

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

Department of Enforcement,

Complainant,

v.

Jay C. Hatton  
(CRD No. 1725472),

Respondent.

Disciplinary Proceeding  
No. 2014040661801

Hearing Officer–KBW

**ORDER ACCEPTING OFFER OF  
SETTLEMENT**

Date: February 14, 2017

**INTRODUCTION**

Disciplinary Proceeding No. 2014040661801 was filed on March 15, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Jay C. Hatton submitted an Offer of Settlement (Offer) to Complainant dated February 4, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to

which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, as amended by the Offer of Settlement, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

### **BACKGROUND**

Hatton entered the securities industry when he associated with a member firm in May 1990 and became registered as General Securities Representative in August 1990. Hatton was registered with FINRA, through CFD Investments, Inc., as a General Securities Representative from February 11, 2004 through his termination on March 26, 2014. Although he is no longer registered or associated with a FINRA member, Hatton remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of his registration with CFD, namely, March 26, 2014, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

### **FINDINGS AND CONCLUSIONS**

It has been determined that the Offer be accepted and that findings be made as follows:

Former CFD representative Jay C. Hatton willfully failed to update his Form U4 to disclose that: (i) he was charged with felony offenses in 2005 and 2010; (ii) pled guilty to a felony charge in 2005; (iii) failed to satisfy a July 2007 civil judgment; and (iv) was subject to a federal tax lien recorded in May 2011. Hatton also falsely represented to his Firm that he did not have any outstanding judgments or liens and asserted that his Form U4 was not "inaccurate or

incomplete in any material respect,” when, in fact, he had not disclosed felony charges, a felony conviction, a lien and an unsatisfied judgment. After the staff initiated an investigation, Hatton failed to appear for on-the-record testimony.

Hatton violated: (i) FINRA Rule 8210 and NASD Rule 2010 by failing to appear for on-the-record testimony; (ii) Article V, Section 2(c) of the NASD and FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Rule 2110 and IM-1000-1 by willfully failing to update his Form U4 to disclose felony charges, a felony conviction, an unsatisfied civil judgment, and a federal tax lien; and (iii) FINRA Rule 2010 by submitting false and inaccurate annual Adviser Questionnaires to his Firm.

### **FACTUAL BACKGROUND**

On or about February 2, 2004, Hatton completed a Form U4 to become associated with CFD. At that time, and during all other times relevant to this Complaint, Form U4 included the following questions: “Have you ever . . . been convicted of or pled guilty . . . in a domestic, foreign, or military court to any felony?” (Question No. 14A.(1)(a)); “Have you ever . . . been charged with any felony?” (Question No. 14A.(1)(b); and “Do you have any unsatisfied judgments or liens against you?” (Question No. 14M).

After submitting his February 2004 Form U4, Hatton was charged with two felonies, pled guilty to one felony, and became subject to an unsatisfied civil judgment and a federal tax lien as follows:

- On or about February 9, 2005, in Marion County Superior Court, Case No. 49-F09-0502-FD-020535, Hatton was charged with “Resisting Law Enforcement,” a Class “D” felony, in violation of Indiana Code § 35-44-3-3 (“February 2005 Felony Charge”).

- On or about December 13, 2005, in Marion County Superior Court, Hatton pled guilty to the felony “Resisting Law Enforcement” charge (“December 2005 Felony Plea”). On April 26, 2007, after Hatton completed a term of incarceration and a term of probation, the Court amended the Judgment of Conviction, previously entered as a Class “D” felony to show entry of conviction as a Class “A” misdemeanor.
- On June 14, 2010, in Marion County Superior Court, Case No. 49-F24-1006-FD-047008, Hatton was charged with “operating a vehicle while intoxicated, with a previous conviction of operating while intoxicated, and with a passenger who was less than eighteen (18) years of age,” a Class “D” felony, in violation of Indiana Code § 9-30-5-3, (“June 2010 Felony Charge”). The June 2010 Felony Charge was dismissed on January 6, 2011, after Hatton prevailed on a motion to exclude certain evidence.
- On July 11, 2007, in Marion County Case No. 49K09-0611-SC-06071, entitled *Central Collection Bureau, Inc. v. Jay Hatton*, a judgment was entered against Hatton in the amount of \$4,985.03 plus costs (“July 2007 Judgment”). To date, the July 2007 Judgment remains unsatisfied.
- On May 23, 2011, the Internal Revenue Service (“IRS”) recorded a \$71,881.28 lien against Hatton in Marion County, Indiana (“May 2011 Lien”). The May 2011 Lien has not been released.

Hatton remained associated with CFD until March 26, 2014, yet failed to disclose and failed to cause his Form U4 to be amended to report the February 2005 Felony Charge,

December 2005 Felony Plea, June 2010 Felony Charge, July 2007 Judgment, and May 2011 Lien.

On or about March 26, 2014, CFD learned of the February 2005 Felony Charge and December 2005 Felony Plea, caused Hatton's Form U4 to be amended to disclose these events, and terminated Hatton because he had failed to provide the Firm with the requisite information to keep his Form U4 updated.

**FIRST CAUSE OF ACTION**  
**Willful Failure to Timely Update Form U4**  
**(Article V, Section 2(c) of the By-Laws, FINRA Rules 1122 and 2010,**  
**NASD Rule 2110, and NASD IM-1000-1)**

Article V, Section 2(c) of the NASD and FINRA By-Laws requires that associated persons who apply for registration must provide "such . . . reasonable information with respect to the applicant as [NASD or FINRA] may require" and further requires that the applications "shall be kept current at all times by supplementary amendment . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

NASD IM-1000-1 and its successor, FINRA Rule 1122 (effective August 17, 2009), prohibit associated persons from filing or failing to correct registration information that is incomplete or inaccurate so as to be misleading.

Hatton willfully omitted to state material facts on a Form U4 to disclose material information.

Specifically, while associated with CFD, Hatton failed to cause his Form U4 to be amended to disclose the February 2005 Felony Charge, the December 2005 Felony Plea, the June 2010 Felony Charge, the July 2007 Judgment, and the May 2011 Lien, despite having notice of the felony charges, the felony plea, the lien and the judgment on or about the time that each occurred.

By willfully failing to update his Form U4 in a timely manner to disclose the February 2005 Felony Charge and December 2005 Felony Plea, Hatton violated Article V, Section 2(c) of the NASD By-Laws, NASD Rule 2110, and NASD IM-1000-1.

By willfully failing to update his Form U4 in a timely manner to disclose the July 2007 Judgment, Hatton violated Article V, Section 2(c) of the FINRA By-Laws, NASD Rule 2110, and IM-1000-1.

By willfully failing to update his Form U4 in a timely manner to disclose the June 2010 Felony Charge and the May 2011 Lien, Hatton violated Article V, Section 2(c) of the FINRA By-Laws, and FINRA Rules 1122 and 2010.

**SECOND CAUSE OF ACTION**  
**Material Misrepresentations and Omissions**  
**(FINRA Rule 2010)**

On September 24, 2010, and about one year later, on or about September 23, 2011, Hatton completed “Financial Advisor Questionnaires” and submitted them to the firm.

On the 2010 and the 2011 Financial Advisor Questionnaires, Hatton falsely answered “no” to the question that asked, “[In the past twelve months] Are you or have you been involved in any judicial, administrative regulatory or legal proceedings not previously reported to the firm?” Hatton failed to report that he had been charged with a felony criminal violation in June 2010 and that he was involved in that criminal proceeding until his case was dismissed in January 2011.

On September 21, 2012, and about one year later on September 27, 2013, Hatton completed “Financial Advisor Questionnaires” and submitted them to the firm.

On the 2012 and 2013 Financial Advisor Questionnaires, Hatton falsely answered “no” to the questions that asked, “Do you have any outstanding judgments/liens?” and “Is your current

CRD U4 outdated, inaccurate or incomplete in any material respect?” These answers were false because the July 2007 Judgment was unsatisfied and the May 2011 lien had not been released. Moreover, Hatton had not updated his Form U4 to disclose the February 2005 Felony Charge, the December 2005 Felony Plea, the June 2010 Felony Charge, the July 2007 Judgment, and the May 2011 Lien.

By making material misrepresentations and by failing to disclose material information to CFD on the 2010, 2011, 2012 and 2013 Advisor Questionnaires, Hatton violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION**  
**Failure to Appear and Provide Testimony**  
**(FINRA Rules 8210 and 2010)**

FINRA Rule 8210(a) provides that for purposes of an investigation, FINRA staff has the right to require a person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically and to testify at a location specified by FINRA staff. FINRA Rule 8210(c) provides that, “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.”

FINRA Rule 8210(d) specifies that “notice under this Rule shall be deemed received by the person . . . to whom it is directed by mailing or otherwise transmitting the notice to the last known . . . residential address of the person as reflected in the Central Registration Depository.”

*The August 19, 2015 Letter (“First Request”)*

On August 19, 2015, FINRA staff, pursuant to FINRA Rule 8210, and in connection with an investigation regarding Hatton’s failure to disclose certain material events on his Form U4, sent a letter to Hatton requesting that he appear and testify on October 2, 2015 at FINRA’s office in Chicago, Illinois. The First Request was sent to Hatton by first class and certified mail, at his

residential address listed in the Central Registration Depository (“CRD”). A copy of the letter was also emailed to Hatton’s email address.

The First Request asked Hatton to confirm, by August 26, 2015, that he would appear for the testimony, or to contact the staff to arrange an alternative “mutually acceptable date and time.”

The First Request sent by first class mail was not returned. The First Request sent by certified mail was returned with the notation, “Return to Sender Unclaimed Unable to Forward.”

Hatton neither confirmed he would appear nor contacted the staff to schedule an alternative date. Instead, early in the morning on October 2, 2015, the staff received a voicemail message from Hatton claiming that he was ill and unable to appear for testimony that day.

*The October 2, 2015 Letter (“Second Request”)*

On October 2, 2015, FINRA staff, pursuant to Rule 8210, sent Hatton a letter, requesting that he appear and testify on November 17, 2015, at FINRA’s office in Chicago, Illinois. The Second Request was sent to Hatton by first class and certified mail, at his residential address listed in the CRD. A copy of the letter was also emailed to Hatton’s email address.

The Second Request asked Hatton to confirm, by October 9, 2015, that he would appear for testimony, or to contact the staff to arrange an alternative “mutually acceptable date and time.” The Second Request specifically warned that, “a failure to appear, in and of itself, is grounds for disciplinary action which may include a suspension, fine, and or bar from association with any FINRA member firm.”

The Second Request sent by first class mail was not returned. The Second Request sent by certified mail was returned with the notation, “Return to Sender Unclaimed Unable to Forward.”

Hatton neither confirmed he would appear nor contacted the staff to schedule an alternative date. Instead, without explanation, Hatton failed to appear for on-the-record testimony on November 17, 2015.

By failing to appear and provide testimony, Hatton violated FINRA Rules 8210 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

#### **SANCTIONS**

It is ordered that Respondent be

- Suspended from association with all FINRA member in all capacities for two years; and
- Fined \$10,000.

The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the  
Director of ODA, by delegated authority



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