

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Louis Ottimo,
Syosset, NY,

Respondent.

DECISION

Complaint No. 2009017440201r

Dated: March 27, 2020

On remand from the Securities and Exchange Commission for reconsideration of sanctions. Held, sanctions reaffirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Danielle I. Schanz, Esq., Dale A. Glanzman, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Robert Knuts, Esq.

Decision

I. Background

This matter is before us on remand from the Securities and Exchange Commission (“Commission”). In our initial decision, the National Adjudicatory Council (“NAC”) found that Louis Ottimo fraudulently omitted material information in his private placement memorandum (“PPM”) biography in the offer and sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010. The NAC further found that Ottimo willfully failed to amend, or amend timely, on the Uniform Application for Securities Industry Registration or Transfer (“Form U4”) material information related to his unsatisfied tax liens and civil judgments, and a bankruptcy filing. For his fraud violation, the NAC barred Ottimo from associating with any FINRA member in all capacities. For his Form U4 violations, the NAC assessed a two-year suspension in all capacities and a \$25,000 fine, but in light of the bar did not impose them. Because Ottimo engaged in willful misconduct, he was subject to statutory disqualification. *See Dep’t of Enforcement v. Ottimo*, Complaint No. 2009017440201, 2017 FINRA Discip. LEXIS 10 (FINRA NAC Mar. 15, 2017).

On appeal to the Commission, Ottimo challenged only those portions of the NAC's decision that found him liable for engaging in fraud. The Commission affirmed FINRA's findings that Ottimo repeatedly failed to timely and accurately report material information on his Form U4 in violation of FINRA rules, and that his violations were willful. Thus, Ottimo is statutorily disqualified. The Commission further affirmed FINRA's findings that Ottimo violated the antifraud provisions under SEC and FINRA rules, with one exception. The Commission found that Ottimo willfully violated Exchange Act Section 10(b) and Rule 10b-5, and FINRA Rules 2020 and 2010, by omitting material facts in his PPM biography related to Jet One Jets, Inc. ("Jet One Jets"), a private jet charter company he co-owned. The Commission also sustained FINRA's finding that Ottimo is statutorily disqualified on this ground. The Commission, however, set aside FINRA's finding that Ottimo's failure to disclose bankruptcy information regarding Wheatley Capital Corporation ("Wheatley") constituted a material omission of fact that made his biography in the PPM misleading. Because the Commission set aside a portion of the fraud findings, it remanded the case to FINRA to re-determine the sanctions. *See Louis Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588 (June 28, 2018).

Having reconsidered the matter based on the full record, the Commission's findings of violation, and the briefs the parties submitted on remand, we impose the sanction of a bar on Ottimo. As explained below, we do so based on Ottimo's fraudulent omissions regarding Jet One Jets, and assess, but in light of the bar do not impose, a two-year suspension and \$25,000 fine for his Form U4 violations.

II. Facts

The relevant facts for this remand are as follows. Ottimo entered the securities industry in 1995. In 2008, Ottimo joined his father's brokerage firm, EKN Financial Services Inc. ("EKN"), and was a general securities representative during the misconduct at issue. Prior to joining EKN, Ottimo was the co-owner of Jet One Jets, and the owner and president of Wheatley. Both Jet One Jets and Wheatley ceased operations in 2008, the same year Ottimo joined EKN. FINRA expelled EKN in October 2012. Ottimo is not currently associated with a FINRA member.

A. Ottimo's Failure to Timely or Accurately Amend His Form U4 to Report Unsatisfied Tax Liens and Civil Judgments, and the Wheatley Bankruptcy Petition

Between 2010 and 2011, the Internal Revenue Service ("IRS") and the New York State Department of Taxation and Finance ("NYS DT") issued seven tax liens against Ottimo. From January 2010 through November 2010, the IRS notified Ottimo of five unsatisfied tax liens totaling \$160,129 for his failure to pay personal income taxes for years 2005 through 2009. In April 2010 and June 2011, the NYSDT notified Ottimo of two unsatisfied tax liens totaling \$32,994 for his failure to pay state personal income taxes for years 2006, 2008, and 2009. Ottimo reported none of these tax liens timely on his Form U4.

Ottimo did not report the first four IRS tax liens and one NYS DT tax lien issued between January 2010 and April 2010 on his Form U4 until September 2010, which is well after the 30-day period required by FINRA's rules. Ottimo did not report on his Form U4 the IRS tax lien issued in November 2010, until June 2011. He also did not report the NYS DT tax lien issued in June 2011, until April 2012. Although Ottimo acknowledged during the FINRA hearing that he knew FINRA required him to update his Form U4 within 30 days of receiving notice of a tax lien, he failed to do so in these seven instances.

Between March 2008 and April 2010, Ottimo also was the subject of the following six civil judgments that he either failed to report on his Form U4 within the 30 day requisite period, or he failed to report accurately, in the case of one civil judgment:

- On April 7, 2010, a judgment in favor of Lake Park 135 Crossways Park Drive, LLC was entered against Ottimo and others in the amount of \$ 300,031.81. Ottimo did not report the judgment on his Form U4 until May 19, 2011.
- On June 4, 2009, a judgment in favor of a creditor was entered against Ottimo and others in the amount of \$36,590.15. The court vacated the judgment on September 9, 2009, but Ottimo never reported the unsatisfied judgment on his Form U4 despite amending the form four times between June and August 2009.
- On March 9, 2009, a judgment in favor of Hamilton Equity Group, LLC, was entered against Ottimo and another party in the amount of \$108,832.94. Ottimo satisfied the Hamilton Equity Group judgment over a year later on May 17, 2010, but he never reported the judgment while it was unsatisfied on his Form U4.
- On December 18, 2008, a default judgment in favor of Stairworld Inc. was entered against Ottimo in the amount of \$6,791.40. Ottimo did not report the judgment on his Form U4 until March 28, 2011—over two years later and after filing 19 amendments to his Form U4.
- On October 2, 2008, a judgment in favor of a creditor was entered against Ottimo and Jet One Jets in the amount of \$2,211.80. Ottimo did not report the judgment on his Form U4 until November 11, 2010—over two years later and after filing 16 amendments to his Form U4.
- On March 3, 2008, Shelvin Plaza Associates, LLC, obtained a judgment against Ottimo and others holding them jointly and severally liable for \$161,740.73 of unpaid rent. Ottimo reported the judgment on his initial Form U4 after joining EKN, but he inaccurately reported the amount as \$70,240.06 and the date of the judgment as November 19, 2007. On February 23, 2009, the judgment was reduced to \$81,982.66, which included a principal amount of \$70,240.06 plus interest. Ottimo did not report this new information until September 13, 2010, but he incorrectly listed the judgment as \$41,847.22 and continued to list the judgment date as November 19, 2007.

On April 27, 2010, Wheatley filed for bankruptcy. Ottimo, as Wheatley's president, signed for and filed the bankruptcy petition. He, however, did not report the bankruptcy on his Form U4 until April 19, 2012, after he already filed 22 Form U4 amendments.

B. Ottimo Omitted Material Information in His PPM Biography Regarding Jet One Jets

In early 2012, Ottimo created First Secondary Market Fund LLC ("Fund"), a special purpose vehicle created to purchase shares of Facebook Inc. in the secondary market before its initial public offering ("IPO"). From March 6 through April 10, 2012, EKN sold member interests in the Fund raising \$3.76 million from 20 investors. Ottimo personally sold \$500,000 of member interests to two EKN clients, for which he received a six percent placement agent fee. Ottimo managed the Fund through First Secondary Managers LLC ("FSM"), of which he owned 85 percent and served as its chief executive officer.

According to the Fund's PPM, FSM "ha[d] the sole discretion over all decisions regarding the investments of the [Fund]." FSM was authorized to use the Fund offering's net proceeds to "acquire securities of companies such as Facebook Inc., Twitter, Inc. or other privately held companies" that FSM "deem[s] to be suitable . . . in its sole discretion." Ottimo exercised his authority to purchase pre-IPO shares of Facebook, and he personally received \$82,276 in management fees for managing the Fund.

As the PPM provided, Fund investors were not given disclosure materials regarding Fund investments because they were "relying solely on the investment acumen of the officers of" FSM. The PPM also identified "reliance on [FSM]" as a "significant" risk factor because FSM, in its sole discretion, could make "[a]ll decisions regarding management of the [Fund]." For this reason, and because investors could not withdraw their investment in the Fund without the prior consent of FSM, which could be "withheld for any reason or no reason," the PPM advised that "no party should make any investment in the [Fund] unless such party is willing to entrust all aspects of the [Fund's] management to" FSM.

As FSM's CEO, Ottimo was authorized to manage FSM to effect the objectives and purposes of the Fund. Consequently, "The Manager" section of the PPM provided information about his background. Regarding Jet One Jets, the PPM stated that Ottimo "co-founded Jet One Jets in April 2006" and he "successfully negotiated an exclusive reseller Agreement with American Express to handle the Jet One Jets pre-paid card." Moreover, "Jet One Jets grew to \$18 million in revenues inside approximately 18 months."

The PPM, however, included little or no information about Jet One Jets' operation history. For example, Jet One Jets ceased operations in the summer of 2008 and was never profitable. Ottimo conceded that ultimately "there was no profitability" for Jet One Jets and that he "lost hundreds of thousands of dollars as a result of the failure of Jet One's business." Outside investors, who contributed more than \$1 million to the venture, lost all of their principal investments. In August 2010, Jet One Jets filed for bankruptcy. The bankruptcy petition, which

Ottimo signed, listed estimated company assets of less than \$50,000, and liabilities between \$100,000 and \$500,000. The PPM never disclosed any of this information.

The U.S. Department of Transportation (“DOT”) issued a consent order against Jet One Jets in March 2008. DOT alleged that Jet One Jets’ website and print advertisements were misleading because they “contained statements and omissions that, when considered together, would lead the public to conclude erroneously but reasonably that [Jet One Jets was] a direct air carrier with operational control over flights.” Jet One Jets settled the action without admitting or denying DOT’s findings, which included that Jet One Jets had committed “an unfair and deceptive practice” by engaging in air transportation without appropriate authorization. The DOT ordered Jet One Jets to cease and desist from further violations and imposed a \$60,000 fine. Again, the Fund’s PPM did not disclose any of this information.

Around February 2012, Ottimo hired a law firm (“ABC Firm”) to provide legal advice regarding the Fund’s organization and to draft offering documents, including the Fund’s PPM. ABC Firm’s retainer agreement obligated the Fund to “fully and accurately disclose to [ABC Firm] all facts that may be relevant to the matter.” As part of the PPM drafting process, ABC Firm asked Ottimo to provide a biography. Ottimo made minor modifications to a biography that he had previously used for an unrelated purpose and submitted it to counsel at ABC Firm. Ottimo did not seek, and ABC Firm did not provide, legal advice about whether he should include the negative information regarding Jet One Jets in his biography. There also was no evidence that, at the time the PPM was drafted, ABC Firm knew about the adverse information concerning Jet One Jets. The ABC lawyers made a few modifications to the biography Ottimo provided but did not materially alter the substance of the information.

III. Discussion

We have reconsidered the full record in this case, including the Commission’s findings and the parties’ briefs filed on remand, and we have evaluated anew what sanctions to impose.¹ Notwithstanding the Commission’s dismissal of a portion of the fraud findings, we determine that the remaining fraud charges affirmed by the Commission are still of the utmost significance and warrant a bar from the securities industry. Accordingly, we bar Ottimo in all capacities for his fraud violation. Moreover, we maintain our previous decision to assess a two-year suspension and \$25,000 fine against Ottimo for his Form U4 violations, but we do not impose these sanctions in light of the bar.

A. Ottimo’s Material Omissions of Fact

We first reconsidered Ottimo’s sanction for his material omissions of fact given the portion of the fraud findings the Commission has sustained. For intentional or reckless fraud, misrepresentations or material omissions of fact, the FINRA Sanction Guidelines (“Guidelines”)

¹ Although Ottimo requested oral argument, we have determined that the limited issues before us are capable of resolution based on the parties’ briefs; thus, his request was denied.

recommended that we “[s]trongly consider barring an individual” unless mitigating factors predominate.² We acknowledge that the Commission set aside a portion of the fraud findings with respect to Wheatley. Ottimo nevertheless committed an egregious offense in connection with sales of securities to the investing public that warrants robust sanctions. We thus reaffirm the bar.

On remand, we considered the applicable principal considerations in determining an appropriate sanction, several of which we find aggravating, including: (1) whether the respondent’s misconduct was the result of an intentional act, recklessness or negligence;³ (2) the number, size and character of the transactions at issue;⁴ (3) whether the respondent engaged in the misconduct over an extended period of time;⁵ (4) whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain;⁶ and (5) whether the respondent accepted responsibility for and acknowledged the misconduct to his employer or a regulator prior to detection and intervention by a member firm or a regulator.⁷

² In determining the sanctions on remand, we applied the same version of the Guidelines in effect when the NAC issued its initial decision. *See FINRA Sanction Guidelines* 87 (2016), https://www.finra.org/sites/default/files/2016_Sanction_Guidelines.pdf [hereinafter *Guidelines*].

Ottimo for the first time argues on remand that the Extended Hearing Panel (“Hearing Panel”) erred when it applied the May 2015 version of the Guidelines instead of the 2013 version of the Guidelines that existed at the time of his misconduct. He contends that the 2013 Guidelines recommended that adjudicators impose a bar only when the intentional or reckless misconduct was egregious, rather than as a standard sanction unless mitigating factors predominate as stated in the May 2015 version. Not only is Ottimo’s argument deemed waived for not being asserted in earlier proceedings, it is irrelevant because the Hearing Panel determined that Ottimo’s misconduct was egregious. Thus, evaluating his misconduct under the 2013 Guidelines would not have altered his sanction. In any event, because the May 2015 Guidelines were effective as of the date of their publication and supersede all prior editions, the Hearing Panel correctly applied the version of the Guidelines that was in effect while the matter was pending before it, and so too does the NAC. *See id.* at 8; *see also Meyers Assocs., L.P.*, Exchange Act Release No. 86193, 2019 SEC LEXIS 1626, at *61 n.75 (June 24, 2019).

³ *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13).

⁴ *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 18).

⁵ *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 9).

⁶ *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

⁷ *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 2).

Acting with scienter, Ottimo made material omissions in the Fund's PPM in connection with the sale of securities.⁸ His fraudulent omissions significantly impacted the entire Fund offering period, which lasted several weeks.⁹ Ottimo and other EKN registered representatives sold \$3.76 million in Fund member interests to 20 investors, which is a substantial sales dollar amount and volume of transactions.¹⁰ Ottimo, through FSM, exercised broad authority over managing the Fund for which he was paid \$82,276 in management fees and \$30,000 in commissions for his sales to two investors.¹¹ Ottimo admitted that he authored his PPM biography and did not provide ABC Firm with any information other than the statements he made therein. As an experienced securities professional who managed the Fund, Ottimo should have known to include fair and balanced disclosure and to not make his PPM biography misleading. But rather than accept responsibility for his misconduct, Ottimo, throughout the course of the proceedings, has blamed others for his own gross failure to disclose material adverse information regarding Jet One Jets.¹² Ottimo contends that defending oneself in a disciplinary action should never be an aggravating factor. Although Ottimo is "entitled to present a vigorous defense" and we have considered his defense, his refusal to accept accountability for his conduct "demonstrates a misunderstanding of, or lack of regard for" his responsibilities as a securities professional, which strongly indicates a propensity for future wrongdoing. *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015).

Ottimo raises several arguments for mitigation. His arguments, however, all lack merit. First, Ottimo argues that he reasonably relied on the Fund's attorneys to ensure compliance with the securities laws and advise on which disclosures should be made in the PPM. For a reliance on counsel claim to be mitigating, however, Ottimo needed to demonstrate with sufficient detail that he, after fully disclosing his intended conduct, sought and received legal advice on omitting

⁸ *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13); *cf. William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *37 (Mar. 31, 2006) (finding intentional, or at least reckless, fraudulent omissions of material fact aggravating for purposes of determining sanctions).

⁹ *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 9).

¹⁰ *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 18).

¹¹ *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

¹² *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 2). We also find it aggravating that, during a FINRA investigation, Ottimo, through his counsel, sent letters to the Fund's investors pressuring them to sign and agree that information regarding the Wheatley bankruptcy and his tax liens and civil judgments would have no impact on their decision to invest in the Fund had such information been disclosed as part of his PPM biography. At least six Fund investors told the testifying FINRA investigator that they would not have signed the letter but felt coerced into doing so and felt they otherwise would not be able to get out of the Fund. *See id.* at 6 (instructing us to consider under Principal Consideration No. 10 whether the respondent attempted to deceive or intimidate a customer).

the adverse information about Jet One Jets. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 7); *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *38 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). Ottimo established none of these elements, and we find no evidence in the record to support his claim. To the contrary, Ottimo admitted that he was responsible for the content of the Fund's PPM, of which he approved, and he "didn't provide [ABC Firm] with any information but the statement that appears in the biography." Therefore, Ottimo's reliance on counsel defense warrants no mitigation.

Second, Ottimo for the first time argues that he should receive mitigation because he did not engage in a pattern of misconduct involving numerous acts. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 8). Even if Ottimo did not engage in a pattern of misconduct, it does not make his fraud violation here any less egregious. A fraud violation is "especially serious" and warrants the severest sanctions under the securities laws. *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *36 (Sept. 30, 2016). Consistent with prior Commission precedent, we find that the absence of establishing a pattern of Ottimo's misconduct is not a mitigating factor. *See, e.g., Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *43 (Jan. 9, 2015) (rejecting respondent's claim that the absence of several aggravating factors is mitigating), *aff'd*, 641 F. App'x 27 (2d Cir. 2016); *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at *30 (Feb. 24, 2012) (finding the absence of a particular aggravating factor under the Guidelines is not necessarily mitigating); *Michael Frederick Siegel*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459, at *43 (Oct. 6, 2008) ("While the presence of any of these factors could constitute aggravating circumstances justifying an increase in sanctions, their absence is not mitigating."), *aff'd*, 592 F.3d 147 (D.C. Cir. 2010).

Third, we reject Ottimo's attempt to downplay the severity of his misconduct by arguing that the period of time the PPM was used was "only two months," and the number of investors and offering size were "extremely small." On the contrary, as we stated above, Ottimo's fraudulent omissions impacted multiple investors and affected a multi-million dollar capital raise throughout the entire offering period—which are factors that we consider to be more aggravating than mitigating. Moreover, the fact that none of the Fund investors lost their principal investments as a result of Ottimo's misconduct warrants no lesser of a sanction here. *See, e.g., Mark O'Leary*, 43 S.E.C. 842, 850 (1968) ("[T]he fact that a customer may have suffered no loss or made money does not excuse the serious fraud shown.").

Fourth, Ottimo argues that it is mitigating that his misconduct only affected sophisticated, accredited investors, *see Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 19), and states in his brief that "[n]o investor in the Fund testified that they were deceived by the omission[s]." We disagree. As a preliminary matter, the record does not evidence that all of the Fund investors were sophisticated and accredited. Even if it did, at least one investor testified that the undisclosed adverse information about Jet One Jets—the DOT consent order in particular—would have "given [him] hesitation" to invest with Ottimo. In any event, an investor's level of sophistication did not relieve Ottimo of his fundamental duty as a securities professional to fully disclose all material facts necessary to make the offering disclosures about his management experience at Jet One Jets not misleading. *See, e.g., West*, 2015 SEC LEXIS

102, at *46 & n.60 (rejecting respondent's claim for a reduction of sanctions because his customer was sophisticated and holding that all investors, sophisticated or otherwise, are entitled to protections against abuse under the securities laws).

The Department of Enforcement argues that our sanctions determination should be unaffected by the Commission's findings. According to Enforcement, because there are several aggravating factors and no mitigating ones, Ottimo again should be barred. We agree that Ottimo's misconduct was egregious, several factors aggravate his misconduct, and his claims for mitigation do not warrant a lesser sanction. We do not agree, however, that the Commission's partial dismissal of the fraud findings regarding Wheatley does not inform our sanction analysis on remand. Our consideration of Ottimo's sanction gives full effect to the Commission's findings, however, it is clear from the record that Ottimo's omissions of material information with regard to Jet One Jets (i.e., the fraud findings that the Commission sustained) still makes him a threat to the investing public.¹³

Accordingly, we bar Ottimo in all capacities for his fraud violation. The bar, as recommended by the Guidelines, serves to remedially protect the public interest by impressing upon Ottimo and others to provide full material disclosure in connection with the sale of securities.

B. Ottimo's Form U4 Violations

The Guidelines for the failure to file timely or accurate amendments to the Form U4 recommend that we consider a fine ranging between \$2,500 and \$73,000, and a suspension in any or all capacities of five to 30 business days.¹⁴ In egregious cases, such as those involving repeated failures to file, untimely filings, or false, inaccurate, or misleading filings, the Guidelines recommend a longer suspension in any or all capacities of up to two years, or a bar.¹⁵ In its initial decision, the NAC assessed, but did not impose in light of the sanction it imposed for Ottimo's fraud violation, a \$25,000 fine and a two-year suspension. On appeal, Ottimo did not

¹³ Ottimo suggests that barring him again notwithstanding the Commission's dismissal of a portion of the fraud findings would "make a mockery of the balanced approach advocated" under the Guidelines and violate the fair procedure requirement in Exchange Act Section 15A(b)(8), 15 U.S.C. § 78o-3(b)(8). The Commission, however, has asked on remand that we determine the appropriate sanction for the fraud violation it sustained and neither has suggested nor ruled on what the result should be. *See Ottimo*, 2018 SEC LEXIS 1588, at *51. Moreover, Ottimo fails to demonstrate with any specificity that our imposition of a bar contravenes the Code of Procedure or is inconsistent with the Guidelines' recommendation to "[s]trongly consider barring" a respondent.

¹⁴ *See id.* at 69.

¹⁵ *See id.* at 70.

challenge the sanctions we assessed. On remand, we find that our assessment of these sanctions in light of Ottimo's bar remains appropriate.¹⁶

In addition to considering aggravating or mitigating factors that are applicable to determining sanctions for all violations, we also consider the principal considerations applicable to Form U4 violations, including: (1) the nature and significance of information at issue; (2) whether the failure resulted in a statutory disqualified individual becoming associated with or remaining with a firm; and (3) whether the misconduct resulted in any harm to any other person or entity.¹⁷ As a seasoned securities professional, Ottimo's reporting failures reflected a blatant disregard of complying with FINRA rules that we find to be egregious. Ottimo testified that he was aware of his obligation to update his Form U4 within 30 days of receiving notice of a reportable event. Yet, for three consecutive years, he repeatedly failed to disclose, or disclose on a timely and accurate basis, 14 reportable events that made his Form U4 inaccurate and misleading.¹⁸

Ottimo's omissions concerned material financial disclosures about outstanding civil judgments entered against him, unsatisfied tax liens, and a bankruptcy filing for a company that he controlled.¹⁹ His reporting deficiencies also deprived the investing public, potential employing firms, and regulators of material information about his financial condition for an extended period of time. *Accord Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *48 (July 31, 2019) (finding respondent's Form U4 violations harmed the investing public, his firm, and regulators by denying them access to material information about his failure to pay his federal taxes), *appeal docketed*, No. 19-1251 (D.C. Cir. Nov. 26, 2019); *see also Guidelines*, at 69 (Specific Consideration No. 3). Ottimo's Form U4 violations further demonstrate his willingness to deceive the investing public by withholding material information regarding the financial losses he suffered.

Accordingly, we suspend Ottimo in all capacities for two years and fine him \$25,000, but do not impose these sanctions in light of his bar from the securities industry for his fraud. These sanctions are consistent with the Guidelines and appropriately remedial to ensure that associated persons, like Ottimo, provide complete, accurate, and timely updates to the Form U4 in accordance with FINRA rules.

¹⁶ *See Ottimo*, 2018 SEC LEXIS 1588, at *51 & n.56 (permitting FINRA on remand to revisit its initial decision not to impose sanctions for Ottimo's Form U4 violations).

¹⁷ *See Guidelines*, at 69.

¹⁸ *See id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8 and 9).

¹⁹ *See id.* at 69 (Specific Consideration No. 1).

IV. Conclusion

For committing fraud, Ottimo is barred from association with any FINRA member in all capacities. Ottimo is ordered to pay hearing costs totaling \$11,037.51 and appeal costs totaling \$1,692.50. The bar will become effective immediately upon issuance of this decision.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary