SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 69406 / April 18, 2013

Admin. Proc. File No. 3-15056

In the Matter of the Application of

JOSEPH S. AMUNDSEN
3537 Chain Dam Road
Easton, PA 18045

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Membership and Conduct Rules

Misstatements and Omissions on Forms U4

Applicant, a registered representative of a member firm of a registered securities association, failed to disclose both an injunction entered against him in connection with investment-related activity and the revocation of his license to act as a CPA. *Held*, association's findings of violation and sanctions imposed are *sustained*.

APPEARANCES:

Joseph S. Amundsen, pro se.

Alan Lawhead and *Megan Rauch*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: September 27, 2012
Last brief received: December 31, 2012

I.

Joseph S. Amundsen, formerly a registered representative of various FINRA member firms,[1] seeks review of a FINRA disciplinary action.[2] FINRA found that during the course of more than six years Amundsen violated NASD Interpretive Material 1000-1 and Rule 2110 and FINRA Rules 1122 and 2010 by failing to disclose, on thirty-six Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") he completed for thirty-four employers, an injunction entered against him in connection with investment-related activity and the revocation of his license to act as a certified public accountant in California.[3] FINRA further

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[1] As of the date of this opinion, Amundsen was not registered with any FINRA member firm. We take official notice of this information on BrokerCheck, an electronic database maintained by FINRA and available at *www.finra.org/Investors/toolsCalculators/BrokerCheck* (all websites referenced in this decision were last visited on April 18, 2013). *See* 17 C.F.R. § 201.323 (rule of practice relating to official notice).

[2] This case was instituted after the creation of The Financial Industry Regulatory Authority, Inc. in July 2007; however, some of the conduct at issue took place before that date. We therefore apply conduct rules of both FINRA and its predecessor, NASD, as relevant.

[3] NASD IM-1000-1 prohibits the filing, in connection with registration as a registered representative, of information 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." On August 17, 2009, IM-1000-1 was replaced by FINRA Rule 1122. FINRA Regulatory Notice 09-33, 2009 FINRA LEXIS 96, at *6-7 (June 2009). FINRA Rule 1122 provides that "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

NASD Conduct Rule 2110 requires members to observe "high standards of commercial honor and just and equitable principles of trade." NASD Rule 0115(a) made NASD Rule 2110 applicable with equal force to members and their associated persons. On December 15, 2008, NASD Rule 2110 was adopted as FINRA Rule 2010, and NASD Rule 0115(a) was adopted (with minor, non-substantive changes) as FINRA Rule 0140(a). *See* FINRA Notice to Members 08-57, 2008 FINRA LEXIS 50, at *30-32 (Oct. 2008). Under the Commission's "long-standing and judicially-recognized policy," a violation of another Commission or self-regulatory organization rule or regulation constitutes a violation of the rule prohibiting conduct inconsistent with just and equitable principles of trade. *See Stephan G. Gluckman*, Exchange Act Release No. 41628, 54 SEC 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999); *see also, e.g.*, *Thomas W. Heath III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *12 n.8 (Jan. 9, 2009) (citing and quoting *Gluckman*), *petition denied*, 586 F.3d 122 (2d Cir. 2009).

found that Amundsen was subject to statutory disqualification.[4] FINRA barred Amundsen and ordered him to pay costs. We base our findings on an independent review of the record.

II.

This case concerns false answers Amundsen provided on regulatory filings connected to his employment in the securities industry between 2003 and 2009. As found by FINRA, Amundsen falsely answered questions asking whether he had ever been enjoined in connection with investment-related activity and whether he had ever had a professional license revoked.

A. Amundsen was enjoined from appearing or practicing before the Commission, after which his California CPA license was revoked.

On February 15, 1983, the United States District Court for the Northern District of California entered, by consent, a final judgment of permanent injunction (the "Judgment") in a civil action brought against Amundsen by the Commission.[5] The Judgment permanently enjoined Amundsen (i) from engaging in any fraudulent conduct in the offer or sale, or in connection with the purchase or sale, of "any security of Olympic Gas & Oil, Inc. or any other issuer," and (ii) from "appearing or practicing before the Commission in any way."[6]

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[4] *See* Exchange Act § 3(a)(39)(F), 15 U.S.C. § 78c(a)(39) (enumerating conditions under which a person is subject to statutory disqualification). Under Article III, § 3 of FINRA's By-Laws, a statutorily disqualified person cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for, and is granted, in FINRA's discretion, relief from the statutory disqualification. Denials of a firm's application to retain its membership if it employs a statutorily disqualified individual are reviewable by the Commission. *See, e.g., Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977 (Sept. 10, 2010) (dismissing application for review of denial of membership continuance application); *Timothy P. Pedregon Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164 (Mar. 26, 2010) (same).

[5] *SEC v. Amundsen*, No. C83-00711 WHA (N.D. Cal. Feb. 15, 1983).

[6] *Id.* at 2-3.

The complaint in the action against Amundsen was based on allegations that Amundsen had violated federal antifraud provisions, § 17(a) of the Securities Act of 1933,[7] § 10(b) of the Securities Exchange Act of 1934,[8] and Exchange Act Rule 10b-5,[9] in connection with audit work performed for Olympic Gas & Oil, Inc. More specifically, the complaint alleged that Amundsen, a certified public accountant, had issued and signed an audit report that falsely stated (i) that Olympic's financial statements fairly presented its financial positions and results of its operations in conformity with generally accepted accounting principles, and (ii) that the audit was conducted in accordance with generally accepted auditing standards.[10] The complaint further alleged that Amundsen's audit report was included with the registration statement that Olympic filed with the Commission to register its common stock, and that the audit report was distributed to broker-dealers and investors in connection with offers and sales of Olympic stock. Without admitting or denying these allegations, Amundsen consented to the entry of the Judgment.[11]

On October 10, 1986, the California Board of Accountancy revoked Amundsen's license to practice as a CPA in California.[12] The board found that Amundsen's injunction against practicing

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[7] 15 U.S.C. § 77q(a),

[8] *Id.*, § 78j(b).

[9] 17 C.F.R. § 240.10b-5.

[10] Among other things, the complaint alleged that the sales and costs of sales in Olympic's income statement for the fiscal year ended February 28, 1979 were materially overstated in that the reported figures for sales and costs of sales were generated by the successive sales and purchases of money market investments (with sales of such investments included in Olympic's sales figures and the purchase price of those investments included in Olympic's costs of sales), and that neither the income statement nor the notes to the financial statements disclosed the nature of the reported income or the accounting method used to recognize sales and costs of sales. With respect to Amundsen's audit, the complaint alleged, among other things, that Amundsen (i) issued an audit report containing an unqualified opinion without receiving or examining required disclosures regarding sales and costs of sales, (ii) failed to take steps to test sales or costs of sales, and (iii) altered his workpapers before providing them to Commission staff.

[11] *Amundsen*, *supra* note 5. At the hearing before the FINRA panel, Amundsen admitted that he read the complaint and the judgment in 1983.

[12] Amundsen obtained his California CPA license on December 8, 1972.

before the Commission gave it cause to take disciplinary action against Amundsen, and that it was in the public interest to revoke his license.

B. Approximately twenty years after the injunction was entered, Amundsen obtained a CPA license and began working in the securities industry.

For about twenty years in the 1980s and 1990s, Amundsen owned a small building materials company and worked as a painter, also maintaining a small accounting practice until his license was revoked. Around 1995, however, he developed arthritis, and could no longer handle the physical labor involved in the building trades, so after holding a series of part-time jobs, he decided to resume work as an accountant. In the late summer of 2002, Amundsen again became licensed to practice as an accountant, first in New York and then in California.[13]

Shortly thereafter, Amundsen began working in the securities industry. He worked through two firms: Gettenberg Associates, a consulting firm that provided financial and operations principals for broker-dealer firms, and Buchanan Associates, a full-service compliance firm for small broker-dealers. Gettenberg asked Amundsen to become a financial and operations principal ("FINOP") for Sort Securities, LLC, a FINRA member firm, which Amundsen agreed to do. Thus, on November 4, 2003, Amundsen filed a Form U4 with FINRA through Sort Securities, the first of the thirty-six Forms U4 at issue in this proceeding.

As relevant here, the Form U4 asked whether "any domestic or foreign court ever enjoined [the registrant] in connection with any investment related activity?" (the "Injunction Question"),

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[13] The record does not reflect whether New York or California regulators considered the permanent injunction entered against Amundsen in deciding to license or relicense him. Amundsen testified only that he re-took and passed the required California examination and was thereupon given a "clean license." NAC Tr. at 28.

with "investment-related" defined as "pertain[ing] to securities,"[14] and whether the registrant had "ever had an authorization to act as an attorney, accountant, or federal contractor that was revoked or suspended?" (the "Revocation Question"). On the Form U4 filed through Sort Securities, and on every other Form U4 at issue, Amundsen responded "No" to both the Injunction and the Revocation Questions, despite the events described above.

Amundsen subsequently passed the Series 27 examination, qualifying him to act as a FINOP, and became registered with FINRA as a FINOP through Sort Securities on November 19, 2003. Amundsen later passed examinations that qualified him to act as a securities agent, general securities representative, general securities principal, and registered options principal. Over the course of the next six years, Amundsen filed, or caused to be filed, at least thirty-five additional Forms U4 to enable him to act as a FINOP or in other capacities with at least thirty-three additional FINRA member firms.[15]

C. Amundsen sought, unsuccessfully, to have the injunction vacated.

In October 2010, Amundsen asked the district court that had entered the Judgment to vacate the injunction. Amundsen based his motion on three arguments: (i) that he had rehabilitated himself (through good behavior, a stable family life, and continuing education) and he agreed to

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[14] This definition was contained in the instructions for completing Form U4.

[15] Exhibit A to the Complaint filed in this proceeding showed that Amundsen was registered with thirty-four member firms and filed, or caused to be filed, thirty-six Forms U4 between November 4, 2003 and January 26, 2010. Amundsen admitted that he filed these forms, or caused them to be filed. Although the record shows that Amundsen may have filed an additional Form U4 in connection with his association with a thirty-fifth member firm, we base our findings, as FINRA did, on the numbers shown in the complaint. *See Dep't of Enf. v. Amundsen*, Complaint No. 2010021916601, 2012 FINRA Discip. LEXIS 54, at *5 n.3 (NAC Sept. 20, 2012). The minor discrepancy in numbers has no effect on our decision.

comply with all Commission and PCAOB[16] requirements going forward; (ii) that the legal basis of the injunction was unsound because when he agreed to settle the Commission's action against him, he was unaware that his audit report could not be filed with Olympic's registration statement without his consent, which he did not give, and there was therefore no basis for the action against him; and (iii) that the procedural basis for the injunction was unsound because when he agreed to settle, (a) Commission staff told him that the offer to settle was "a really good deal" and that if he had been able to afford counsel, his counsel would have given him the same advice, (b) he never met the judge and did not realize "that the settlement was in fact an open ended judgment," and (c) he thereby "was denied his right of due process to understand the judgment [or] how to disclose such actions in future job applications."[17]

The court denied Amundsen's motion, finding that Amundsen's asserted facts did not warrant relief and that there was no demonstrated reason to vacate the injunction.[18] Amundsen thereupon appealed to the United States Court of Appeals for the Ninth Circuit, asserting, among other things, that the Commission never had jurisdiction to bring the charges, that Olympic's

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[16] "The Public Company Accounting Oversight Board is an independent executive agency created by the Sarbanes-Oxley Act of 2002." *Free Enterprise Fund v. PCAOB*, 537 F.3d 667, 686 (D.C. Cir. 2008). It was established "to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports." *[No name in original]*, Exchange Act Release No. 68921, 2013 SEC LEXIS 495, at *1 (Feb. 13, 2013).

[17] Request to Vacate Injunction at 2 (unnumbered), *SEC v. Amundsen*, No. C83-00711 WHA (N.D. Cal. Oct. 4, 2010).

[18] *SEC v. Amundsen* , No. C83-00711 WHA (N.D. Cal. Nov. 15, 2010) (order denying defendant's motion to vacate injunction).

financial statements met GAAP standards, and that the Olympic audit was done with all professional care. The Ninth Circuit affirmed the district court's order.[19]

D. FINRA filed a disciplinary action against Amundsen and held a hearing on the charges.

On May 18, 2011, FINRA filed a complaint against Amundsen alleging that he had willfully failed to disclose the license revocation and the injunction imposed by the Judgment on approximately thirty-six Forms U4.[20] At the ensuing hearing, a FINRA examiner testified that Amundsen answered "No" to both the Injunction Question and the Revocation Question on each of the thirty-six Forms U4 at issue.

Amundsen did not deny that he had been enjoined or that his CPA license had been revoked. But he contended that his answer to the Injunction Question was correct because the Judgment was based on his audit of a private company that was filed with the Commission without his consent, and he understood the injunction as barring him only from auditing public companies. The injunction involved only accounting, he argued, not investment-related activity, and thus the

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[19] *SEC v. Amundsen*, No. 10-17759, 470 F. App'x 651, 2012 U.S. App. LEXIS 4512, at *1-2 (9th Cir. 2012). Before filing his appeal, Amundsen delivered a motion for reconsideration to the clerk of the district court. However, the motion was not docketed until after Amundsen had filed his appeal. The district court denied the motion for reconsideration, *SEC v. Amundsen*, No. C83-00711 WHA (N.D. Cal. Feb. 2, 2011) (order denying defendant's motion for reconsideration), and it does not appear that Amundsen appealed that denial.

After the Ninth Circuit denied his appeal, Amundsen filed a "Petition for Remand to District Court," which the court construed as a petition for panel rehearing and denied. Order, *SEC v. Amundsen*, No. 10-17759 (9th Cir. July 24, 2012). In the same order, the court stated, "No further filings shall be accepted in this closed case." *Id.* Nonetheless, Amundsen made several additional filings with the court, which rejected them. We take official notice of the court's docket.

[20] The complaint also alleged that Amundsen willfully failed to amend the false answers he had provided on the Forms U4. However, FINRA construed the complaint as having a single cause of action—willful failure to disclose material information on thirty-six Forms U4—and made only passing reference to the failure-to-amend charged in the complaint. Accordingly, we focus our analysis on Amundsen's failure to disclose the injunction and the revocation when he filed each of the Forms U4.

correct answer was "No."[21] With respect to the Revocation Question, Amundsen stated that he considered "No" the correct answer because his CPA license had been reissued before he completed and signed the Forms U4.[22]

Amundsen testified that he determined that the two questions should be answered "No" "[i]n conjunction with" Gettenberg and Buchanan, the two firms that helped place him with broker-dealer firms. But he acknowledged that he did not actually show a copy of the injunction to the person with whom he spoke at Gettenberg,[23] and he later said that he was unsure whether he had any discussion with Gettenberg and Buchanan about whether Form U4 required disclosure of the injunction.

Amundsen testified that he "[a]bsolutely" accepted responsibility for the answers contained in all thirty-six of the Forms U4 at issue.[24] He maintained, however, that he did not

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[21] Although Amundsen admitted at the hearing that the Judgment was in an action instituted by the Commission, which, he conceded, regulates trading in securities, he nonetheless continued to maintain that the injunction was not investment-related because when he audited Olympic, it was not a public company: "This is not an investment related activity. It was an audit of a public – of a private company. I don't see how you can say that this – this answer is wrong. It's obviously correct, in my opinion." Hearing Tr. at 30. It is not clear why Amundsen allegedly thought it would matter whether his audit was of a private or a public company, since both private and public companies can issue securities. Similarly, even if, as Amundsen asserted, he understood the injunction to bar him only from auditing public companies, it is unclear why he would believe that auditing public companies would not constitute investment-related activity. We agree with FINRA that Amundsen failed to offer a coherent explanation for his position as to why "No" was the correct answer to the Injunction Question, but since Amundsen is not pressing this argument on review, we need not further explore the issue.

[22] Amundsen also said that in connection with CPA certification, he was asked, "[S]ince the last filing, has your license ever been revoked?" Because he would answer "No" to that question, he testified, he answered the Revocation Question the same way. On appeal before FINRA's National Adjudicatory Council, Amundsen stated that he thought the Revocation Question meant to ask whether he had practiced as an accountant without a license.

[23] Hearing Tr. at 74. Before the NAC, Amundsen argued that when he looked at the documents related to the 1983 Judgment after receiving a letter from FINRA in 2010 related to his statutory disqualification, *see infra* note 64, "that was the first time after 30 years I'd seen them." NAC Tr. at 49.

[24] Hearing Tr. at 57. In completing each Form U4, Amundsen was required to sign an acknowledgment and consent that included the following language: "I swear or affirm that I have read and understood the items and instructions on this form and that my answers (including attachments) are true and complete to the best of my knowledge." *E.g.*, R. 1097-98 (Amundsen's Form U4 for registration with Semanza Securities, LLC (May 13, 2009)).

complete each of the thirty-six Forms U4 individually; instead, after he filled out the first one, the U4s were "rolled over per the FINRA system, not through my work."[25] By "rolled over," Amundsen apparently meant that portions of the form were automatically populated with information he originally entered. Amundsen testified that he did not review each of the U4s at issue, but he admitted that he signed each one.[26]

Amundsen testified that he understood that FINRA asked the Injunction Question and the Revocation Question on Form U4 because it was "interested in full disclosure."[27] Although Amundsen acknowledged that he had an obligation to provide full disclosure to FINRA, he testified that he believed, even at the time of the hearing, that he had provided full disclosure "[u]nder the circumstances."[28]

Amundsen further testified that he believed it was important to firms that would be employing him to know that he was subject to a permanent injunction that prohibited him from auditing public companies and that his accounting license had previously been revoked. But when asked whether he disclosed the license revocation to any of the thirty-four firms in question, Amundsen did not answer "Yes." Instead, he responded that the information was a matter of public record, and if they had any questions, they could have asked him.[29]

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[25] Hearing Tr. at 36.

[26] *Id.* at 35-36.

[27] *Id.* at 68.

[28] *Id.* at 68-69.

[29] At one point during the hearing, Amundsen testified that he took the initiative in informing firms that he was enjoined from auditing public companies: "I brought it up with them." *Id.* at 38.Before the NAC, however, he admitted that he did not discuss the injunction and revocation with the employing firms when he first associated with them, but rather waited until after FINRA notified him in 2010 that he was statutorily disqualified.

E. FINRA found that Amundsen willfully failed to disclose the injunction and revocation and sanctioned him.

On December 30, 2011, the hearing panel issued a decision finding that Amundsen willfully failed to disclose the injunction and the license revocation on the Forms U4, and that this willful failure to disclose violated NASD IM-1000-1 and Rule 2110 and FINRA Rules 1122 and 2010.[30] Having heard Amundsen testify, the panel found his explanations as to why he did not disclose the injunction and the license revocation, as well as his explanation as to how the answers on the Forms U4 were "self-populated" or "rolled over," not credible.[31] As a sanction for his misconduct, the hearing panel barred Amundsen from associating with any FINRA member firm; it also ordered Amundsen to pay costs.

Amundsen appealed the decision to FINRA's National Adjudicatory Council,[32] which affirmed the hearing panel's findings as to liability and sanctions.[33] The NAC found that Amundsen "offered no credible, coherent support for his position" that "No" was the correct answer to the Injunction Question, and it agreed with the hearing panel's assessment that Amundsen's explanation about why he answered "No" to the Revocation Question lacked credibility. It also rejected Amundsen's argument that the injunction was unlawful and that the disciplinary action against him should therefore be dismissed. The NAC found that Amundsen

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[30] *Dep't of Enf. v. Amundsen*, Complaint No. 2010021916601, 2011 FINRA Discip. LEXIS 63 (OHO Dec. 30, 2011), *aff'd*, 2012 FINRA Discip. LEXIS 54 (NAC Sept. 20, 2012).

[31] The panel found that Amundsen had provided no evidence to support the "rolling-over" explanation, and stated that the explanation was "completely contradicted by the Hearing Panel's own experience." 2011 FINRA Discip. LEXIS 63, at *9-10.

[32] The NAC serves as the appellate body for FINRA's disciplinary proceedings and the committee that sets the association's sanctions policy. FINRA Manual, at *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4735* (By-Laws of FINRA Regulation, Inc., Art. V, §§ 5.1 (Authority)); FINRA website, at *http://www.finra.org/Industry/Enforcement/SanctionGuidelines/p016371* (March 2006 Revisions to the NASD Sanction Guidelines—FAQ).

[33] *Amundsen*, 2012 FINRA Discip. LEXIS 54, at *1, 33-34.

"has been subject to statutory disqualification because he was enjoined in 1983 in connection with the purchase or sale of securities"[34] and further found that Amundsen's willful submission of material false information on Forms U4 was an additional basis for his statutory disqualification.[35]

In considering sanctions, the NAC found that the information Amundsen failed to disclose was "highly material" and that disclosure of that information would create serious doubt for member firms regarding Amundsen's commitment to accuracy with respect to regulatory compliance and his ability to provide accurate financial information. It characterized Amundsen's interpretation of the relevant Form U4 questions as "self-serving [and] implausible" and found that his active concealment of the Judgment and the license revocation demonstrated "deliberativeness rather than mere oversight."[36] The NAC found that nothing in the record other than Amundsen's testimony supported his assertion that he told at least some firms about the Judgment, and that to the extent he disclosed anything, the disclosure was "grossly inadequate" because his interpretation of the Judgment was "patently wrong" and he did not give any of the firms a copy of the Judgment.[37] Further, the NAC was "troubled" by Amundsen's failure to express any remorse for having exposed the firms that employed him to risk and possible liability based on their employment of a statutorily disqualified individual.[38] The NAC found that Amundsen's assertions that disclosure of the license revocation to potential employers was unimportant because the information was available on the Internet demonstrated "intentional and complete disregard for the

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[34] *Id.* at *20.

[35] *Id.* at *15-21.

[36] *Id.* at *29.

[37] *Id.* at *30.

[38] *Id.* at *27.

disclosure required by FINRA rules and the Form U4."[39] Finding that Amundsen lacked the integrity and fitness required of those employed in the securities industry, the NAC concluded that a bar (which it found to be consistent with FINRA's Sanction Guidelines) would "best serve to protect the investing public and deter others from failing to disclose material information when seeking registration through a FINRA member."[40] This appeal followed.

III.

A. Amundsen violated NASD IM-1000-1 and Conduct Rule 2110 and FINRA Rules 1122 and 2010 by providing incorrect answers on his Forms U4.

As discussed further below, we find that Amundsen violated NASD IM-1000-1 and Conduct Rule 2110 and FINRA Rules 1122 and 2010 by providing incorrect answers to the Injunction Question and the Revocation Question on the thirty-six Forms U4 at issue. Before addressing the specific details of Amundsen's case, however, we provide a brief discussion of the policy issues involved.

Registered representatives like Amundsen bear that designation because they represent their firms to the public. Before they can align themselves with any member firm, they must complete and file with FINRA a Form U4. Form U4 is a critically important regulatory tool. As we recently observed, "Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm."[41] Members of the public can also access

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[39] *Id.* at *28.

[40] *Id.* at *33 (citing *McCarthy v. SEC*, 406 F.3d 179, 188-89 (2d Cir. 2005)).

[41] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012) (citing *Rosario R. Ruggiero*, Exchange Act Release No. 37070, 52 SEC 725, 1996 SEC LEXIS 990, at *8–9 (Apr. 5, 1996)), *appeal docketed*, No. 13-31 (2d Cir. Jan. 8, 2013).

the information reported in the form, via BrokerCheck,[42] and can use that information when deciding to whom they want to entrust their money.[43] "The form is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public."[44]

Because Form U4 is so important, every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment.[45] "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."[46]

Given the size of FINRA's membership, FINRA "cannot investigate the veracity of every detail in each document filed with it, [and] must depend on its members to report to it accurately

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[42] According to FINRA's website:

> BrokerCheck is a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers, as well as investment adviser firms and representatives. It should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.

FINRA website, at *http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/*.

[43] *See, e g.*, *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009) (information about respondent's tax liens, if disclosed on Form U4, would have allowed potential investors to assess "whether [respondent's] tax problems and large financial obligations had a bearing on their confidence in him"), *petition denied*, 671 F.3d 210 (2d Cir. 2012).

[44] *Tucker*, 2012 SEC LEXIS 3496, at *26 (internal citation omitted; citing additional authority).

[45] FINRA By-Laws of the Corporation, Art. V, § 2(c). To ensure that registrants are aware of this requirement, Form U4 expressly requires registrants to acknowledge their obligation to keep their Forms U4 current by filing timely supplemental amendments.

[46] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17–18 (Oct. 20, 2011).

and clearly in a manner that is not misleading."[47] Thus, NASD IM-1000-1 and FINRA Rule 1122 prohibit the filing, in connection with membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading.[48] Moreover, filing a misleading Form U4 violates not only IM-1000-1 and FINRA Rule 1122, but also the standard of just and equitable principles of trade to which every person associated with a NASD or FINRA member is held under Rule 2110 or Rule 2010 respectively.[49]

Each time Amundsen associated with a new firm, he completed a new Form U4, certified that he understood the questions, and certified that his answers were accurate and complete.[50] However, on the thirty-six forms at issue, Amundsen falsely answered "No" to the Injunction Question and the Revocation Question although the plain language of those questions required an affirmative response based on facts he knew.

Amundsen's false answers to the Injunction Question and the Revocation Question violated his duty under IM-1000-1 and its successor, Rule 1122, to provide full, accurate, and non-misleading information in connection with his registration and his duty under Rules 1122 and 2010 to act consistently with just and equitable principles of trade. By concealing the injunction and the revocation of his accountant's license, Amundsen deprived regulators, broker-dealers, and members of the investing public of critical information necessary to determine whether he was

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[47] *Robert E. Kauffman*, Exchange Act Release No. 33219, 51 SEC 838, 1993 SEC LEXIS 3163, at *3 (Nov. 18, 1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (Table). We note that as of mid-April 2013, there were more than 4,000 FINRA member firms with approximately 630,000 registered representatives in more than 160,000 branch offices. FINRA website, at *http://www.finra.org/AboutFINRA*.

[48] NASD IM-1000-1. "This rule applies to Form U4." *Mathis*, 2009 SEC LEXIS 4376, at *16.

[49] *Tucker*, 2012 SEC LEXIS 3496, at *30 (citing *Mathis*, 2009 SEC LEXIS 4376, at *16, and other authority).

[50] *See supra* note 24.

trustworthy and could fulfill the high standards of conduct required of securities industry registrants.

Amundsen's misconduct had repercussions beyond the violation of his own disclosure responsibilities. By failing to disclose the injunction, he concealed from the firms that employed him that he was statutorily disqualified and prevented them from assessing whether they wanted to seek FINRA's approval to have Amundsen associate with them despite the disqualification,[51] or on what terms they would want such association.[52] Additionally, Amundsen's misconduct potentially exposed each of the thirty-four firms that employed him to the risk of disciplinary action based on their having employed a statutorily disqualified person without having obtained FINRA's approval to do so.[53]

Amundsen's actions also reflect poorly on his commitment to his regulatory responsibilities in general. Answering the questions falsely allowed Amundsen to be hired repeatedly over a six-year period without the kind of scrutiny that would otherwise have been given to someone with his history. Thus, he put his own interests in employment in the securities industry above the legitimate interests of regulators, firms, and investors in having truthful

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[51] *See supra* note 4 (discussing consequences of statutory disqualification).

[52] Presumably the firms would also have wanted to evaluate the question whether Amundsen could function satisfactorily as a FINOP in light of his injunction from appearing or practicing before the Commission. *See* NASD Rule 1022 (explaining that FINOP's duties include "[f]inal approval and responsibility for the accuracy of financial reports submitted to any duly established securities regulatory body," "[f]inal preparation of such reports," and "[s]upervision of individuals who assist in such reports").

Amundsen's vague testimony that he discussed the injunction with some firms does not establish that he adequately informed them about the injunction and the license revocation, especially in light of his repeated attempts to downplay the importance of those events. Moreover, as noted above, the record does not show that these discussions were held before Amundsen completed the Forms U4 and started working at the firms. *See supra* note 29 and accompanying text.

[53] *See Amundsen*, 2012 FINRA Discip. LEXIS 54, at *27.

information on which to base their dealings with him. A history of multiple false filings like Amundsen's is highly problematic in any person participating in an industry that "presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[54]

We find, as FINRA did, that Amundsen's testimony about why he answered the questions "No" rather than "Yes"—the Injunction Question because he believed the injunction did not involve "investment-related" activity and the Revocation Question because his license had been reinstated by the time he completed the forms (or because he answered a CPA certification question that way)—lacked credibility.[55] It is well established that securities industry professionals "'must take responsibility for compliance' with [Form U4] and 'cannot be excused for lack of knowledge, understanding or appreciation of' its requirements."[56] Indeed, Amundsen stated that he "absolutely" accepted responsibility for the answers on the thirty-six Forms U4 at issue. As FINRA found, the Judgment (which Amundsen admits he read) and the definition of "investment-related" in Form U4 are written in plain language, and the Revocation Question is explicit and unambiguous.[57] If Amundsen was nonetheless unsure about how the questions should

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[54] *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *28 (Sept. 26, 2007), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

[55] We concur with the panel's credibility findings, which are entitled to considerable weight. *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *49 & n.22 (Feb. 1, 2010), *petition denied*, 647 F.3d 1156 (D.C. Cir. 2011); *see also Laurie Jones Canady*, Exchange Act Release No. 41250, 54 SEC 65, 1999 SEC LEXIS 669, at *27 (Apr. 5, 1999).

[56] *Tucker*, 2012 SEC LEXIS 3496, at *36 (quoting *Guang Lu*, Exchange Act Release No. 51047, 58 SEC 43, 2005 SEC LEXIS 117, at *22 (Jan. 14, 2005), *aff'd*, 179 F. App'x 702, 2006 U.S. App. LEXIS 24875 (D.C. Cir. 2006), and citing additional authority).

[57] *Cf. Mathis*, 2009 SEC LEXIS 4376, at *21 (rejecting applicant's claim that the question was ambiguous, noting that it "contains no limitations on the kind of liens required to be disclosed").

be answered, it was incumbent on him to find out.[58] Amundsen, as the individual directly impacted by the injunction and the license revocation, was in the best position to provide accurate information about those subjects, and it is thus appropriate that he bore primary responsibility for correctly answering the questions on the Forms U4 that pertained to those topics.[59]

Whatever discussions Amundsen may have had with Gettenberg and Buchanan do not affect his obligation to provide complete and accurate information on each Form U4 he completed.[60] Nor does the alleged availability on the Internet of information regarding the Judgment and the license revocation affect this obligation. Firms, regulators, and investors must be able to rely on Form U4 as a source of truthful answers to the questions posed there. Whether they

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[58] *Cf. Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at* 14 (Dec. 22, 2008) ("If Craig had any doubt about the disposition of his conviction, it was his duty to determine whether the information he was providing on Form U4 was complete and accurate.").

[59] *Cf. Tucker*, 2102 SEC LEXIS 3496, at *37 (reaching similar conclusion with respect to responsibility of registered representative who filed bankruptcy petitions and against whom tax lien and judgment were entered for answering questions about those subjects on Form U4). *But see also id.* at *38 n.46 (discussing firm's obligations to also take steps to ensure that the information contained in registration documents it submits is accurate).

[60] We find, as FINRA did, that Amundsen's testimony about his discussions with Gettenberg and Buchanan was evasive. Amundsen identified only one individual with whom he allegedly spoke about the injunction and provided no specifics about when any such discussions took place or what they allegedly covered. Amundsen does not contend that anyone at either firm advised him that he need not disclose the injunction (or the revocation) on Form U4; rather, he phrased all alleged conclusions impersonally, testifying, "[T]he feeling was that this was an injunction against auditing a public company," Hearing Tr. at 27, and "[T]he issue [of the Commission's complaint against him] was brought up. The understanding was . . . it was an injunction against auditing a public company." *Id.* at 28. But even if individuals at those firms had told Amundsen that he could appropriately answer "No" to the Injunction and Revocation Questions, Amundsen would still be responsible for his answers. As we have previously held, "a member firm's own interpretations of the securities laws and rules do not protect associated persons. To hold otherwise would permit every broker-dealer to interpret the laws and rules to its liking and would result in enormous inconsistency of enforcement." *Thomas R. Alton*, Exchange Act Release No. 36058, 52 SEC 380, 1995 SEC LEXIS 1975, at *8 n.12 (Aug. 4, 1995); *see also Barry C. Wilson*, Exchange Act Release No. 37867, 52 SEC 1070, 1996 SEC LEXIS 3012, at *9 n.12 (Oct. 25, 1996) (noting that "failings on the part of certain firm personnel do not excuse misconduct by others").

could have found additional relevant information, or even the same information, by searching the Internet is beside the point.[61]

B. Amundsen is statutorily disqualified.

A person is subject to a statutory disqualification under Exchange Act § 3(a)(39)(F) if, among other things, he or she "is enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C)."[62] Among the injunctions specified in § 15(b)(4)(C) are injunctions "from engaging in . . . any conduct or practice . . . in connection with the purchase or sale of any security."[63] Because the Judgment enjoined Amundsen from engaging in fraudulent activity "in connection with the purchase or sale of any security of [Olympic] or any other issuer," Amundsen has been subject to statutory disqualification since the injunction was issued in 1983.[64]

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[61] *Cf. Tucker*, 2012 SEC LEXIS 3496, at *38 n.45 (rejecting argument that employing firm knew about respondent's tax liens, which were not reported on Form U4, because employer had obtained credit reports that disclosed those liens: "[V]iolative Form U4 disclosures are not excused by the availability of relevant information through third parties.").

[62] 15 U.S.C. § 78c(a)(39)(F). For information about the origins of statutory disqualification, see *Tucker*, 2012 SEC LEXIS 3496, at *40 & n.49.

[63] 15 U.S.C. § 78o(b)(4)(C).

[64] By letter dated April 16, 2010, FINRA notified one of the firms that employed Amundsen as a FINOP that Amundsen was subject to statutory disqualification as a result of the injunction.

As a result of the injunction, Amundsen was also subject to disqualification under NASD's and FINRA's By-Laws. Under Article III, § 4(h) of NASD's By-Laws, a person is subject to "disqualification" with respect to association with a member firm if the person is "permanently . . . enjoined by order, judgment, or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." NASD Manual at 1307 (Nov. 2003). Under Article III, § 4 of FINRA's By-Laws, a person is subject to "disqualification" with respect to association with a member firm if the person is subject to any "statutory disqualification" as defined by Exchange Act § 3(a)(39). *http://finra.complinet.com/en/display/display_main.html? rbid=2403&element_id=4607.*

Amundsen attached to his opening brief an April 30, 2010 letter written by an attorney representing Amundsen, which states that the Judgment is not a basis for statutory disqualification under § 3(a)(39) because it "enjoins only conduct in connection with the sale of one specific security and restrained Mr. Amundsen from appearing and practicing before [the Commission only] as an accountant." Letter from Andrew J. Goodman, GSB Law, to Ms. Lorraine Lee, Manager, Statutory Disqualification Policy, FINRA (April 30, 2010), at 1 (unnumbered). Insofar as Amundsen is making this argument on appeal, we reject it. The attorney's characterization of the injunction is incorrect, since it enjoins Amundsen from certain conduct "in the offer or sale of any security of Olympic Gas & Oil,

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Amundsen's willful provision of material false information on the thirty-six Forms U4 discussed in this opinion is also a basis for statutory disqualification.[65] Under Exchange Act § 3(a)(39)(F), a person who "has willfully made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state . . . any material fact which is required to be stated therein," is subject to statutory disqualification.[66]

A willful violation under the federal securities laws means "'that the person charged with the duty knows what he is doing.'"[67] It is not necessary to additionally find that the respondent "was aware of the rule he violated or that he acted with a culpable state of mind."[68] A failure to disclose is willful under Exchange Act § 3(a)(39)(F) if the respondent of his own volition provides false answers on his Form U4.[69] Here, Amundsen acted willfully by voluntarily supplying false answers to the Injunction Question and the Revocation Question on the Forms U4 while he was aware of the injunction and the revocation. These false answers were neither involuntary nor

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(... continued)
Inc. *or any other issuer*" (emphasis added), and it enjoins Amundsen "from appearing or practicing before the Commission *in any way*" (emphasis added).

[65] *See Tucker*, 2012 SEC LEXIS 3496, at *40-48 (finding statutory disqualification under § 3(a)(39)(F) where respondent voluntarily supplied false answers to questions on Form U4 while he was aware of correct information that should have been disclosed).

[66] 15 U.S.C. § 78c(a)(39)(F).

[67] *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

[68] *Craig*, 2008 SEC LEXIS 2844, at *13. *Accord Mathis*, 671 F.3d at 217; *Wonsover*, 205 F.3d at 414; *Neaton*, 2011 SEC LEXIS 3719, at *21.

[69] *Mathis*, 2009 SEC LEXIS 4376, at *19; *see also Mathis*, 671 F.3d at 216 (finding that the Commission "did not abuse its discretion when it concluded that Mathis willfully failed to disclose . . . tax liens within the meaning of [Exchange Act] § 3(a)(39)(F) because he 'voluntarily provided false answers on his Form U4'").

inadvertent; the questions were clearly and straightforwardly formulated, as was the definition of "investment-related" for purposes of the Injunction Question.[70] We find ample support in the record for FINRA's determination that Amundsen's testimony about his belief in the accuracy of his answers was not credible. And he gave those answers repeatedly. His evasive testimony about his alleged discussions regarding the injunction with Gettenberg and Buchanan, which were not shown to have been based on an accurate description of the injunction or to have occurred before Amundsen completed any particular Form U4, does not detract from our conclusion that Amundsen's conduct was willful. And in any event, Amundsen does not contend that he discussed the license revocation with Gettenberg and Buchanan. Thus, the willfulness of his answers to the Revocation Question is unaffected by any such discussions.[71]

We also find that the information Amundsen excluded from the thirty-six Forms U4 at issue was material. Information not disclosed on a Form U4 is material if the omitted information would have "'significantly altered the total mix of information made available,'" or "'would have assumed actual significance in the deliberations of' the representative's employers, regulators, and investors."[72] The injunction was significant because it was a remedial sanction imposed by consent judgment entered by a court in a Commission enforcement action alleging that Amundsen violated antifraud provisions of the federal securities laws and because, by enjoining Amundsen from appearing or practicing before the Commission, it limited the potential scope of his

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[70] As previously noted, *see supra* note 14, the instructions for completing Form U4 defined "investment-related" as "pertain[ing] to securities."

[71] An Exchange Act statutory disqualification can be triggered by a single willful violation. *See* Exchange Act § 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F) (covering any material misstatement or omission willfully made on any application for association with a member firm).

[72] *Tucker*, 2012 SEC LEXIS 3496, at *47 (quoting *Mathis*, 2009 SEC LEXIS 3276, at *29 & n.27, *31).

professional practice. The license revocation was significant because it similarly curtailed Amundsen's professional activities and reflected disciplinary action taken by a professional licensing board. The materiality of such information is particularly evident when, as in this case, its disclosure was required by specific questions on the Form U4. We have previously recognized that "'[e]ssentially all the information that is reportable on the Form U4 is material.'"[73] Thus we find, as FINRA did, that Amundsen's willful failure to disclose the injunction and the revocation on the thirty-six Forms U4 results in statutory disqualification.

C. Amundsen's procedural objections are without merit.

Amundsen does not challenge the basis for FINRA's action, *i.e.*, the fact that he incorrectly answered the Injunction Question and the Revocation Question on the thirty-six Forms U4 at issue. Instead, he focuses on what he claims were procedural errors by FINRA. Specifically, he claims that FINRA staff improperly suppressed a district court finding that he sought to introduce—a January 19, 2012 order of the United States District Court for the Northern District of California that Amundsen contends dealt with "the same issues" involved in this review proceeding.[74] He asserts that FINRA's Department of Enforcement filed a motion to exclude the district court order when he attempted to submit it while the matter was pending before the NAC, and that the NAC's

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[73] *Id.* at *47 (quoting *Dep't of Enf. v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004)); *see also Heath*, 586 F.3d at 138-39 (noting deference accorded to SROs in interpreting their rules).

[74] Amundsen's Opening Br. at 1 (unnumbered). Amundsen's brief states that he appealed the hearing panel's decision on December 30, 2011, the same day it was issued, "on the grounds that the panel did not know of the Court's decision." *Id.* at 2. Of course, the court's January 19, 2012 decision did not yet exist when the hearing panel issued its decision in December 2011. The record document that Amundsen cites in support of this assertion shows that on December 30, 2011, Amundsen asked FINRA's Office of Hearing Officers for "an appeal and a stay of any actions," based in part on his assertion that an "initial decision" in federal district court would be made "on or about January 10, 201[2]," and that "[a]ll indication are that the Court will rule in Amundsen's favor." Letter from Joseph Amundsen to FINRA Office of Hearing Officers (Dec. 30, 2011).

decision was "based on the resulting assumption that Amundsen had no right [to bring] the District Court action to its attention."[75] Thus, Amundsen argues, the NAC's decision was "based on suppression" of the district court's finding.[76]

To begin with, the district court order does not deal with the same issues involved in this proceeding. The district court's ruling was on a motion brought by the Commission to have Amundsen held in contempt for violating the injunction. The principal question in this proceeding, whether Amundsen violated NASD and FINRA rules by providing false information on thirty-six Forms U4, was not at issue in the district court action. In fact, the district court order does not mention either Form U4 or the pertinent NASD and FINRA rules.

Amundsen asserts in his reply brief that "[t]he only Court findings (in 2012) were that the injunction upon which all this controversy is about should be vacated."[77] This interpretation of the order is unfounded. To the contrary, the district court found that "in light of his consent decree, the defendant should never have begun the practice [of auditing financial statements of broker-dealers destined to be filed with the Commission] in the first place" and that Amundsen's "narrow reading" of the injunction as barring only audit reports for public companies was unreasonable.[78] The court advised Amundsen that he "would be well-advised to retain counsel" if he wanted to enter a motion to modify the scope of the injunction, but stated, "Whether or not such a motion would be

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[75] Amundsen's Opening Br. at 2.

[76] Amundsen's Reply Br. at 1 (unnumbered).

[77] *Id.* at 1. Amundsen does not identify the language in the order on which he relies.

[78] *SEC v. Amundsen*, No. C 83-00711 WHA, at 2-3 (N.D. Cal. Jan. 19, 2012) (order re motion for contempt). The court did not find Amundsen to be in contempt, but the absence of such a finding does not affect our disposition of this matter.

granted would depend on its own merits and this order does not intimate one way or the other."[79] Thus, Amundsen's interpretation of the order as vacating the injunction, or suggesting that the injunction should be vacated, is incorrect.[80]

Even if the district court had vacated the injunction, that would not change the analysis under FINRA Rules 1122 and 2010 and their NASD counterparts. The Injunction Question asked Amundsen whether he had "ever" been enjoined in connection with any investment-related activity. The answer to that question was, and remains, "Yes." The entry of the injunction is a historic fact that would not be affected by a subsequent determination to vacate the injunction.[81]

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[79] *Id.* at 3.

[80] Amundsen asserts, without further explanation or any evidentiary support, that "[t]he actual injunction was written by employees of the SEC (in 1983) who had never passed the bar exam, but represented to the Court that they were lawyers." Amundsen's Reply Br. at 1. Not only are these allegations unsupported, we also understand them as a collateral attack on the federal court proceedings. Such collateral attacks are impermissible in our administrative proceedings. *See, e.g.*, *Neaton*, 2011 SEC LEXIS 3719, at *43 (holding that findings of discipline board of state bar are not subject to collateral attack in FINRA review proceeding); *Phillip J. Milligan*, 2010 SEC LEXIS 1163, at *13-15 (Mar. 26, 2010) (holding that district court findings in injunctive action and criminal proceeding are not subject to challenge in follow-on proceeding). Amundsen's assertions that "[t]he SEC lawyer in [the contempt proceeding in federal district court] lied when he said that [information used in the Commission's brief] was public," Amundsen's Opening Br. at 1, is equally unsupported.

In his petition for review, Amundsen states that Commission staff responded to an inquiry from the district court in the contempt action against Amundsen by saying that "the action had nothing to do with FINRA, and that Amundsen was able to do FINRA and FOCUS work." Petition for Review at 1 (unnumbered). Amundsen overly simplifies and misrepresents the staff's responses, which he attached to his reply brief in this proceeding. The staff stated that the injunction did not prevent Amundsen from working at a FINRA-registered broker-dealer, but that FINRA rules provided that the injunction must be disclosed to FINRA before the enjoined person could become registered, and appropriate supervisory rules must be put in place by the member firm and approved by FINRA. Letter from Christopher M. Bruckmann, Senior Counsel, SEC, Office of the Gen'l Counsel, to The Hon. William Alsup, U.S. District Judge, N.D. Cal. (Jan. 17, 2012), at 2. The staff also stated that because the injunction prohibited Amundsen "from appearing or practicing before the Commission in any way," it prohibited him from preparing FOCUS Reports (Financial and Operational Combined Uniform Single Reports), which it defined as "unaudited financial statements filed by broker-dealers with the SEC and/or self-regulatory organizations." *Id.* at 3. Amundsen points to nothing in the staff's responses that would support the argument he made before FINRA that the injunction was not in connection with investment-related activity. Moreover, Amundsen could not have relied on the staff's responses in completing the Forms U4 at issue, since all of those Forms U4 were completed before the staff's responses were submitted.

[81] *See Robert J. Sayegh*, Exchange Act Release No. 37953, 52 SEC 1110, 1996 SEC LEXIS 3177, at *5 (Nov. 15, 1996) (holding that the pendency of a respondent's petition to vacate or overturn an injunction "would not alter the 'factual' existence of the injunction 'and its public interest implications'") (quoting *Charles Phillip Elliott*, Exchange Act Release No. 31202, 50 SEC 1273, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992)). In this connection, we note

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Moreover, Form U4 instructs applicants who answer "Yes" to the Injunction Question to provide details on a continuation page of the form. Thus, an applicant whose injunction was vacated would still be required to report the injunction, but would also have the opportunity to report facts relevant to its vacation.

Amundsen's contention that the NAC's decision was based on suppression of the district court's January 19 order is also unfounded. The NAC denied the Department of Enforcement's motion to exclude the district court order. Though it found that Amundsen "failed to seek leave to introduce additional evidence, and more importantly, failed to demonstrate why this proposed evidence is material to the proceeding," the NAC nonetheless "considered the substance of the documents and arguments, and . . . [found] that they are irrelevant to liability and sanctions in this matter."[82] Thus, Amundsen's allegation that the district court order was suppressed, or that the NAC failed to consider it, is baseless.[83]

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that the April 30, 2010 letter attached to Amundsen's opening brief, *see supra* note 64, asked FINRA to grant Amundsen relief from FINRA's eligibility requirements under FINRA Rule 9522(e)(1)(a). Rule 9522(e)(1)(A) allows FINRA to grant such relief to a person who is statutorily disqualified based on an injunction entered at least ten years before the proposed admission if certain conditions are met, including that the person in question be "not subject otherwise to disqualification." *http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3987*. To the extent Amundsen is arguing that FINRA should have granted him relief under Rule 9522(e)(1)(a), we note that, as explained above, he is subject to statutory disqualification for reasons other than the injunction. Moreover, even if FINRA had relieved him of the eligibility requirements in response to a request made in April 2010, that would not alter the fact that the answers he gave on Forms U4 completed between 2003 and January 2010 were false.

[82] *Amundsen*, 2012 FINRA Discip. 54, at *24 n.16. FINRA Rule 9346 provides that additional evidence may be introduced in NAC proceedings only with prior approval, upon a showing that extraordinary circumstances exist.

[83] In his reply brief, Amundsen asserted that the NAC's decision "was based on the suppression of the fact that the SEC has in place a procedure for dealing with these disclosure issues." Amundsen's Reply Br. at 1. In support of this assertion, Amundsen attached what he characterized as "a form letter prepared by the SEC for dealing with such disclosure issues." *Id.* (referring to proposed exhibit 1). Rule of Practice 452, 17 C.F.R. § 201.452, permits a party to a Commission administrative proceeding to file a motion to adduce additional evidence, but requires that any such motion "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." Amundsen did not file a motion to introduce the alleged "form letter" in his reply brief, and he does not explain why he could not have adduced that document previously. Moreover, neither
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Finally, even if the NAC had not considered the district court order on which Amundsen relies, the failure to do so would not have affected the outcome of this proceeding. In our *de novo* review we have considered that order, and for the reasons discussed above, we conclude that it does not excuse his false answers to the Injunction Question, much less to the Revocation Question.[84]

V.

Pursuant to Exchange Act § 19(e)(2), we sustain FINRA sanctions unless we find, giving due regard to the public interest and the protection of investors, that the sanctions are excessive, oppressive, or impose an unnecessary or inappropriate burden on competition.[85] Here, we find no basis for reducing the bar imposed by FINRA. In the first place, the bar is consistent with FINRA's Sanction Guidelines.[86] When an individual files a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine of between $2,500 and $50,000 and a suspension of from five to

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the record nor Amundsen's proposed Exhibit 1 shows that the Commission has any "procedure" for dealing with disclosure issues like Amundsen's, nor does the record show that Amundsen's attempt to establish this alleged fact was "suppressed." We therefore find both proposed Exhibit 1 and Amundsen's argument to this end irrelevant to the matters at issue in this proceeding, and we decline to admit proposed Exhibit 1. *See, e.g.*, *Tucker*, 2012 SEC LEXIS 3496, at *58-60 (declining to adduce proposed exhibits and citing additional authority).

[84] It is well established that *de novo* review by the Commission cures any harm that may have resulted from improper procedural decisions made at the hearing level or by the NAC. *See Tucker*, 2012 SEC LEXIS 3496, at *52 & n.74 (citing additional authority); *see also Heath*, 2009 SEC LEXIS 14, at *42 & n.65 (citing *McCarthy v. SEC*, 406 F.3d 179, 187 (2d Cir. 2005), for the proposition that "the 'due process afforded [the applicant] before the Commission cured any alleged defect in the proceedings before the [SRO]'").

[85] 15 U.S.C. § 78s(e)(2). Section 19(e)(2) permits us to affirm, reduce, or set aside a FINRA sanction, or to remand the matter to FINRA; it does not authorize us to increase the sanction. *Id.*; *see also Gregory W. Gray*, Exchange Act Release No. 60361, 2009 SEC LEXIS 2554, at *39 n.41 (July 22, 2009) (noting that the Exchange Act does not authorize the Commission to increase a NYSE disciplinary sanction). Amundsen does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[86] "FINRA promulgated the Sanction Guidelines to achieve greater consistency, uniformity, and fairness in its sanctions. Although the Guidelines do not control our consideration of the sanctions, they serve as a benchmark for our review under Exchange Act § 19(e)(2)." *Tucker*, 2012 SEC LEXIS 3496, at *61 n.85 (citing *Craig*, 2008 SEC LEXIS 2844, at *18 n.27).

thirty business days.[87] In egregious cases, however, such as when false, misleading, or inaccurate Form U4 filings have been made repeatedly or when a statutory disqualification event has not been disclosed, the Guidelines recommend that adjudicators consider a longer suspension of up to two years or a bar.[88] The Guidelines also invite consideration of the "[n]ature and significance of [the] information at issue," whether the violation "resulted in a statutorily disqualified individual becoming or remaining associated with a firm," and whether the misconduct "resulted in harm to a registered person, another member firm or any other person or entity."[89]

Amundsen's failures to disclose the injunction and the license revocation were egregious. Over six years, Amundsen was responsible for at least thirty-six false and misleading Forms U4.[90] The injunction and license revocation that he failed to disclose embody critical limitations on his practice as an accountant and his involvement in the securities industry. His false and misleading filings egregiously violated the standard of "candor and forthrightness" required of associated persons during the registration process.[91] Accurate and timely disclosure would have provided material information to the firms with which he sought employment and to potential customers.

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[87] FINRA Sanction Guidelines at 69 (2011), at *http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.*

[88] *Id.* at 70.

[89] *Id.* at 69.

[90] The Sanction Guidelines set forth "Principal Considerations in Determining Sanctions" applicable to all violations, including whether the respondent "accepted responsibility for and acknowledged the misconduct . . . prior to detection," "demonstrated reasonable reliance on competent legal or accounting advice," "engaged in numerous acts and/or a pattern of misconduct," and/or "engaged in the misconduct over an extended period of time," as well as whether the misconduct "was the result of an intentional act, recklessness, or negligence," or "resulted in the potential for the respondent's monetary or other gain." *Id.* at 6–7. Here, we find that Amundsen repeatedly failed to accept responsibility for his actions, failed to demonstrate that he reasonably relied on advice from others, and engaged in a pattern of misconduct over a long period of time. Additionally, as discussed above, we find that the misconduct was the result of intentional acts, and that the misconduct resulted in potential monetary gain to Amundsen in that it made it possible for him to gain employment in the securities industry.

[91] *Mathis*, 2009 SEC LEXIS 4376, at *16; *see also Craig*, 2008 SEC LEXIS 2844, at *15 ("The effectiveness of the form depends on applicants' candid disclosures.").

Letting the firms know of his statutory disqualification was crucial to the regulatory scheme under which firms must assess whether they want to take on the additional burden of seeking FINRA's consent to let them continue in membership if they employ a statutorily disqualified individual. Amundsen's failure to provide this information to those firms may potentially have also put the firms themselves at risk of disciplinary action based on their employment of a statutorily disqualified individual.[92] Additionally, Amundsen's evasive and incredible testimony (which FINRA appropriately termed self-serving and implausible) reveals a disconcerting failure to acknowledge his own responsibility in this matter.[93]

We find no mitigating factors. As we have previously stated, failures to make truthful disclosures on Form U4 are not harmless: "[E]mployers, regulators, and investors [are] entitled to rely on the disclosures . . . submitted as part of the Form U4 registration process. . . . [F]alse and misleading disclosures undermin[e] efforts by each of these stakeholders in the securities industry to gather accurate information and to detect risks."[94] Although Amundsen argues that he has "never broken the law or defrauded anyone,"[95] he consented to the entry of an injunction based on allegations of antifraud violations. And even if he had no disciplinary history, we have repeatedly held that a lack of such history is not a mitigating factor.[96]

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[92] *See supra* note 4 (discussing statutory and regulatory provisions regarding association with statutorily disqualified individual).

[93] *See Craig*, 2008 SEC LEXIS 2844, at *22 (noting that a "failure to take responsibility for . . . conduct makes recurrence more likely").

[94] *Tucker*, 2012 SEC LEXIS 3496, at *65–66.

[95] Amundsen's Reply Br. at 1.

[96] *E.g.*, *Craig*, 2008 SEC LEXIS 2844, at *27 & n.45 (citing cases).

We find that the bar imposed by FINRA is an appropriate remedial response to Amundsen's misconduct. We find that this sanction is also appropriate to encourage other representatives to provide complete and accurate Form U4 disclosures,[97] and that it serves the public interest in "maintain[ing] a high level of business ethics in the securities industry" based on timely, accurate, and complete disclosure to investors.[98] Accordingly, we sustain this sanction because it is neither excessive nor oppressive, is remedial, and will protect investors and the public interest.[99]

An appropriate order will issue.[100]

By the Commission

Elizabeth M. Murphy
Secretary

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[97] *See Neaton*, 2011 SEC LEXIS 3719, at *45 (affirming imposition of bar for willful failure to make required disclosures on Form U4 because, among other reasons, bar would encourage others in industry "to be forthright in their responses to questions on their Forms U4"); *Craig*, 2008 SEC LEXIS 2844, at *28 (affirming imposition of bar for willful failure to make required disclosure on Form U4, among other reasons, to "impress upon others the importance of the accuracy of the information in Form U4").

[98] *Mathis*, 671 F.3d at 217; *see also Steadman v. SEC*, 603 F.2d 1126, 1142 (5th Cir. 1979) ("[T]he Commission also may consider the likely deterrent effect its sanctions will have on others in the industry."); *PAZ Secs., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007) (noting that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry'" (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005)).

[99] We also sustain FINRA's assessment of costs against Amundsen.

Amundsen asks that if we deny his petition for review, we give our "permission" for him "to take this matter back to the District Court in San Francisco, and also to the 9th Circuit Court for review." Amundsen's Reply Br. at 1. Amundsen also asserts that the injunction has "lost its usefulness and should be vacated." *Id.* at 2. Amundsen's rights to challenge the continued need for the injunction or otherwise to seek recourse in federal court do not depend on any permission from us. We therefore take no action in response to this request.

Amundsen also asks that if we grant his petition for review, or "agree with" him, we order that his FINRA licenses be restored, his legal bills be paid, and he receive "compensation for the illegal bar from working for the past three years." Amundsen's Reply Br. at 1. As set forth above, we do not grant Amundsen's petition, but even if we did, we do not have the statutory authority to grant the relief he seeks.

[100] We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69406 / April 18, 2013

Admin. Proc. File No. 3-15056

In the Matter of the Application of

JOSEPH S. AMUNDSEN
3537 Chain Dam Road
Easton, PA 18045

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by FINRA against Joseph S. Amundsen is hereby sustained.

By the Commission.

Elizabeth M. Murphy
Secretary