

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department Of Enforcement,

Complainant,

v.

Louis Ottimo
(CRD No. 2606438),

Respondent.

Disciplinary Proceeding
No. 2009017440201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From January 9, 2009 to April 19, 2012, Ottimo willfully failed to disclose or timely and accurately disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") numerous liens and judgments and a bankruptcy filing. First, on January 9, 2009, Ottimo filed a Form U4 in which he inaccurately reported the amount of an unsatisfied judgment. Second, on September 13, 2010, Ottimo filed an amended Form U4 that again incorrectly reported the amount of that judgment. Third, from January 9, 2009 to April 19, 2012, Ottimo failed to disclose or timely and accurately disclose on his Form U4 seven tax liens, five civil judgments and a bankruptcy petition. Ottimo's willful failure to disclose or timely and accurately disclose material facts on his Form U4 violated FINRA Rules 1122 and 2010, NASD IM-1000-1 and Article 5, Section 2(c) of the FINRA By-Laws.

2. Ottimo made material misrepresentations and omitted material facts concerning his prior business experience in a private placement memorandum ("PPM") for an offering by FS, a fund that he managed and controlled. Ottimo knew, or was reckless in not knowing, that the FS PPM contained these misrepresentations and omissions. By making material misrepresentations and omitting material facts in the FS PPM, Ottimo willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and FINRA Rules 2020 and 2010.
3. Alternatively, Ottimo violated FINRA Rule 2010 by making material misrepresentations and omitting material facts in the FS PPM in violation of Sections 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act").

RESPONDENT AND JURISDICTION

4. Ottimo first entered the securities industry in 1995 when he became a registered representative with a FINRA member firm. From 1999 to 2009, Ottimo was not registered with any FINRA member firm. From at least November 2002 to December 2005, he acted as an associated person of EKN Financial Services, Inc. ("EKN") without being registered. On January 9, 2009, he became registered with EKN, where he had been a director of the corporation for a number of years. Ottimo remained registered with EKN until it was expelled from FINRA membership in October 2012. Since September 2012, Ottimo has been employed as a registered representative with another FINRA member firm. Ottimo holds Series 7 and 63 licenses.

BACKGROUND

Form U4 Disclosure Requirements

5. At all times relevant to this Complaint, on Question 14M of the Form U4, FINRA asked:
“Do you have any unsatisfied judgments or liens against you?”
6. If a registered representative affirmatively answered Question 14M on his Form U4, then he would be required to provide detailed information about each unsatisfied judgment or lien, including, in relevant part, disclosing the amount and filing date of the judgment or lien.
7. At all times relevant to this Complaint, on Question 14K(2) of the Form U4, FINRA asked: “Within the past 10 years, based upon events that occurred while you exercised *control* over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?” (emphasis in original).
8. If a registered representative affirmatively answered Question 14(K)(2) on his Form U4, then he would be required to provide detailed information about any bankrupt entity over which he exercised control, including, in relevant part, disclosing the name of the entity and his position with it.

OTTIMO FAILED TO DISCLOSE OR TIMELY AND ACCURATELY DISCLOSE MATERIAL FACTS ON HIS FORM U4

Ottimo Inaccurately Reported the Amounts and Filing Date of the SP Judgment

9. On March 3, 2008, creditor SP obtained a judgment against Ottimo, his co-defendant TG and his company WC in the amount of \$161,740.73 in the Supreme Court for Nassau

County, New York, and served notice of that judgment on Ottimo on April 14, 2008.

Ottimo and TG were jointly and severally liable for the SP judgment.

10. On December 18, 2008, the court vacated the original judgment and entered a revised judgment in the amount of \$70,240.06, plus interest of \$11,742.60 for a total of \$81,982.66. The revised judgment was entered *nunc pro tunc* as of March 3, 2008, the date of the original judgment. On January 9, 2009, Ottimo filed his initial Form U4 with EKN, which inaccurately reported the amount and filing date of the SP judgment. Although the SP judgment at that time was in the amount of \$81,982.66 and the filing date was as of March 3, 2008, Ottimo disclosed on his Form U4 that the judgment was \$70,240.06 and the filing date was November 19, 2007.
11. Ottimo knew or should have known that the amount of the SP judgment as of January 9, 2009, was \$81,982.66 and the filing date was as of March 3, 2008.
12. The Nassau County Clerk's Office recorded the revised judgment on February 23, 2009, and SP served notice of the revised judgment on Ottimo on April 30, 2009.
13. On September 13, 2010, Ottimo filed an amended Form U4, in which he inaccurately reported that the SP judgment was \$41,847.22, although the judgment amount at that time was still \$81,982.66.
14. Ottimo knew or should have known that the amount of the SP judgment as of September 13, 2010, was \$81,982.66.
15. The amounts and filing date of the SP judgment constituted material facts and Ottimo's failure to accurately report them on his Form U4 was willful.

Ottimo Failed to Timely Disclose Seven Tax Liens on His Form U4

16. Between January 15, 2010 and April 19, 2012, Ottimo failed to timely disclose seven unpaid tax liens on his Form U4.

Lien 1

17. On February 10, 2007, the Internal Revenue Service ("IRS") sent Ottimo a Collection Due Process Notice of Intent to Levy for his unpaid taxes for tax year 2005.
18. On February 23, 2007, Ottimo appointed a representative in connection with his dispute with the IRS over his 2005 unpaid taxes.
19. On January 15, 2010, the IRS filed a lien against Ottimo in the amount of \$6,990.29 for his unpaid taxes for tax year 2005 ("Lien 1").
20. On January 26, 2010, the IRS sent Ottimo a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, which informed him that the IRS had filed a Notice of Federal Tax Lien against him for the 2005 unpaid tax assessment.
21. The Nassau County Clerk's Office recorded Lien 1 on January 27, 2010.
22. On January 27, 2010, the IRS sent a letter to Ottimo, informing him that it would collect his unpaid taxes through "enforced collection," which could include a levy on his assets, if he failed to pay his outstanding tax liabilities for tax year 2005.
23. The IRS also sent a copy of this letter to Ottimo's accountant on January 27, 2010.
24. Ottimo knew or should have known around January 26, 2010, that the IRS had filed Lien 1 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 1 within 30 days after learning of it.

25. Ottimo filed Form U4 amendments on March 5, 2010, March 25, 2010 and July 15, 2010, but did not disclose unpaid Lien 1 on any of them.
26. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 1, he did not file an amended Form U4 disclosing unpaid Lien 1 until September 13, 2010 – approximately eight months after he was first on notice of it.
27. Lien 1 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

Lien 2

28. On January 15, 2010, the IRS filed a lien against Ottimo in the amount of \$35,674.93 for his unpaid taxes for tax year 2006 ("Lien 2").
29. On January 26, 2010, the IRS sent Ottimo a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, which informed him that the IRS had filed a Notice of Federal Tax Lien against him for the 2006 unpaid tax assessment.
30. The Nassau County Clerk's Office recorded Lien 2 on January 27, 2010.
31. On March 3, 2010, Ottimo appointed a representative in connection with his dispute with the IRS over his 2006 unpaid taxes.
32. Ottimo knew or should have known around January 26, 2010, that the IRS had filed Lien 2 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 2 within 30 days after learning of it.
33. Ottimo filed Form U4 amendments on March 5, 2010, March 25, 2010 and July 15, 2010, but did not disclose unpaid Lien 2 on any of them.

34. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 2, he did not file an amended Form U4 disclosing unpaid Lien 2 until September 13, 2010 – approximately eight months after he was first on notice of it.
35. Lien 2 constituted a material fact and Ottimo’s failure to timely amend his Form U4 to disclose it was willful.

Lien 3

36. On February 16, 2010, the IRS sent Ottimo a Collection Due Process Notice of Intent to Levy for his unpaid taxes for tax year 2007.
37. On February 26, 2010, the IRS filed a lien against Ottimo in the amount of \$44,486.84 for his unpaid taxes for tax years 2006 and 2007 (“Lien 3”).
38. In Lien 3, the IRS included the 2006 unpaid tax assessment of \$35,674.93 that was also the subject of Lien 2 and \$8,811.91 for the 2007 unpaid tax assessment.
39. On March 3, 2010, Ottimo appointed a representative in connection with his dispute with the IRS over his 2007 unpaid taxes.
40. On March 9, 2010, the IRS sent Ottimo a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, which informed him that the IRS had filed a Notice of Federal Tax Lien against him for the 2006 and 2007 unpaid tax assessments.
41. The Nassau County Clerk’s Office recorded Lien 3 on March 15, 2010.
42. The IRS sent a copy of the Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 to Ottimo’s tax attorney on March 18, 2010.

43. Ottimo knew or should have known around March 9, 2010, that the IRS had filed Lien 3 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 3 within 30 days after learning of it.
44. Ottimo filed Form U4 amendments on March 25, 2010 and July 15, 2010, but did not disclose unpaid Lien 3 on either of them.
45. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 3, he did not file an amended Form U4 disclosing unpaid Lien 3 until September 13, 2010 – approximately six months after he was first on notice of it.
46. Lien 3 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

Lien 4

47. On April 23, 2010, the IRS filed a lien against Ottimo in the amount of \$66,035.05 for his unpaid taxes for tax year 2008 ("Lien 4").
48. On March 3, 2010, Ottimo appointed a representative in connection with his dispute with the IRS over his 2008 unpaid taxes.
49. On March 9, 2010, the IRS sent Ottimo a Collection Due Process Notice of Intent to Levy. On March 12, 2010, a return receipt for this Notice was signed.
50. On May 4, 2010, the IRS sent Ottimo a Notice of Lien Filing and Right to Collection Due Process Hearing.
51. The Nassau County Clerk's Office recorded Lien 4 on May 6, 2010.

52. Ottimo knew or should have known around May 4, 2010, that the IRS had filed Lien 4 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 4 within 30 days after learning of it.
53. Ottimo filed a Form U4 amendment on July 15, 2010, but did not disclose unpaid Lien 4 on it.
54. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 4, he did not file an amended Form U4 disclosing unpaid Lien 4 until September 13, 2010 – approximately four months after he was first on notice of it.
55. Lien 4 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

Lien 5

56. On April 27, 2010, the New York State Department of Taxation and Finance ("NYSDT") filed a warrant against Ottimo in the amount of \$14,534.77 for his unpaid taxes for tax year 2008. The warrant created a lien against Ottimo's real and personal property. The warrant will be referred to as "Lien 5."
57. The Nassau County Clerk's Office recorded Lien 5 on June 9, 2010.
58. Ottimo knew or should have known around April 27, 2010, that the NYSDT had filed Lien 5 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 5 within 30 days after learning of it.
59. Ottimo filed a Form U4 amendment on July 15, 2010, but did not disclose unpaid Lien 5 on it.

60. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 5, he did not file an amended Form U4 disclosing unpaid Lien 5 until September 13, 2010 – approximately five months after he was first on notice of it.
61. Lien 5 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

Lien 6

62. On June 27, 2011, the NYSDT filed a warrant against Ottimo in the amount of \$18,459.81 for his unpaid taxes for tax years 2006 and 2009. The warrant created a lien against Ottimo's real and personal property. The warrant will be referred to as "Lien 6."
63. Lien 6 included the unpaid tax assessment for tax year 2006 in the amount of \$7,149.45 and the unpaid tax assessment for tax year 2009 in the amount of \$11,310.36.
64. The Nassau County Clerk's Office recorded Lien 6 on July 6, 2011.
65. Ottimo knew or should have known around June 27, 2011, that the NYSDT had filed Lien 6 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 6 within 30 days after learning of it.
66. Ottimo filed Form U4 amendments on August 22, 2011, September 21, 2011, October 14, 2011, February 28, 2012, March 1, 2012 and March 22, 2012, but did not disclose unpaid Lien 6 on any of them.
67. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 6, he did not file an amended Form U4 disclosing unpaid Lien 6 until April 19, 2012 – approximately ten months after he was first on notice of it.

68. Lien 6 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

Lien 7

69. On November 8, 2010, the IRS sent a notice to Ottimo informing him that he owed \$42,618.71 in taxes for tax year 2009.
70. Ottimo faxed this notice to his tax attorney on November 8, 2010, with the note "[r]eceived these documents from the IRS in the mail over the weekend."
71. On November 8, 2010, Ottimo submitted an Offer in Compromise to the IRS to settle his outstanding tax obligations for tax year 2009.
72. On November 9, 2010, the IRS sent Ottimo a Collection Due Process Notice of Intent to Levy.
73. On November 18, 2010, the IRS filed a lien against Ottimo in the amount of \$42,618.71 for his unpaid taxes for tax year 2009 ("Lien 7").
74. On November 30, 2010, the IRS sent Ottimo a Notice of Lien Filing and Right to Collection Due Process Hearing.
75. The Nassau County Clerk's Office recorded Lien 7 on December 2, 2010.
76. Ottimo knew or should have known around November 30, 2010, that the IRS had filed Lien 7 against him, it was unsatisfied and he needed to amend his Form U4 to disclose Lien 7 within 30 days after learning of it.
77. Ottimo filed Form U4 amendments on February 9, 2011, February 15, 2011(two Form U4 amendments were filed on this date), March 7, 2011, March 28, 2011(two Form U4

amendments were filed on this date), April 4, 2011, May 19, 2011 and May 26, 2011, but did not disclose unpaid Lien 7 on any of them.

78. Although Ottimo was required to amend his Form U4 within 30 days after learning of Lien 7, he did not file an amended Form U4 disclosing unpaid Lien 7 until June 23, 2011— approximately seven months after he was first on notice of it.
79. Lien 7 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

**Ottimo Failed to Disclose or Timely Disclose
Five Civil Judgments on His Form U4**

80. Between January 9, 2009 and May 19, 2011, Ottimo willfully failed to disclose or timely disclose five unsatisfied civil judgments on his Form U4.

Judgment 1

81. On October 2, 2008, the court entered a judgment in favor of creditor LM against JOJ and Ottimo in the amount of \$2,211.80 ("Judgment 1").
82. On November 26, 2008, the Nassau County Clerk's Office recorded Judgment 1.
83. Ottimo knew or should have known by January 9, 2009, that Judgment 1 had been entered against him and was unsatisfied and that he needed to disclose it on his initial Form U4 at EKN and on subsequent Form U4 amendments.
84. On January 14, 2010, Ottimo sent his lawyer an email referring to Judgment 1.
85. Ottimo filed an initial Form U4 on January 9, 2009 and Form U4 amendments on January 12, 2009, January 13, 2009, March 12, 2009, April 13, 2009, May 28, 2009, June 5, 2009, June 29, 2009, July 10, 2009, August 20, 2009, September 25, 2009, November 2,

2009, March 5, 2010, March 25, 2010, July 15, 2010, September 13, 2010 and October 12, 2010, but did not disclose unpaid Judgment 1 on any of them.

86. Although Ottimo was required to amend his Form U4 within 30 days after learning of Judgment 1, he did not file an amended Form U4 disclosing unpaid Judgment 1 until November 11, 2010 – almost two years from the date he was first required to disclose it on his Form U4.
87. Judgment 1 constituted a material fact and Ottimo’s failure to timely amend his Form U4 to disclose it was willful.

Judgment 2

88. Creditor SW filed a complaint against Ottimo on August 9, 2008, and served the summons and complaint against Ottimo on October 13, 2008, by taping a copy of those documents on the front door of his residence.
89. On December 18, 2008, the court entered a default judgment for SW in the amount of \$6,791.40 against Ottimo (“Judgment 2”).
90. SW sent a copy of the judgment to Ottimo on January 13, 2009.
91. On January 20, 2009, the Nassau County Clerk’s Office recorded Judgment 2.
92. On January 4, 2010, Ottimo sent his lawyer an email referring to Judgment 2 asking “[SW]: Vacate Judgment yet?”
93. On January 14, 2010, Ottimo sent his lawyer another email referring to Judgment 2.
94. On February 23, 2010, Ottimo sent his lawyer another email referring to Judgment 2.

95. FINRA also informed Ottimo about Judgment 2 during his on-the-record testimony on October 19, 2010 ("FINRA OTR").
96. Ottimo knew or should have known around January 13, 2009, that Judgment 2 had been entered against him and was unsatisfied and that he needed to amend his Form U4 to disclose Judgment 2 within 30 days after learning of it.
97. Even if he was unaware of Judgment 2 in January 2009, he knew by no later than October 19, 2010 – at the time of the FINRA OTR – that Judgment 2 had been entered against him.
98. Ottimo filed Form U4 amendments on March 12, 2009, April 13, 2009, May 28, 2009, June 5, 2009, June 29, 2009, July 10, 2009, August 20, 2009, September 25, 2009, November 2, 2009, March 5, 2010, March 25, 2010, July 15, 2010, September 13, 2010, October 12, 2010, November 11, 2010, November 18, 2010, February 9, 2011, February 15, 2011 (two Form U4 amendments were filed on this date) and March 7, 2011, but did not disclose unpaid Judgment 2 on any of them.
99. Although Ottimo was required to amend his Form U4 within 30 days after learning of Judgment 2, he did not file an amended Form U4 disclosing unpaid Judgment 2 until March 28, 2011 – more than two years after he was first on notice of it and five months after FINRA informed him about it.
100. Judgment 2 constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

Judgment 3

101. On January 21, 2010, Ottimo entered into a Stipulation of Settlement with CP agreeing to the entry of a \$300,000 judgment against him and WC.
102. On April 7, 2010, the court entered a judgment against WC, Ottimo and others in favor of CP in the amount of \$300,031.80. (“Judgment 3”).
103. On December 17, 2010, the Nassau County Clerk’s Office recorded Judgment 3.
104. Ottimo knew or should have known around April 7, 2010, that Judgment 3 had been entered against him and was unsatisfied and that he needed to amend his Form U4 to disclose Judgment 3 within 30 days after learning of it.
105. Ottimo filed Form U4 amendments on July 15, 2010, September 13, 2010, October 12, 2010, November 11, 2010, November 18, 2010, February 9, 2011, February 15, 2011(two Form U4 amendments were filed on this date), March 7, 2011, March 28, 2011(two Form U4 amendments were filed on this date) and April 4, 2011, but did not disclose unpaid Judgment 3 on any of them.
106. Although Ottimo was required to amend his Form U4 within 30 days after learning of Judgment 3, he did not file an amended Form U4 disclosing unpaid Judgment 3 until May 19, 2011 – more than one year after he was first on notice of it.
107. Judgment 3 constituted a material fact and Ottimo’s failure to timely amend his Form U4 to disclose it was willful.

Judgment 4

108. On March 9, 2009, the court entered a judgment in favor of creditor HE against WC and Ottimo in the amount of \$108,832.94 (“Judgment 4”).

109. On March 24, 2009, the Nassau County Clerk's Office recorded Judgment 4.
110. Ottimo was *pro se* in the dispute with HE and he received correspondence reflecting HE's judgment against him.
111. Ottimo satisfied Judgment 4 on May 17, 2010.
112. Ottimo knew or should have known around March 9, 2009, that Judgment 4 had been entered against him and was unsatisfied and that he needed to amend his Form U4 to disclose Judgment 4 within 30 days after learning of it.
113. Ottimo filed Form U4 amendments on March 12, 2009, April 13, 2009, May 28, 2009, June 5, 2009, June 29, 2009, July 10, 2009, August 20, 2009, September 25, 2009, November 2, 2009, March 5, 2010 and March 25, 2010, but did not disclose unpaid Judgment 4 on any of them.
114. Although Ottimo was required to amend his Form U4 within 30 days after learning of Judgment 4, Ottimo failed to amend his Form U4 to disclose unpaid Judgment 4 prior to May 17, 2010 – more than one year after he was first on notice of it.
115. Judgment 4 constituted a material fact and Ottimo's failure to amend his Form U4 to disclose it was willful.

Judgment 5

116. On June 4, 2009, the court entered a judgment in favor of creditor BM against Ottimo and others in the amount of \$36,590.15 ("Judgment 5").
117. On June 4, 2009, the Nassau County Clerk's Office recorded Judgment 5.

118. On July 27, 2009, Ottimo and others filed an Order to Show Cause to vacate Judgment 5. Ottimo submitted an “affidavit of mailing” alleging that he served the Order to Show Cause on BM and submitted an “affidavit in reply” reiterating that statement.
119. The court vacated Judgment 5 on September 9, 2009.
120. Ottimo knew or should have known around June 4, 2009, that Judgment 5 had been entered against him and was unsatisfied and that he needed to amend his Form U4 to disclose Judgment 5 within 30 days after learning of it.
121. Even if Ottimo did not know about Judgment 5 on June 4, 2009, he knew of its existence by no later than July 27, 2009, when he filed the Order to Show Cause and his affidavits.
122. Ottimo filed Form U4 amendments on June 5, 2009, June 29, 2009, July 10, 2009 and August 20, 2009, but did not disclose unpaid Judgment 5 on any of them.
123. Although Ottimo was required to amend his Form U4 within 30 days after learning of Judgment 5, Ottimo failed to amend his Form U4 to disclose unpaid Judgment 5 prior to September 9, 2009 – approximately three months after he was first on notice of it.
124. Judgment 5 constituted a material fact and Ottimo’s failure to amend his Form U4 to disclose it was willful.

Ottimo Failed to Timely Disclose a Bankruptcy Filing on His Form U4

125. Ottimo was the president and sole shareholder of a company called WC.
126. On or about April 13, 2010, WC filed a petition for bankruptcy with the United States Bankruptcy Court for the Eastern District of New York.
127. Ottimo signed the bankruptcy petition on behalf of WC.

128. Ottimo knew or should have known that WC filed for bankruptcy on April 13, 2010, and that he was required to amend his Form U4 to disclose the bankruptcy within 30 days.
129. Ottimo filed Form U4 amendments on July 15, 2010, September 13, 2010, October 12, 2010, November 11, 2010, November 18, 2010, February 9, 2011, February 15, 2011 (two Form U4 amendments were filed on this date), March 7, 2011, March 28, 2011 (two Form U4 amendments were filed on this date), April 4, 2011, May 19, 2011, May 26, 2011, June 23, 2011, June 24, 2011, August 22, 2011, September 21, 2011, October 14, 2011, February 28, 2012, March 1, 2012 and March 22, 2012, but did not disclose the WC bankruptcy on any of them.
130. Although Ottimo was required to amend his Form U4 within 30 days after the filing of the WC bankruptcy petition, he did not file an amended Form U4 disclosing the WC bankruptcy until April 19, 2012 – more than two years after the bankruptcy filing.
131. The WC bankruptcy filing constituted a material fact and Ottimo's failure to timely amend his Form U4 to disclose it was willful.

**OTTIMO MADE MATERIAL MISREPRESENTATIONS
AND OMITTED MATERIAL FACTS IN A PPM**

Creation of FS and FSM and the FS PPM

132. On February 15, 2012, Ottimo created FS, a special purpose vehicle, to purchase shares of social media companies, namely Facebook, prior to the initial public offerings of such companies.
133. On February 15, 2012, Ottimo created FSM, for the purpose of acting as manager for FS.
134. Ottimo and NL were the members and managers of FSM. Ottimo was FSM's Chief Executive Officer and NL was FSM's Chief Operating Officer.

135. Ottimo owned 85% of FSM and NL owned the remaining 15%.
136. FSM was the sole manager of FS and controlled all aspects of FS's business and operations.
137. FSM directed FS's operations and had sole discretion over all decisions regarding investments by FS.
138. FSM retained outside counsel, CL, to prepare the PPM for a private offering of member interests in FS.
139. Ottimo approved the FS PPM and was responsible for its contents.
140. In February 2012, FS commenced a private offering of its shares through EKN, which acted as the sole placement agent. FS solicited investments from EKN customers and used the proceeds to purchase approximately 80,000 shares of Facebook.
141. During the period March 6, 2012 to April 10, 2012, FS raised \$3.76 million from the sale of FS shares to 20 investors.
142. Ottimo personally sold \$500,000 worth of FS shares to two investors.
143. FS sold shares to EKN customers using a means of interstate commerce. Specifically, it used email and United States mail to solicit sales from EKN customers and those EKN customers paid EKN for the shares by electronic transfers and checks drawn on United States banks.
144. EKN provided each investor with a copy of the FS PPM.
145. The FS PPM contained a section called the "The Manager," which contained the following biographical information about Ottimo:

Louis Ottimo – Chief Executive Officer

Mr. Louis Ottimo is the Chief Executive Officer of the Manager. In such capacity, Mr. Ottimo is authorized to manage the Manager to effect the objectives and purposes of the Company. Mr. Ottimo has been a registered representative of EKN, where he maintains retail clients, since 2009. Mr. Ottimo currently serves on the board of directors of [BSE]. Previously, Mr. Ottimo co-founded [JOJ] in April 2006 and successfully negotiated an exclusive reseller Agreement with [AE] to handle the [JOJ] pre-paid card. [JOJ] grew to \$18 million in revenues inside approximately 18 months. In April 2001, Mr. Ottimo founded [WC] and was its president until 2011. He also founded [NPC] in 1996, which was an Office of Supervisory Jurisdiction of [TC], a registered broker-dealer. Under his ownership the branch office grew to over \$25 million in annual sales with up to 100 Registered Representatives.

Mr. Ottimo graduated from the University of Maryland in 1987 with a Bachelor of Science degree in Financial Studies. He has passed the FINRA Series 7 and Series 63 exams.

146. Ottimo made material misrepresentations and omitted material facts concerning his prior business experience in this section of the FS PPM.

Misrepresentations and Omissions Concerning JOJ

147. Ottimo made material misrepresentations and omitted material facts in the FS PPM concerning the profitability and business operations of JOJ.
148. Ottimo and his brother were co-owners of JOJ, which they founded in 2006 to broker chartered airplane flights.
149. Ottimo's statement in the FS PPM that JOJ "grew to \$18 million in revenues inside approximately 18 months" created the misleading impression that JOJ was a profitable company, when it was not.

150. Ottimo knew that JOJ never made a profit, had substantial net operating losses from 2006 to 2008 and had filed for bankruptcy in 2010. JOJ's 2006 tax return reflected losses of \$569,964 and JOJ experienced even larger losses in 2007 and 2008.
151. Although Ottimo knew about JOJ's operating losses and lack of profitability, he did not disclose this information in the FS PPM.
152. Ottimo also knew that JOJ had suspended required quarterly payments to investors after two or three quarters and that the JOJ investors ultimately lost their principal investment, but failed to disclose these facts in the FS PPM.
153. Ottimo also was aware that the Department of Transportation had fined JOJ \$60,000 for engaging in unfair and deceptive practices, but did not disclose this fact in the FS PPM.
154. These misrepresentations and omissions concerning JOJ were material and misled FS investors about JOJ's profitability and business operations and Ottimo's management of the company.
155. Ottimo knew, or was reckless in not knowing, that the FS PPM contained these material misrepresentations and omissions.
156. Ottimo did not provide CL with any information concerning JOJ other than what was contained in the FS PPM.

Misrepresentations and Omissions Concerning WC

157. Ottimo made material misrepresentations and omitted material facts in the FS PPM concerning the profitability and business operations of WC.

158. Ottimo knew that WC had no revenues from 2008 to 2010 and had \$1,395,014.37 in outstanding liabilities as of April 27, 2010, but failed to disclose this information in the FS PPM.
159. Although Ottimo signed a bankruptcy petition on WC's behalf on April 13, 2010, he failed to disclose the bankruptcy filing in the FS PPM.
160. By failing to disclose information in the FS PPM concerning WC's liabilities, lack of revenues and its bankruptcy, Ottimo gave the misleading impression that WC was a profitable company, when it was not.
161. In the FS PPM, Ottimo stated that he was the president of WC until 2011, although he knew that WC had wound down by 2008 and had no operating revenue in 2008, 2009 or 2010.
162. This statement gave the misleading impression that WC was a going concern until 2011 and that Ottimo was actively involved in its operations.
163. The information concerning WC's liabilities, lack of revenues and its bankruptcy all constituted material facts. This information was necessary to give investors a full and accurate picture of WC's business operations and profitability and Ottimo's management of the company.
164. Ottimo knew, or was reckless in not knowing, that the FS PPM contained these material misrepresentations and omissions.

FIRST CAUSE OF ACTION

Ottimo Willfully Failed to Disclose or Timely and Accurately Disclose Material Facts on a Form U4

FINRA By-Laws, Art. V, Sec. 2, FINRA Rules 1122 and 2010 and NASD IM 1000-1

165. The Department realleges and incorporates by reference paragraphs 1 through 164 above.
166. Article V, Section 2(c) of the FINRA By-Laws requires that associated persons keep their Forms U4 “current at all times by supplementary amendments . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” Pursuant to NASD IM-1000-1 (effective to August 16, 2009) and FINRA Rule 1122 (effective from August 17, 2009), the filing by a registered representative of a Form U4 that “is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.” FINRA Rule 2010 provides that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.” Failing to file prompt, accurate amendments to a Form U4 thus violates Article V, Section 2(c) of the FINRA By-Laws, FINRA Rule 1122 (or its predecessor, NASD IM-1000-1) and FINRA Rule 2010.
167. Ottimo failed to accurately disclose on his Form U4 the amounts and filing date of the SP judgment.
168. Ottimo failed to disclose or timely disclose on his Form U4 Liens 1-7, Judgments 1-5, and the WC bankruptcy.

169. Liens 1-7, Judgments 1-5, the SP judgment and the WC bankruptcy all constituted material facts for purposes of Form U4 disclosures and Ottimo's failure to disclose or timely and accurately disclose them on his Form U4 was willful.
170. As a result of the foregoing conduct, Ottimo willfully violated (a) Article V, Section 2(c) of the FINRA By-Laws and FINRA Rule 2010 for all periods set forth in this Complaint, (b) NASD IM 1000-1 for conduct to August 16, 2009, and (c) FINRA Rule 1122, for conduct after August 16, 2009.

SECOND CAUSE OF ACTION

Ottimo Willfully Made Material Misrepresentations and Omitted Material Facts in a PPM

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and FINRA Rules 2020 and 2010

171. The Department realleges and incorporates by reference paragraphs 1 through 170 above.
172. Section 10(b) of the Exchange Act prohibits "any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance."
173. Rule 10b-5 of the Exchange Act prohibits any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of

business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

174. FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”
175. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rule 2020 constitutes a violation of FINRA Rule 2010.
176. FS sold shares to EKN customers using means of interstate commerce, including email, United States mail, electronic transfers and checks drawn on United States banks.
177. Ottimo made material misrepresentations and omitted material facts concerning his prior business experience in the FS PPM.
178. Ottimo knew, or was reckless in not knowing, that the FS PPM contained these material misrepresentations and omissions.
179. As a result of the foregoing conduct, Ottimo willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

THIRD CAUSE OF ACTION

Ottimo Made Material Misrepresentations and Omitted Material Facts in a PPM

FINRA Rule 2010 by Virtue of Violations of Sections 17(a)(2) and (3) of the Securities Act

(Pleaded in the Alternative to the Second Cause of Action)

180. The Department realleges and incorporates by reference paragraphs 1 through 179 above.

181. Section 17(a)(2) and (3) of the Securities Act prohibits “any person in the offer or sale of any securities ... by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly” to “obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading” or to “engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”
182. FS sold shares to EKN customers using means of interstate commerce, including email, United States mail, electronic transfers and checks drawn on United States banks.
183. Ottimo made material misrepresentations and omitted material facts concerning his prior business experience in the FS PPM.
184. By reason of the foregoing violations of Sections 17(a)(2) and (3) of the Securities Act, Ottimo violated FINRA Rule 2010.

RELIEF REQUESTED

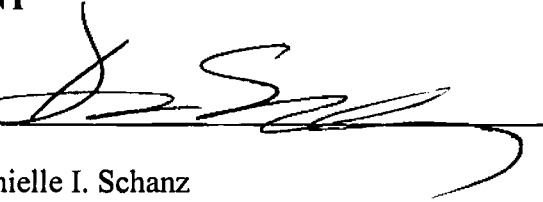
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;

- D. make specific findings that Respondent's conduct, as alleged in the First Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application; and
- E. make specific findings that Respondent willfully violated Section 10(b) and Rule 10b-5 of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 22, 2013

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