

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM ERIC RICE
(CRD No. 2255148),

Respondent.

Disciplinary Proceeding
No. 2015043295202

Hearing Officer – CC

DEFAULT DECISION

August 16, 2016

Respondent willfully failed to timely update his Form U4 to disclose material information—a felony charge and a felony conviction—and falsely attested on the firm’s annual compliance questionnaire to the accuracy of his Form U4 disclosures. For these violations, Respondent is barred from associating with any member firm in any capacity.

Appearances

For Complainant: Sarah B. Belter-Pylant, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

No appearance by or on behalf of Respondent William Eric Rice.

DECISION

I. Introduction

On April 19, 2016, FINRA’s Department of Enforcement (“Enforcement”) filed a Complaint in this matter with FINRA’s Office of Hearing Officers (“OHO”). The Complaint alleges in cause one that, while associated with member firm First Independent Financial Services, Inc. (“FIFS”), William Eric Rice (“Rice”) failed to amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose a July 31, 2009 felony charge for driving while intoxicated and subsequent guilty plea and conviction. Cause two of the Complaint alleges that Rice falsely stated in six FIFS annual compliance questionnaires that his Form U4 was updated and accurate. The Complaint alleges that Rice’s conduct violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.¹

¹ FINRA’s Rules are available at www.finra.org/rules.

Enforcement served Rice with the Complaint in accordance with FINRA's Code of Procedure. Rice failed to file an Answer or otherwise respond to the Complaint. Accordingly, on July 8, 2016, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), together with the Declaration of Sarah B. Belter-Pylant, Esq. ("Belter-Pylant Decl.") in support of the Default Motion and six exhibits.²

As stated in detail below, the Hearing Officer finds Rice in default, grants Enforcement's Default Motion, and deems the allegations of the Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Rice's Background

Rice became registered in the securities industry in 1992.³ From August 4, 2004, through August 7, 2015, Rice was associated with FIFS and registered with FINRA in several capacities including general securities representative and principal.⁴ On August 7, 2015, FIFS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Rice was voluntarily terminated as of the same date.⁵ Rice is no longer in the securities industry.

B. FINRA's Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because: (1) Enforcement filed the Complaint on April 19, 2016, which is within two years of FIFS's termination of Rice's association with the firm on August 7, 2015; and (2) the Complaint alleges that Rice engaged in misconduct during the period when he was associated with member firm FIFS.⁶

C. Origin of the Investigation

During a sales practice cycle examination of FIFS, FINRA staff discovered Rice's felony charge and guilty plea and determined that Rice had not updated his Form U4. Enforcement thereafter filed the Complaint in this matter.⁷

² In this decision, Enforcement's exhibits are referenced as CX-1 through CX-6.

³ Belter-Pylant Decl. ¶ 7; CX-1.

⁴ Belter-Pylant Decl. ¶ 7; CX-1.

⁵ Belter-Pylant Decl. ¶ 8; CX-2.

⁶ See Article V, Sec. 4, FINRA By-Laws; Belter-Pylant Decl. ¶ 10.

⁷ Belter-Pylant Decl. ¶ 6.

D. Rice's Default

When Enforcement filed the Complaint in April 2016, Rice's residential address as reflected in the Central Registration Depository ("CRD") was an address in Arkansas City, Kansas (the "CRD Address").⁸ Enforcement represented that it has no knowledge or reason to believe that the CRD Address is out of date or incorrect.⁹

On April 19, 2016, Enforcement served Rice at the CRD Address with the Notice of Complaint and Complaint by certified mail.¹⁰ Enforcement also sent a copy by first-class mail.¹¹ The United States Postal Service ("USPS") made three unsuccessful attempts to deliver the certified mailing and ultimately returned it marked unclaimed.¹² The USPS did not return the first class mailing.¹³ Rice's Answer to the First Notice of Complaint was due on or before May 17, 2016. Rice did not file an Answer or otherwise respond to the Complaint by that date.¹⁴

On May 18, 2016, Enforcement served Rice by certified mail at the CRD Address with the Second Notice of Complaint and the Complaint.¹⁵ Enforcement also sent the same materials to Rice's CRD Address by first-class mail.¹⁶ On May 25, 2016, the USPS returned the certified mail receipt card to FINRA.¹⁷ The receipt card indicated that the Second Notice of Complaint was delivered on May 21, 2016, and contained the signature of "Brandy Rice."¹⁸ The USPS did not return the first-class mailing.¹⁹ Rice's Answer to the Second Notice of Complaint was due on or before June 6, 2016.²⁰ To date, Rice has not filed an Answer or otherwise responded to the Complaint.²¹

⁸ Belter-Pylant Decl. ¶ 11; CX-1.

⁹ Belter-Pylant Decl. ¶ 12.

¹⁰ Belter-Pylant Decl. ¶ 13; CX-3.

¹¹ Belter-Pylant Decl. ¶ 13.

¹² Belter-Pylant Decl. ¶ 14; CX-3.

¹³ Belter-Pylant Decl. ¶ 15.

¹⁴ Belter-Pylant Decl. ¶ 16; CX-3.

¹⁵ Belter-Pylant Decl. ¶ 17; CX-4.

¹⁶ Belter-Pylant Decl. ¶ 17.

¹⁷ Belter-Pylant Decl. ¶ 18.

¹⁸ Belter-Pylant Decl. ¶ 18; CX-4.

¹⁹ Belter-Pylant Decl. ¶ 19.

²⁰ Belter-Pylant Decl. ¶ 20; CX-4.

²¹ Belter-Pylant Decl. ¶ 21. The Second Notice of Complaint advised Rice that his failure to submit an Answer to the Complaint on or before June 6, 2016, would allow the Hearing Officer to: (1) treat as admitted by Rice the allegations of the Complaint; (2) enter a default decision against Rice pursuant to FINRA Rule 9269; and (3) impose sanctions against Rice without further notice. CX-4.

FINRA Rule 9134 provides for service of a complaint on a natural person by certified mail to the person's residential address as indicated in the CRD. The Hearing Officer finds that Enforcement properly served Rice with the First and Second Notices of the Complaint and that Rice failed to file an Answer to the Complaint. Pursuant to FINRA Rules 9215(f) and 9269(a), the Hearing Officer finds Rice in default and deems admitted all allegations of the Complaint.

E. Rice Willfully Failed to Timely Update His Form U4 to Disclose Material Information as Alleged in Cause One

Cause one alleges that, during the period from September 11, 2009 through June 29, 2015, Rice willfully failed to amend his Form U4 to timely disclose the material fact that he had been charged with a felony. Cause one also alleges that, during the period from December 3, 2009, through June 29, 2015, Rice willfully failed to timely amend his Form U4 to disclose the material fact that he pled guilty to a felony.

Individuals like Rice who seek to become registered through FINRA must file a Form U4 with FINRA to apply for registration. Article V, Section 2(c) of FINRA's By-Laws states that every application for registration filed with FINRA shall be kept current at all times by the filing of supplementary amendments. It requires any such amendments to be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment. If the amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), Article V, Section 2(c) of FINRA's By-Laws requires that the amendment be filed within 10 days.

FINRA Rule 1122 prohibits associated persons from filing with FINRA registration information that is incomplete or inaccurate so as to be misleading, or can in any way tend to mislead. Rule 1122 also prohibits associated persons from failing to correct registration information that is incomplete, inaccurate, or misleading. FINRA Rule 2010 requires associated persons like Rice, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. "Rule 2110 [now FINRA Rule 2010] prohibits associated persons from failing to disclose information required by the Form U4."²²

On July 31, 2009, while Rice was associated with FIFS, he was arrested for driving under the influence ("DUI") of drugs or alcohol in Cowley County, Kansas.²³ On August 11, 2009, the County Attorney for Cowley County, Kansas filed a Complaint/Information against Rice in the District Court of Cowley County.²⁴ The Complaint/Information charged Rice with a DUI felony and a traffic infraction.²⁵ On November 2, 2009, Rice pled guilty to the felony of "driving under

²² *Dist. Bus. Conduct Comm. v. Jones*, No. C02970023, 1998 NASD Discip. LEXIS 60, at *9 (NAC Aug. 7, 1998).

²³ Belter-Pylant Decl. ¶ 22; Complaint ¶ 10.

²⁴ Belter-Pylant Decl. ¶ 22; Complaint ¶ 10.

²⁵ Belter-Pylant Decl. ¶¶ 23-24.

the influence 4th or subsequent non-grid felony.”²⁶ This was Rice’s fourth DUI offense.²⁷ On December 15, 2009, Rice was sentenced to 90 days in the county jail, with work release authorized after serving 72 hours. Rice received a post-release supervision term of 12 months and was ordered to pay costs of \$2,586.²⁸

Rice was aware that he had been charged with, and pled guilty to, a felony. On October 21, 2015, Rice testified on the record that he knew that he had been charged with, and pled guilty to, a felony.²⁹ He also testified that he timely disclosed both facts to his supervisor at FIFS and that together the two agreed that Rice need not disclose the incidents on the Form U4 because his conviction occurred in “traffic court.”³⁰ Rice’s supervisor testified on the record on November 19, 2015.³¹ He contradicted Rice’s account and stated that, while he knew this was Rice’s fourth DUI offense, Rice reported to him that he was charged with a misdemeanor, not a felony.³² The compliance officer states that he told Rice that, if the charge was elevated to a felony, he would have to report it on his Form U4.³³

Question 14A(1)(b) of the Form U4 asks, “Have you ever . . . been charged with any felony?”³⁴ Question 14A(1)(a) of the Form U4 asks, “Have you ever . . . been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any felony?”³⁵ Before Rice’s guilty plea, he answered “no” to both questions. On July 31, 2009, when Rice was charged with felony DUI, he did not amend his answer to question 14A(1)(b) on his Form U4.³⁶ On December 3, 2009, when Rice pled guilty to felony DUI, he did not amend his answer to question 14A(1)(a) of his Form U4.³⁷ On June 30, 2015, in response to FINRA’s investigation, FIFS amended Rice’s Form U4 to disclose Rice’s felony charge and guilty plea.³⁸

For the period from September 11, 2009, to June 29, 2015, Rice failed to timely amend his Form U4 to disclose the material fact that he had been charged with a felony. From December 3, 2009, to June 29, 2015, Rice failed to timely amend his Form U4 to disclose the

²⁶ Belter-Pylant Decl. ¶ 25; Complaint ¶ 12.

²⁷ Complaint ¶ 12.

²⁸ Belter-Pylant Decl. ¶ 27.

²⁹ CX-5, at 29-50.

³⁰ Belter-Pylant Decl. ¶ 28; CX-5, at 24, 29-31, 40-55, 59.

³¹ CX-6.

³² CX-6, at 3-5.

³³ CX-6, at 4-5.

³⁴ Belter-Pylant Decl. ¶ 9.

³⁵ Belter-Pylant Decl. ¶ 11.

³⁶ Belter-Pylant Decl. ¶ 29; Complaint ¶ 13.

³⁷ Belter-Pylant Decl. ¶ 29; Complaint ¶ 13.

³⁸ Complaint ¶ 13.

material fact that he had pled guilty to a felony. “Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4 . . . essentially all the information that is reportable on the Form U4 is material.”³⁹ Both the National Adjudicatory Council and the Securities and Exchange Commission have concluded that criminal history is a material disclosure.⁴⁰ Furthermore, Rice failed to disclose a statutorily disqualifying event. A person is statutorily disqualified if, within the ten years prior to his application for registration, he has been convicted of any felony.⁴¹ The information that Rice failed to disclose therefore was material to FIFS’s consideration of whether to retain, promote, or impose heightened supervision on Rice, and would have divulged his statutory disqualification. By failing to timely disclose a felony conviction, Rice remained associated with a member firm when, under the Exchange Act, he was no longer permitted to be associated. I find Rice’s felony charge and guilty plea to be material.

Rice’s failure to disclose was willful. “A willful violation of the securities laws means merely ‘that the person charged with the duty knows what he is doing.’”⁴² A finding of willfulness does not require finding that Rice was aware of the rule he violated or that he acted with a culpable state of mind.⁴³ Rice testified on October 21, 2015, that he knew he had been charged with, and pled guilty to, a felony DUI.⁴⁴ Rice also testified that he and the FIFS compliance officer together agreed that he need not disclose the felony conviction because it occurred in “traffic court.”⁴⁵ The compliance officer disputed Rice’s account and stated that Rice told him the DUI charge was a misdemeanor, not a felony.⁴⁶ Regardless of Rice’s discussions with his firm’s compliance officer, the responsibility rested with Rice to maintain the accuracy of the information reported on his Form U4.⁴⁷ I find Rice’s failure to amend the Form U4 willful.

³⁹ *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004).

⁴⁰ *See Knight*, 2004 NASD Discip. LEXIS 5, at *13-14; *Dep’t of Enforcement v. Craig*, No. E8A2004095901, 2007 FINRA Discip. LEXIS 16, at *12 n.9 (NAC Dec. 27, 2007), *aff’d*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844 (Dec. 22, 2008).

⁴¹ Section 3(a)(39)(F) of the Exchange Act.

⁴² *Craig*, 2008 SEC LEXIS 2844, at *12-13.

⁴³ *Craig*, 2008 SEC LEXIS 2844, at *13; *see also Dep’t of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (NAC May 3, 2005) (finding that a willfulness finding is predicated on respondent’s intent to commit the act that constitutes the violation—inaccurately completing a Form U4—not a finding that he intended to violate a FINRA rule)

⁴⁴ Belter-Pylant Decl. ¶ 28; CX-5, at 29-50.

⁴⁵ Belter-Pylant Decl. ¶ 28; CX-5, at 49-50, 54-55, 59.

⁴⁶ Belter-Pylant Decl. ¶ 28; CX-6, at 3-5.

⁴⁷ *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *33 (Apr. 18, 2013) (finding that respondent’s purported discussions with firm supervisors did not affect his obligation to provide complete and accurate information on every Form U4 that he completes); *Daniel Richard Howard*, 55 S.E.C. 1096, 1103 (2002) (holding registered person responsible for the false statements on his Form U4 and the failure to amend the misinformation).

“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.”⁴⁸ I find that Rice violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010 by willfully failing to amend his Form U4 to disclose material information—a felony charge and a felony conviction.⁴⁹

F. Rice Falsely Stated on Firm Compliance Questionnaires that He Had No New Disclosures to Add to His Form U4 as Alleged in Cause Two

Cause two alleges that, while Rice was associated with FIFS, he misled the firm by completing annual attestations that falsely represented he had no new disclosures to report on the Form U4 on October 22, 2009, November 10, 2010, September 9, 2011, July 2012, June 11, 2013, and April 11, 2014.

FINRA Rule 2010 is FINRA’s ethical standards rule. The reach of FINRA Rule 2010 “is not limited to rules of legal conduct, but states a broad ethical principle.”⁵⁰ The rule applies broadly to all business-related misconduct, regardless of whether it involves securities.⁵¹ A registered person therefore violates Rule 2010 when he fails to disclose material information to his firm.⁵²

Rice represented as follows on FIFS compliance questionnaires:

- On October 22, 2009, Rice checked “True” in response to the statement “I understand my responsibility to report immediately any information that would result in a change in my Form U4. I have reported all such information, if applicable, since my last report.” He acknowledged that he understood that he had “an ongoing obligation to promptly notify the firm of any new...disclosures.”
- On November 10, 2010, Rice checked “No” in response to the statement “I have a new disclosure to report on Section 14 of Form U4,” and he acknowledged that he understood that he had “an ongoing obligation to promptly notify the firm of any new . . . disclosures.”
- On September 9, 2011, Rice checked “No” in response to the statement “I have a new disclosure to report on Section 14 of Form U4,” and he acknowledged that he understood

⁴⁸ *Amundsen*, 2013 SEC LEXIS 1148, at *25.

⁴⁹ Under Sections 3(a)(39)(F) and 15(b)(4)(A) of the Exchange Act, my finding that Rice willfully failed to report a material fact that is required to be stated on the Form U4 subjects Rice to a statutory disqualification from the industry.

⁵⁰ *Dep’t of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *39 (NAC July 18, 2014), *aff’d*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

⁵¹ *Id.*

⁵² *Mielke*, 2014 FINRA Discip. LEXIS, at *40 (holding that respondent’s misstatements on his firm’s compliance questionnaires violated FINRA Rule 2010).

“that the accuracy of the information contained in [his] Form U4 is [his] responsibility” and that his answers were “true and accurate.”

- In July 2012, Rice’s annual attestation stated that “Maintaining the completeness and accuracy of [the Form U4] is your responsibility. This includes the disclosure of events you may not wish to discuss like felony convictions . . . You must report any and all information and disclosures immediately and accurately . . . You are solely responsible for making sure the information is complete and truthful.” Rice checked “No” in response to the statement “I have a new disclosure to report on Section 14 of Form U4.”
- On the same attestation, Rice specifically acknowledged “I have read and understand my U4 disclosures. I have disclosed all required information and I hereby affirm this information to be accurate and truthful to the best of my knowledge. I agree that I must promptly notify the firm of any new information of disclosures or changes in existing information or disclosures . . . I understand that the requirement to disclose information requested on Form U4 is a legal requirement, and a failure to provide this disclosure . . . is deemed to be a condition of my registration, and a failure to do so may result in disciplinary action, including possible termination with cause.”
- On June 11, 2013, and April 11, 2014, Rice’s annual attestation stated that “Maintaining the completeness and accuracy of [the Form U4] is your responsibility. This includes the disclosure of events you may not wish to discuss like felony convictions . . . You must report any and all information and disclosures immediately and accurately . . . You are solely responsible for making sure the information is complete and truthful.” Rice checked a box indicating that he “[had] reviewed [his] U4 and [had] no changes to report at this time,” and he specifically acknowledged “I have disclosed all required information and I hereby affirm this information to be accurate and truthful to the best of my knowledge. I agree that I must promptly notify the firm of any new information of disclosures or changes in existing information or disclosures . . . I understand that the requirement to disclose information requested on Form U4 is a regulatory requirement, and a failure to provide this disclosure . . . is deemed to be a condition of my registration, and a failure to do so may result in disciplinary action, including possible termination with cause.”

Based on the foregoing, I find that Rice violated FINRA Rule 2010 by falsely representing on FIFS questionnaires and attestations that he had not been charged and pled guilty to a felony when he had.

III. Sanctions

Given the similarity of Rice’s underlying misconduct—his failure to advise FIFS and FINRA in the Form U4 and in firm compliance questionnaires of his felony charge and guilty plea—I impose one sanction for both causes of action. For Rice’s failure for nearly six years to amend his Form U4 and honestly answer firm questionnaires (resulting in his association with FIFS while statutorily disqualified from the industry), I bar Rice from associating with any member firm in any capacity.

The Form U4 serves as “a vital screening device for hiring firms and [FINRA] against individuals with ‘suspect history.’”⁵³ Recognizing the importance of Forms U4 to member firms and FINRA, FINRA’s Sanction Guidelines (“Guidelines”) for Form U4 late filings and failing to file amendments recommend suspending the individual in any or all capacities for 5 to 30 business days and, in egregious cases such as those involving a statutorily disqualifying event, a longer suspension of up to two years or a bar in all capacities.⁵⁴ The principal considerations applicable to this violation advise adjudicators to consider the nature and significance of the information at issue and whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a member firm.⁵⁵

Rice’s violation is egregious. The information Rice withheld relates to Rice’s felony charge, guilty plea, and ultimate conviction—a conviction that resulted in Rice’s statutory disqualification from the industry. As a result of Rice’s failure to update his Form U4, he was allowed to remain active in the securities industry, without enhanced oversight, for nearly six years when in fact he was statutorily disqualified from associating with a member firm. Also, the commission of a felony, even one that would not have statutorily disqualified him from the securities industry, may bear on his ability and fitness to work in the securities industry. Although Rice was statutorily disqualified, FIFS did not have the opportunity to make the determination of whether it would sponsor him for continued association because Rice withheld information about his felony charge and guilty plea from the firm. More importantly, FIFS did not establish the enhanced supervision of Rice that FINRA ordinarily would require to enable a statutorily disqualified person to continue to associate with a firm.

Although I do not impose an additional sanction for Rice’s false attestations to FIFS, I find that this misconduct also is egregious. There are no Guidelines directly applicable, but I have considered the Guidelines for the falsification of records, which recommends consideration of the nature of the falsified documents.⁵⁶ Rice falsely responded in documents FIFS designed to ensure that the firm and its employees were in compliance with federal securities laws and FINRA’s rules. A firm’s annual compliance forms serve as one of the firm’s methods of oversight and supervision of its registered representatives. Here, Rice was not mistaken as to the questions asked. Rather, he knowingly falsely answered questions on six attestations over a six year period.⁵⁷ Additionally, Rice’s misconduct was intentional.⁵⁸ Rice knew he was charged with, and pled guilty to, a felony, and in fact served jail time (with work release). Yet, he concealed his felony charge and conviction and remained associated with FIFS despite his statutory disqualification.

⁵³ *Dist. Bus. Conduct Comm. v. Jones*, 1998 NASD Discip. LEXIS 60, at *9.

⁵⁴ *FINRA Sanction Guidelines* (2015), at 69-70, http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

⁵⁵ Guidelines at 69 (Principal Consideration Nos. 1, 2).

⁵⁶ Guidelines at 37 (Principal Consideration No. 1).

⁵⁷ Guidelines at 6 (Principal Considerations Applicable to All Violations Nos. 8, 9).

⁵⁸ Guidelines at 7 (Principal Considerations Applicable to All Violations No. 13).

In light of these aggravating factors and given the nature of Rice's misconduct, I bar Rice from associating with any FINRA member firm in any capacity.

IV. Order

Respondent William Eric Rice is barred from associating with any FINRA member firm in any capacity for: (1) willfully failing to amend his Form U4 to disclose material information—a felony charge and a felony conviction—in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010; and (2) falsely representing on FIFS questionnaires and attestations that he had not been charged and pled guilty to a felony when he had, in violation of FINRA Rule 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Carla Carloni
Hearing Officer

Copies: William Eric Rice (*via overnight courier and first-class mail*)
Sarah B. Belter-Pylant, Esq. (*via electronic and first-class mail*)
David B. Klafter, Esq. (*via electronic mail*)
Jeffrey Pariser, Esq. (*via electronic mail*)