would need additional time to respond. In addition, he stated that his focus at that time was on finding employment.⁵⁸

On June 15, 2010, FINRA staff sent Rausch another Rule 8210 request for information and documents, seeking the same information and documents requested in FINRA's letter dated May 19, 2010.⁵⁹ Rausch responded by letter dated June 29, 2010.⁶⁰ In this letter, Rausch claimed that he had not received FINRA's June 15 letter, but he assumed that it was a follow-up to the staff's May 19 request. Rausch wrote that he was still working on a complete response. Rausch did not provide any of the requested information or documents.

In a further effort to obtain the same information, FINRA staff sent another Rule 8210 request on July 2, 2010.⁶¹ The letter required Rausch to produce the required materials at FINRA's Chicago office on or before July 16, 2010, and warned Rausch that

⁵⁸ *Id.* at 7.

⁵⁹ CX-10, at 8.

⁶⁰ *Id.* at 15.

⁶¹ *Id.* at 16.

his failure to comply may subject him to disciplinary action. On September 8, 2010, FINRA staff had a telephone conversation with Rausch, during which Rausch was told to provide the documents and information contained in the staff's May 19, 2010 request.⁶² In follow up to the telephone conversation, FINRA staff sent another Rule 8210 request to Rausch dated September 9, 2010, specifically asking Rausch to answer certain questions in the May 19, 2010 request. In addition, the staff asked Rausch to identify the products he sold after June 2007 through OM Financial Life Insurance Company and the amount of compensation received from each sale. The staff inquired whether Rausch had disclosed the compensation he received from OM Financial Life Insurance Company to UVEST.⁶³ Rausch was directed to respond no later than September 24, 2010, and the letter advised him that he may be subject to disciplinary action if he failed to comply with the request.⁶⁴

On September 13 and 14, 2010, Rausch provided partial responses to FINRA's May 19, 2010 request.⁶⁵ As to the remaining information, he claimed that it would be difficult to obtain and that FINRA had requested information concerning an area over which FINRA had no regulatory control. Specifically, Rausch took the position that FINRA had no authority to obtain information about his sales of fixed annuity products and that "he had gone past what [was] required."⁶⁶

⁶² Affidavit of Lisa Schaffer ¶ 3.

⁶³ CX-10, at 23.

⁶⁴ CX-10, at 24.

⁶⁵ *Id.* at 32-34.

⁶⁶ *Id.* at 34.

To date, Rausch has not provided all of the information and documents requested by FINRA pursuant to Rule 8210 as set forth in the May 19, 2010 request.⁶⁷

3. Failure to Appear for an On-The-Record Interview

On October 12, 2010, FINRA staff sent Rausch a letter requesting that he appear for an on-the-record interview (“OTR”) at its Chicago office on November 4, 2010.⁶⁸ FINRA’s letter informed Rausch that he was obligated to appear on that date and at the time specified in the letter. Rausch responded to FINRA’s letter on October 21, 2010, stating that he would not be able to appear because he “did not have the resources available to make this 10+ hour trip.” On October 22, 2010, FINRA sent a letter to Rausch requesting that he complete an attached Statement of Financial Condition so that FINRA could verify his claim that he was financially unable to travel from his home in central Michigan to Chicago.⁶⁹ FINRA sent the request for financial information pursuant to Rule 8210. Rausch responded by letter dated November 10, 2010.⁷⁰ Rausch refused to supply the requested financial information and reiterated his objection to the OTR as “overly burdensome.”⁷¹ Rausch further asserted that he had responded fully to all of FINRA’s information requests. To date, Rausch has not provided FINRA with a completed Statement of Financial Condition, and has not appeared for an OTR.⁷²

⁶⁷ Affidavit of Lisa Schaffer ¶ 4.

⁶⁸ CX-11, at 1.

⁶⁹ *Id.* at 7.

⁷⁰ CX-11, at 16.

⁷¹ CX-11, at 16.

⁷² Affidavit of Lisa Schaffer ¶ 5.

Based on the evidence in the record, the Hearing Panel finds that Rausch violated FINRA Rules 8210 and 2010, by failing to respond completely and timely to FINRA's requests for information and failing to appear for an OTR with FINRA staff.

IV. SANCTIONS

In determining the appropriate sanctions in this case, the Hearing Panel first considered the General Principles Applicable to All Sanction Determinations, which provide that

Adjudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices. Depending on the seriousness of the violations, Adjudicators should impose sanctions that are significant enough to ensure effective deterrence.⁷³

Adjudicators are directed to impose sanctions that will protect the investing public.⁷⁴

In addition to the foregoing general guidance, the Hearing Panel next considered whether separate sanctions should be assessed for each violation. "SEC case law and [FINRA] practice strongly suggest that sanctions be assessed per cause."⁷⁵ However, "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals."⁷⁶ The FINRA Sanction Guidelines ("Sanction Guidelines") permit the aggregation or "batching" of violations for purposes of determining sanctions in disciplinary

⁷³ FINRA Sanction Guidelines at 2 (2011) (General Principles Applicable to All Sanctions Determinations No. 1), available at www.finra.org/sanctionguidelines.

⁷⁴ *Id.*

⁷⁵ *Dep't of Enforcement v. Fox & Co. Invs., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (N.A.C. Feb. 24, 2005) (citing *Investment Mgmt. Corp.*, 2003 NASD Discip. LEXIS 47, at *27-28), *aff'd*, 2005 SEC LEXIS 2822 (Oct. 28, 2005).

⁷⁶ *Id.*

proceedings where the violations result from a single systemic problem or cause.⁷⁷ The Hearing Panel concludes that Rausch's submission of the inaccurate Annual Certification in 2008 was part of a systemic problem — a willingness to mislead and deceive his firm regarding his outside business activities and finances — that warrants an aggregation of sanctions for these violations.⁷⁸ The Hearing Panel also notes that the Sanction Guidelines for outside business activities specifically direct adjudicators to take into consideration whether the respondent attempted to mislead his or her employer firm about the existence of the outside activity.⁷⁹ Thus, the recommended range of sanctions for outside business activities takes into consideration conduct such as Rausch's submitting a false compliance questionnaire to conceal his activity from UVEST. Accordingly, the Hearing Panel will not impose a separate sanction for Rausch's submission of the false Annual Certification.

A. Outside Business Activities

The Sanction Guidelines for failure to comply with the rule requirements governing the disclosure of outside business activities recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where the misconduct does not involve aggravating factors and up to one year where aggravating factors are present.⁸⁰ In an egregious case, the Sanction Guidelines recommend a suspension of more than one

⁷⁷ Sanction Guidelines at 4 (General Principles Applicable to All Sanctions Determinations No. 4).

⁷⁸ *Cf., Dep't of Enforcement v. Zaragoza*, No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *29 (NAC Aug. 20, 2008) (upholding the Hearing Panel's decision to aggregate interrelated violations for purposes of assessing sanctions).

⁷⁹ Sanction Guidelines at 13 (Principal Consideration No. 5).

⁸⁰ Sanction Guidelines at 13.

year or a bar.⁸¹ The Hearing Panel concludes that Rausch's misconduct was egregious, involving several aggravating factors, and that a bar is the appropriate remedial sanction.⁸²

Rausch's misconduct was intentional and demonstrated a disregard for the rules governing his conduct as a registered representative. On June 1, 2007, UVEST rescinded Rausch's permission to use direct selling agreements with fixed only insurance companies and directed Rausch to "cease and desist [his] participation in this activity immediately."⁸³ In addition, UVEST required Rausch to sign a copy of the letter to document his understanding and acceptance of the requirements and limitations imposed by the June 1 letter. The acknowledgement and acceptance provided

I have read and understand UVEST's policies and procedures regarding submitting business. Going forward, all business (fixed and variable) will be submitted to UVEST for review and approval. I also understand that UVEST has not approved of me conducting any business as a mortgage broker. If I am currently working in this capacity, I will cease and desist this activity immediately.⁸⁴

Rausch signed the acknowledgement on June 25, 2007.

Despite UVEST's clear directive—and Rausch's written agreement—to cease immediately all outside business activity with fixed only insurance companies, Rausch

⁸¹ *Id.*

⁸² The specific principal considerations set forth in the Sanction Guidelines for outside business activities are: (1) whether the outside activity involved customers of the firm; (2) whether the outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury; (3) the duration of the outside activity, the number of customers and the dollar volume of sales; (4) whether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service; and (5) whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm. Sanction Guidelines at 13.

⁸³ CX-2, at 11.

⁸⁴ *Id.* at 12.

continued to do business with OM Financial Life Insurance Company for another 22 months. In addition, Rausch affirmatively lied on the Annual Certification he submitted in October 2008 in an effort to conceal his ongoing outside business activities. When UVEST finally discovered that he had continued his arrangement with OM Financial Life Insurance Company and attempted to investigate the nature and extent of his activities, Rausch refused to cooperate and stonewalled UVEST. In March 2009, UVEST learned from the size of the tax liens against Rausch that UVEST was not the primary source of Rausch's income. UVEST observed that the income tax liens were greater than his earned income at UVEST.⁸⁵ Accordingly, UVEST's compliance department requested Rausch to provide his tax returns for 2006 and 2007 and bank statements for 2008 in order to understand fully his financial situation.⁸⁶ Rausch refused to cooperate with UVEST's investigation. On April 10, 2009, UVEST's compliance department sent Rausch an email, expressing UVEST's significant concern about his situation.⁸⁷ UVEST wrote that Rausch had not been forthcoming with the information it needed to conduct its investigation and referenced Rausch's unwillingness to produce his tax returns. The email concluded by giving Rausch a deadline to comply or it would be forced to terminate his employment for cause.⁸⁸ Rausch did not respond until UVEST prompted him on April 14, 2009, at which time Rausch stated that he had been too busy

⁸⁵ CX-2, at 47.

⁸⁶ *Id.*

⁸⁷ CX-2, at 55.

⁸⁸ *Id.*

to comply with UVEST's request.⁸⁹ Ultimately, Rausch took the position that UVEST was not entitled to the information,⁹⁰ and he never provided it to UVEST.

The Hearing Panel also found that the volume and duration of the business he did with OM Financial Life Insurance Company to be aggravating factors. Although the record does not contain specific information about the number and value of the policies he sold, there is sufficient information to gauge generally the amount of business he did with OM Financial Life Insurance Company.⁹¹ His tax form shows that OM Financial Life Insurance Company paid him \$57,166.02 in 2008.⁹² In contrast his reported earned income from UVEST was \$17,232.17.⁹³ These numbers support the conclusion that Rausch refused to cease his outside work with OM Financial Life Insurance Company because of the substantial financial benefit it provided.

Finally, the Hearing Panel notes that Rausch has not accepted responsibility for his misconduct.⁹⁴ Even after the Department of Enforcement filed the Complaint, Rausch continued to argue that FINRA had no right to question him about his outside business activities with OM Financial Life Insurance Company. Rausch asserted that the business he was doing was outside FINRA's jurisdiction because he was not selling securities. This argument further evidences his unwillingness to comply fully with FINRA's rules.

⁸⁹ *Id.* at 57.

⁹⁰ *Id.* at 63.

⁹¹ Rausch frustrated the Department of Enforcement's efforts to obtain this information by his refusal to cooperate fully with the Department of Enforcement's investigation.

⁹² The Hearing Panel notes that he earned more than \$81,500 from OM Financial Life Insurance Company in 2007.

⁹³ CX-7, at 60.

⁹⁴ Sanction guidelines at 6 (Principal Considerations in Determining Sanctions No. 2).

The record contains little in the way of mitigation. Although Rausch has stated that he is “very regretful for [his] part” in the mistakes at UVEST and that “[r]egardless of any misunderstandings with UVEST, [he] should have done more,” he has not offered an explanation for his intentional misconduct.⁹⁵ Rausch has not explained either his deliberate refusal to comply with UVEST’s directive that he cease his outside insurance business or his false representations on his Annual Certification. Instead, Rausch points to the fact that he has “20 plus years of always doing what is right for [his] clients.”⁹⁶ But the absence of a disciplinary history is not mitigating.⁹⁷ The Hearing Panel also does not find Rausch’s expression of regret to be mitigating. Rausch only vaguely acknowledged that some mistakes were made, which the Hearing Panel understood to be references to his alleged misunderstanding regarding when he had to report the tax liens. Rausch claimed that he believed that he only had to report the liens once there was a liquidated amount due. Because he claimed that the liens were overstated, he concluded that they were not reportable. This is the only mistake he ever acknowledged. On the other hand, his actions in continuing his outside business with OM Financial Life Insurance Company and his submission of the false Annual Certification were not mistakes—in those instances he acted deliberately and with knowledge that his conduct was wrong. Finally, Rausch did not express any regret until he realized that he might not be able to participate in the securities industry in the future. An individual’s expression of regret

⁹⁵ Rausch Submission (Feb. 8, 2012).

⁹⁶ *Id.*

⁹⁷ *See, e.g., Dep’t of Enforcement v. Cody*, No 200500318890, 2010 FINRA Discip. LEXIS 8, at *63 (NAC May 10, 2010).

made to save his securities license is not the equivalent of heart-felt remorse, recognition of wrongdoing, and acceptance of responsibility for his actions.⁹⁸

Taking all of the forgoing factors into consideration, as well as his refusal to cooperate with FINRA's investigation into the nature and extent of his outside business activities, the Hearing Panel concludes that a bar is necessary and appropriate to protect the investing public and to deter others from engaging in similar misconduct.

B. Failures to Provide Information

Exchange Act Section 15A requires that FINRA enforce compliance by its members and their associated persons with the Exchange Act, the Exchange Act rules, and FINRA's rules. While the Exchange Act imposes an obligation on FINRA to enforce compliance by its members and associated persons, FINRA does not have subpoena power to assist it in carrying out this duty. It must, instead, "rely upon Procedural Rule 8210 in connection with its obligation to police the activities of its members and associated persons."⁹⁹ Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."¹⁰⁰ "The rule is at the heart of the self-regulatory system for the securities

⁹⁸ *Cf. Dep't of Enforcement v. Leopold*, No. 2007011489301, 2012 FINRA Discip. LEXIS 2 (NAC Feb. 24, 2012) (mitigating factors include that respondent testified that he recognized the severity of his misbehavior, expressed sincere remorse, accepted responsibility for his actions, acknowledged that a serious sanction was warranted for his misconduct, expressed genuine shame for his behavior, and vowed that his lapses in judgment would not be repeated).

⁹⁹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), (quoting *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998)).

¹⁰⁰ *Id.* (quoting *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993)).

industry”¹⁰¹ and is an “essential cornerstone of [FINRA’s] ability to police the securities markets and should be rigorously enforced.”¹⁰²

In recognition of the importance Rule 8210 has to FINRA’s ability and obligation to police the securities markets and protect investors, the Sanction Guidelines provide a presumption that individuals should be barred from the securities industry for a complete failure to respond to a Rule 8210 request for information.¹⁰³ Likewise, a bar is standard where an individual provided a partial but incomplete response unless the individual can demonstrate that the information provided substantially complied with all aspects of the request.¹⁰⁴ The Sanction Guidelines further enumerate several principal considerations specifically applicable to determining the appropriate sanction for an individual who provides a partial but incomplete response. Adjudicators are directed to consider: (1) the importance of the information requested that was not provided as viewed from FINRA’s perspective; (2) the number of requests made, the time the individual took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the individual thoroughly explained valid reasons for the deficiencies in the response.¹⁰⁵

Rausch engaged in a pattern of delay and obfuscation that started with FINRA’s first request for information and documents in September 2009. As detailed above, Rausch repeatedly delayed responding completely to FINRA’s September 29, 2009 request letter. FINRA had to send four additional request letters over a four-month period

¹⁰¹ *Id.*

¹⁰² *Jay Alan Ochanpaugh*, Exchange Act Rel. No. 54363, 2006 SEC LEXIS 1926, at *19 (Aug. 25, 2006).

¹⁰³ Sanction Guidelines at 33.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

before Rausch finally acquiesced and provided a complete response. Moreover, Rausch refused to provide all of the information and documents FINRA requested in the second series of Rule 8210 requests. FINRA issued four additional requests over a four-month period beginning in April 2010. Although Rausch provided some information, he refused to provide all of the requested information regarding his outside business activities because he questioned FINRA's authority to obtain the information. His argument that FINRA was not entitled to ask him about the nature and extent of his outside business activities was without merit. Indeed, as an experienced securities professional, he knew or should have known that FINRA had a regulatory responsibility to review his outside activities to ensure that all of his securities related activities were properly supervised.

In addition to his delay tactics in responding to FINRA's written requests for information, Rausch failed to appear for his scheduled OTR. Although he claimed that it would be a financial hardship to attend the OTR in Chicago, he refused to respond to the Department of Enforcement's Rule 8210 request for his financial records. The Department of Enforcement sought the records to evaluate his claim of financial hardship. Rausch offered no other explanation for his refusal to attend the OTR.

The Hearing Panel finds that Rausch failed to substantially comply with all aspects of FINRA's Rule 8210 requests. The information FINRA sought was important to its investigation into the nature and extent of his outside business activities and his financial condition. As UVEST noted, the tax liens indicated that his outside activities were producing significantly more revenue than the business he did through UVEST. In addition, UVEST's credit check had turned up other questions about his solvency. FINRA's concern about his activities and financial stability were well justified under the

circumstances. Rausch's financial profile known to FINRA from UVEST's investigation raised substantial concern that his activities might put investors at risk. In addition, Rausch failed to present valid reasons for the delays and deficiencies in his responses. Indeed, his actions reflect an intentional effort to thwart FINRA's investigation. Accordingly, the Hearing Panel concluded that a bar is the appropriate sanction for this violation.

C. Failure to Amend Form U4 to Disclose Tax Liens

The Sanction Guidelines for filing an inaccurate Form U4 provide for fines ranging from \$2,500 to \$50,000 and a suspension in any or all capacities for 5 to 30 business days.¹⁰⁶ In egregious cases, the Sanction Guidelines recommend consideration of a longer suspension (of up to two years) or a bar.¹⁰⁷ The Sanction Guidelines also provide that adjudicators consider: (1) the nature and significance of the information at issue; and (2) whether the failure resulted in a statutorily disqualified person becoming or remaining associated with a firm.¹⁰⁸

The Hearing Panel concludes that Rausch's failure to disclose the five tax liens was egregious. The omitted tax lien information was significant. The tax liens were for a large amount—\$286,248.68. The liens covered unpaid taxes for a significant period—the tax years 2002 through 2008. The information undeniably was important to investors, employers, and regulators for the same reasons the Hearing Panel found it to be material. Moreover, Rausch did not have a good faith reason for his decision to withhold disclosure of the liens once he became aware of them. Rausch did not offer a credible

¹⁰⁶ Sanction Guidelines at 71.

¹⁰⁷ *Id.* at 72.

¹⁰⁸ *Id.* at 71.

basis for his assumption that he need not disclose such liens until the amounts covered by the liens are finally “resolved.” Rausch points to no authority or advice to that effect. Rausch only amended his Form U4 because of significant regulatory pressure. The Hearing Panel further notes that even after Rausch prepared an amended Form U4 for his signature, Rausch refused to sign it. His refusal to sign the Form U4 evidences his unwillingness to accept responsibility for his violation. Accordingly, the Hearing Panel finds that the sanction recommended by the Department of Enforcement would be appropriate under these facts and circumstances—a three-month suspension in all capacities and a \$5,000 fine. However, in light of the bars imposed for the other violations, the Hearing Panel will not impose a sanction for this violation.

V. ORDER

John D. Rausch is barred from associating in any capacity with any FINRA-registered firm for failing to respond timely and completely to requests for information and documents, and failing to appear for an OTR, in violation of FINRA Rules 8210 and 2010. John D. Rausch also is barred from associating in any capacity with any FINRA-registered firm for engaging in unapproved outside business activities and submitting a false annual compliance certification to conceal this activity from his firm, in violation of NASD Rules 3030 and 2110. The bars shall become effective immediately if this decision becomes FINRA’s final action. In light of the bars, no additional sanction is imposed for his willful failure to timely amend his Form U4.

In addition, John D. Rausch is ordered to pay costs in the amount of \$750, which shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.¹⁰⁹

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

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¹⁰⁹ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.