NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
Complainant,	:	Disciplinary Proceeding No. C3A010005
v.	:	
	:	Hearing Officer - AWH
JAY R. RICE (CRD #1832274), Salt Lake City, UT	:	**Hearing Panel Decision**
	:	December 12, 2001

Registered representative (1) engaged in private securities transactions for compensation without giving his member firm prior written notice or receiving prior written approval from the member firm, in violation of Conduct Rules 2110 and 3040, and (2) failed to disclose information on a Form U-4, in violation of Conduct Rule 2110 and Membership and Registration Rule IM-1000-1. Respondent fined $130,363, suspended in all capacities for 12 months, and ordered to requalify by examination in all capacities for the private securities transactions; and fined $5,000, and suspended in all capacities for 10 business days for the failure to disclose information on the Form U-4.

Appearances:

Roger Hogoboom, Esq., for the Department of Enforcement.

Mark J. Griffin, Esq., for Jay R. Rice.

DECISION

Introduction

The Department of Enforcement filed the two-cause Complaint in this proceeding on February 5, 2001, alleging in the first cause that Jay R. Rice ("Rice" or "Respondent") violated NASD Conduct Rules 2110 and 3040 by engaging in private securities transactions for compensation without giving his member firm prior written notice or receiving prior written approval from the member firm. The second cause of the Complaint alleged that Rice violated NASD Conduct Rule 2110 and Membership and

Registration Rule IM-1000-1 by failing to disclose information on a Form-U-4. In a letter dated March 1, 2001, Rice filed an Answer, addressing the allegations in the Complaint and requesting a hearing. In his Answer, Respondent admitted to participating in the private placement of the securities, but denied knowing that he would be compensated for engaging in the private securities transactions. As to the second cause, Respondent admitted that he failed to update his Form U-4 to reflect that he had been the reason for the denial of a membership application filed by Breakout Stocks Corporation, a firm of which he was the founder, president, and sole owner.

On April 23, 2001, Enforcement filed a motion requesting that the Hearing Panel grant summary disposition on each of the two causes of the Complaint. On May 8, 2001, Respondent filed a motion opposing summary disposition on the first cause of the Complaint. Respondent did not oppose the motion as to the second cause of the Complaint. Pursuant to Rule 9264(e), the Hearing Panel found that there was no "genuine issue with regard to any material fact" regarding the second cause of the Complaint and granted the motion for summary disposition as to that cause. The Hearing Panel did not grant the motion as to the first cause. A hearing was held on July 17, 2001, in Salt Lake City, Utah, before a panel consisting of a Hearing Officer[1] and two current members of the District No. 3 Committee. No post-hearing submissions have been received.

[1] This proceeding was originally assigned to Hearing Officer Gary A. Carleton. A few weeks after having heard the case, Mr. Carleton resigned from the Office of Hearing Officers to accept other employment. Consequently, on September 5, 2001, this matter was reassigned to Hearing Officer Alan W. Heifetz. Hearing Officer Heifetz reviewed the entire record in this case, conferred with the two members of the District Committee to discuss the testimony and documentary evidence, and participated fully in the deliberations that form the basis for this Decision.

Findings of Fact

Background

Respondent Rice entered the securities industry in March 1988 as a General Securities Representative and has been employed with several broker-dealers since his entry into the industry. Tr. 152-154; CX 1.[2] In May 1990, Respondent became associated with PaineWebber, Inc. ("PaineWebber"). CX 1, at 4-5. In October 1993, Respondent left PaineWebber for a number of reasons, including a desire to engage in transactions involving a penny stock that traded under the name of Covol Technologies, Inc. ("Covol"). Tr. 220. During that same month, Respondent became associated with a firm called Birchtree Financial Services, Inc. ("Birchtree Financial"). Tr. 154, CX 1, at 3-4. Six months later, Respondent left Birchtree Financial because of a number of factors, including a desire to prevent his position in Covol from triggering the reporting requirements under the Securities Exchange Act. Tr. 154.[3] From May 1994 to May 1998, Respondent was associated with member firm American Investment Services, Inc. ("American") as a General Securities Representative. CX 1, at 3; Stip. ¶3.[4] On February 20, 1997, the NASD approved Respondent's registration as a General Securities Principal, and he became associated with American in that capacity. CX 1, at 3. Respondent is currently associated with member firm Intermountain Financial Services,

[2] References to the Complainant's Exhibits appear as CX_. Citations to the transcript of the hearing appear as Tr. _.

[3] According to §13(d)(1) of the Exchange Act and the rules promulgated thereunder, once a broker-dealer owns a certain percentage of stock in a company (five percent or more), certain reporting requirements may arise. 15 U.S.C. § 78m(d)(1); Tr. 154. At the time Respondent began working at Birchtree Financial, he had acquired "a pretty good position" in Covol Technologies, which at the time was called EnviroFuels. Birchtree Financial became concerned that Respondent's position might trigger SEC reporting requirements. Tr. 154. To avoid those requirements, Respondent moved to American Investment Services, Inc. *Id.*

[4] References to the Stipulation of Facts appear as Stip. ¶ _.

Inc., and therefore the NASD has jurisdiction over this proceeding. CX 1, p. 1; Compl. ¶1; Answer ¶1.

Prior Regulatory Actions Involving Respondent and Covol Securities

On August 28, 1998, Rice entered into a Stipulation Agreement with the Utah Division of Securities in which he admitted that he engaged in conduct proscribed by Utah Admin. Rule § R164-6-1g(D)(2), by "effecting securities transactions not recorded on the regular books or records of the broker-dealer which [he] represents…unless the transactions are authorized in writing by the broker-dealer prior to execution of the transactions." CX 2. As a result, Rice was ordered to cease and desist from any violations of the Utah Uniform Securities Act, to pay $25,000 to the Division of Securities, and to undergo a suspension of his license for a period of one calendar week. The Stipulation, cited throughout this Decision as CX 2, included findings of fact to which reference is made and deference given in the Findings of Fact below.

On September 20, 1999, the NASD notified Rice in a Denial Letter that it had denied the application of Breakout Stocks Corporation ("BSC") for membership in the NASD. CX 15. That denial was "based primarily upon an action taken by the State of Utah" against Rice, and it quoted extensively from the Stipulation, noted above, that Rice entered into with the Utah Division of Securities. The Denial Letter notified Rice that he could file a written request for review of the decision with the National Adjudicatory Council. There is no evidence that Rice ever requested such a review.

Involvement with Covol Securities

In 1990, Rice's neighbor and friend, Ken Young, approached Rice at his office to talk about the business model of Covol,[5] a company that had a process for turning coal dust (also known as coal tailings) into briquettes for reintroduction as an energy source. Tr. 153-155. When Young first introduced Rice to the company, Covol's stock traded as a penny stock, with no revenues or earnings. Tr. 153. After this conversation, Rice and his father purchased stock in Covol. Tr. 153.

In 1994, Young asked Respondent's wife, Anita Rice, to appear in a promotional video for Covol. Tr. 132; CX 22. Ms. Rice, a professional model and actress, agreed to participate in the video and receive payment in the form of Covol stock in an amount "equivalent to approximately $5,000." Tr. 123, 132. On June 28, 1994, Ms. Rice received 250 shares of Covol stock in payment for her acting in the video. Tr. 133-135; CX 23.

In December 1995 or January 1996, Rice called Phil Chang, the President of American at the time, inquiring about possible participation in a private placement for Covol. Tr. 62-63; CX 11, at 1. Chang told Rice that he "did not object to [Rice] participating by either investing personally or by introducing certain of his acquaintances to the company." CX 11, at 1; Tr. 63. Chang also cautioned Rice against selling the stock for compensation without an agreement between Covol and American, which Chang told him that he "had no interest in doing." Tr. 63.

[5] At this point Covol was known as EnviroFuels. Tr. 153. During the hearing, Rice speculated that the reason for this conversation was that Young "needed capital to get this thing [Covol] off the ground and running." Tr. 156.

The February-March 1996 Private Placement of Stock

During February and March 1996, Rice participated in a private placement of common stock issued by Covol. Stip. ¶ 8. Rice and his father purchased $100,000 worth of stock in Covol, issued in a private placement and priced at $14.30 per share ("the $14.30 private placement"). Eight other investors,[6] referred to Covol by Rice, invested $1,103,590 in the $14.30 private placement. CX 2, at 2-3.

On or about March 11, 1996, Covol issued 8,417 shares of its stock, valued at $120,363, in the name of "Anita Rice." CX-2, at 3. According to Covol's 10-K filing of January 13, 1997, Covol issued the 8,417 shares of common stock to Jay Rice as compensation "for professional services valued at $120,363." Tr. 32-33; CX 9 Amended, at 24. The value of the 8,417 shares was approximately ten percent of the total investment attributable to Rice's referral efforts and his personal investment in the $14.30 private placement. Stip. ¶ 10. In a letter to the Utah Division of Securities, Asael T. Sorensen Jr., Covol's secretary and general counsel and an investor in the private placement, described the 8,417 shares as a "finders fee" for bringing the investors, including Rice and his father, to the "$14.30 placement." CX 4; Tr. 102.[7]

[6] According to Respondent, these investors were clients of his who worked as independent contractors for Covol. Tr. 157.

[7] In a response to a request for information from the SEC, Sorensen also stated that Rice purchased 8,417 shares at $14.30, which he paid for with cash or services (emphasis added). CX 3, at 1. In his testimony, Sorensen claimed that his responses to both the State of Utah and the SEC were "ambiguous" because they were not based on his personal knowledge, but rather were only an endorsement of the SEC's assumptions derived from the mathematical relationship between the amount of the investments and the number of shares (8,417) that were issued to Rice in his wife's name. Tr. 98-107. The Hearing Panel finds nothing ambiguous about the finding of fact by the Utah Division of Securities, based on Covol's 10-K filing of January 13, 1997, that the stock was issued to "Rice" for "professional services." There is no evidence to suggest that the 10-K filing was inaccurate.

The June-September 1996 Limited Partnership Offering

From June 1996 through September 1996, Respondent participated in limited partnership offerings conducted by Covol. Stip. ¶ 14. Rice referred investors to Covol who ultimately invested $100,000.00 in shares of the limited partnership offerings. *Id*. Covol agreed to give Rice a ten percent commission on those referrals. CX 2, at 4. Between July and September 1996, Rice received three checks totaling $10,000 from Covol in payment for his referral efforts in these limited partnership offerings. Stip. ¶¶ 15-17; CX 4. The endorsement on one check read "Jay Rice." Another check was endorsed "Jay Rice, JRR Investment,[8] For Deposit Only." Tr. 163.[9] The checks were deposited into Rice's personal account. CX 2, at 4. In February 1997, Rice received a Form 1099 reflecting the payment of $10,000 as cash compensation for his efforts in the June-September 1996 Covol private placements. Stip. ¶ 22; Tr. 159.[10]

In August 1996, during the time Rice was participating in the limited partnership offerings, Anita Rice sold 2,750 shares of Covol for $29,796.00. CX 23. On November 6, 1996, Ms. Rice disclosed the proposed sale of an additional 250 shares of Covol on a

[8] According to Rice, JRR Investments is his family partnership that handles small commission driven businesses, such as real estate management, and pays some of his office expenses. Tr. 217-218.

[9] The record does not reflect the endorsement on the back of the other check.

[10] Sorensen sent the SEC a letter dated September 11, 1997, informing the SEC that Covol compensated Rice with cash and stock for his fundraising activities for Covol's synthetic fuel facilities. Tr. 21, 96-97; CX 3. According to the letter, from June 1996 through September 1996, Covol paid Rice three separate commission payments totaling $10,000, which was a 10% commission on money he raised in the private placement by Covol for two limited partnerships, organized to fund the construction of two synthetic fuel production facilities in Utah and Alabama. Tr. 21; CX-3, p. 1. In his testimony, Sorensen attempted to back away from the assertions in the letter, claiming that the statements he made were not matters within his personal knowledge. However, the Hearing Panel finds that the assertions in the letter are consistent with the other evidence on the issue of compensation for Rice's referral efforts in the limited partnership offerings. For example, the memo section of one check made out to Rice clearly states that it was issued as a "Commission." CX 4, at 4.

Form 144,[11] filed with the SEC. She signed that Form, and Jay Rice, who served as the broker, signed the letter attached to it. CX 23. Anita Rice disclosed on this Form that she had received the 250 shares from Covol as compensation for "acting services, promotional video." The value of the 250 shares was stated as $3,500.00. Tr. 135-137; CX 23.

On September 11, 1997, Chang received the first written disclosure from Rice of his involvement in the private placement of Covol's securities. CX 6; Tr. 65.[12] Before sending the letter, Rice had called Chang to explain the situation. During the conversation, Chang asked Rice to send him a written version of what had happened. Tr. 65. Rice's letter states that in 1996, "without my knowledge, a check was sent to our office made out to American Investment Services from Covol Technology, for commissions…[that] were never requested or solicited by me." CX 6. In fact, Rice received three checks, totaling $10,000, each of which was made payable to Jay Rice, not to American Investment Services. CX 4. The letter made no mention of the receipt of 8,417 shares of Covol stock.

At no time did Rice give his then employer-member, American, prior written notification of his participation in the February-March, 1996, Covol private placement of stock or the June-September, 1996, limited partnership offerings; neither did Rice receive written approval from American to participate in either in the stock or limited partnership offerings. Stip ¶¶ 11, 12, 19, 20.

[11] A Form 144 is a standard form used to sell restricted stock.

[12] The letter from Rice to Mr. Chang was undated. However, upon its receipt, Mr. Chang took it to his compliance department where it was logged in with the date, September 11, 1997. Tr. 66.

The Form U-4 Filings

The undisputed facts are as follows: On or about March 30, 1999, Breakout Stocks Corporation ("BSC") filed an application to become an NASD member firm. Rice was the founder, president, and sole owner of BSC. On September 20, 1999, the NASD Department of Member Regulation denied the membership application of BSC. The decision denying the application quoted extensively from the Stipulation Rice entered into with the Utah Division of Securities, and then found that, when Rice applied for membership for BSC, he "denied the existence of the Utah action in the first Business Plan of BSC" and "did not provide a copy of Utah's action." Rice was the reason for the denial of the BSC application. Rice was sent, and he received, the Decision denying the application.

On Form U-4 filings subsequent to the denial of the BSC application, Rice was required to answer "yes" to Question 23E(3), disclosing that he was the cause for an investment related business having its authorization to do business denied. However, on September 24, 1999, he completed and signed a full Form U-4 to associate with Intermountain Financial Services, Inc. and, in so doing, answered "no" to Question 23 E(3). Less than a month later, on October 19 and 20, 1999, he filed amendments to his Form U-4, again answering "no" to Question 23 E(3). Again on February 15, 2000, Rice filed another Form U-4, answering "no" to Question 23 E(3). Finally, on February 14, 2001, Rice submitted an amended Form U-4 to disclose that he was the reason for the denial of the BSC application.

Discussion

Private Securities Transactions

Conduct Rule 3040 prohibits any person associated with a member of the NASD from participating in a private securities transaction in any manner without first providing the member with written notice of the transaction, the associated person's role in the transaction, and whether the associated person will receive compensation from the transaction. If the associated person has received, or may receive selling compensation, the associated person must obtain written notice of the member's approval under Rule 3040(c). A violation of Rule 3040 constitutes a violation of Rule 2110. *Stephen J. Gluckman*, Exch. Act. Rel. No 41628, 1999 SEC LEXIS 1395, at *22 (July. 20, 1999) (citations omitted).

On August 28, 1998, Rice signed a Consent Order with the Division of Securities of the Department of Commerce of the State of Utah. That Consent Order, and the incorporated Stipulation (CX 2), resolved a proceeding instituted against Rice by the Division of Securities. The Stipulation found that (1) Rice had received compensation from Covol for his efforts in referring investors for Covol's private placements; (2) that neither American nor any of its officers knew or approved of Rice's activities with respect to Covol, or of Anita Rice's receiving stock as compensation to Rice; and (3) neither Rice's activities with respect to Covol, nor the receipt of stock and monetary payments as compensation was recorded on the books and records of American. In that proceeding, then, Rice admitted that he received compensation for his referrals Rice was fully represented by counsel in that proceeding. Accordingly, the Hearing Panel sees no reason to reconsider Rice's admissions.

The issue of his compensation again was determined against him when the NASD denied the application for membership of BSC. The decision denying the membership application was sent not only to Rice, but also to his attorney who had represented Rice in the proceeding before the Utah Division of Securities. There is no evidence that the denial of membership was ever appealed.

Considering, de novo, all the evidence adduced in this proceeding, the Hearing Panel concludes that Rice was, in fact, paid for his referral of customers to the Covol private placements, and that the issuance of 8,417 shares in the name of Anita Rice was not to compensate her for her participation in the promotional video, but rather, was to compensate Jay Rice for his referrals. Both Jay Rice and Anita Rice signed the Form 144 which was filed with the SEC. That Form specifically stated that the 250 shares proposed to be sold were acquired on June 28, 1994, and that the nature of the acquisition of those shares was "Payment of Acting Services – Promotional Video for Covol Technologies, Inc." CX 23. The value of the 250 shares was stated to be $3,500.00, within range of Ms. Rice's estimate of the $5,000.00 value of her services. The record is devoid of any evidence to explain why Covol would, after having paid Anita Rice once for her services on a reasonable basis, pay her again two years later in an amount almost 25 times her own estimate of the value of her services.

The fact that Covol issued precisely 8,417 shares, in the name of Anita Rice, was not fortuitous. 8,417 is not a round number, and the value of those shares bears no relationship to the $5,000 value Anita Rice placed on her services for the promotional video. The value of those shares, $120,363 (8,417 x $14.30), is almost exactly ten percent of the $1,203,590 that Rice, his father, and the eight other investors referred by

Rice put into the Covol private placement. There is no evidence to suggest any inaccuracy or fraud in the 10-K, filed by Covol with the SEC in January 1997, that stated as follows: "In March 1996, the Company issued 8,714 shares of common stock to Mr. Jay Rice for professional services valued at $120,363."[13]

The $10,000 Rice received from Covol in the Summer of 1996 was clearly compensation for his referral efforts in the limited partnership offering. $10,000 is exactly ten percent of the $100,000 the investors put into the offering. One of the checks specifically noted that it was in payment of a "commission." Notwithstanding his letter to Phil Chang in which Rice wrote that he received only one check from Covol and that it was made out to American Investment Services, Rice received three checks which were made out to Jay Rice and deposited into his personal account. The 1099 he received from Covol made it unquestionably clear that he was being compensated for his referral efforts.

After considering the entire record, the Hearing Panel concludes that Rice participated in private securities transactions for selling compensation in connection with those transactions, without providing prior written notice to the member with which he was associated, and without receiving prior written approval from the member firm. Accordingly, Rice violated Conduct Rules 3040 and 2110.

Failure to Disclose Information on the Form U-4

Rice admits in his answer to the Complaint, and the Hearing Panel finds on the basis of the evidence, that because Rice was the reason for the denial of BSC's membership application, he was required, but failed for 17 months, truthfully to update

[13] How these shares eventually came to be issued in the name of Anita Rice is not explained on this record. Suffice it to say, the 10-K did not assert that the shares were issued to compensate Anita Rice, and it would strain credulity to find that the shares were so intended.

his Form U-4 and answer "yes" to Question 23 E(3) which asks whether the applicant has been the cause for an investment related business having its authorization to do business denied. Accordingly, the Hearing Panel finds that Rice failed on four occasions to disclose material information on the Form U-4, and finally disclosed that information on a Form U-4 17 months late, in violation of NASD Conduct Rule 2110 and Membership and Registration Rule IM-1000-1.

Sanctions

Private Securities Transactions

The NASD Sanction Guidelines for violation of Conduct Rules 2110 and 3040 recommend a fine of from $5,000 to $50,000, and a suspension of 10 business days to one year. The fine may be increased by adding the amount of a respondent's financial benefit. In egregious cases, adjudicators may consider a longer suspension or a bar. NASD Guidelines 19 (2001 ed.). In this case, Enforcement seeks no fine because Rice has already been fined $25,000 for the same conduct by the Utah Division of Securities. However, Enforcement recommends that Rice be required to disgorge the $130,363 he received in stock and commissions from Covol, that he be suspended for a period of one year, and that he be ordered to requalify in all capacities by examination. For the following reasons, the Hearing Panel agrees with Enforcement's recommended sanctions.

Although at the hearing Rice understood that the $10,000 he received in checks from Covol was compensation paid to him by Covol, he maintains that he only came to that realization after he received the 1099 from Covol. Moreover, Rice continues to insist that the 8,417 shares issued in his wife's name was not compensation to him. The Hearing Panel does not find those contentions to be persuasive. Rather, the Hearing

Panel finds that Rice fails to accept responsibility for his actions, and turns a blind eye to his responsibilities.

Rice testified that his routine business practice was for his secretary to put commission checks in front of him, face down, and that, after he endorsed them without turning them over, the secretary would deposit them. He also testified that he brought the matter of the $10,000 to the attention of Mr. Chang as soon as he received the 1099 from Covol in February 1997. However, the undated letter to Mr. Chang, which he received on September 11, 1997, mentions only one check, not three; and the letter claims that the check was made out to American Investment Services, when in fact, all three checks were made out to Rice. The undated letter begins: "It has come to my attention today, after discussing some regulatory procedures with my attorney, that I need to clarify a few private transactions that I have been involved in…." The letter refers to three transactions, only one of which involved Covol. The letter mentioned that his secretary deposited the Covol check, and that he did not learn about the nature of the check until he "[l]ater" learned about it from the 1099. The content and context of the letter are not consistent with the assertion that receipt of the 1099 triggered composition of the letter. The content and context are consistent with the timing of the investigations of the State of Utah and the SEC. The first response by Covol's general counsel to an SEC inquiry into the matter was dated September 11, 1997, the same day Mr. Chang received Rice's undated letter.

In November 1996, Rice signed the letter accompanying the Form 144, signed by his wife, that described the 250 shares of stock she proposed to sell as compensation for "acting services." However, filing that form with the SEC should have raised, if it did

not raise, a red flag for him to consider why Covol, just eight months earlier, would have issued 8,417 shares of stock in his wife's name, worth more than $120,000. However, after filing the Form 144, which noted that the 250 shares were compensation to his wife, he did not ask his neighbor and friend, Ken Young, at Covol, why 8,417 additional shares might have been issued in her name, nor did he mention anything about those shares to Phil Chang at American. Even if, as he testified, his assistant had prepared the Form 144, he cannot avoid responsibility for reading it before he signed the letter transmitting it.

The Sanction Guidelines list five principal considerations in determining sanctions for selling away. The first concerns any proprietary or beneficial interest the respondent has in the issuer. Here, Rice was an investor, but there is no evidence that he was an officer or director of Covol. Second, there is no evidence that Rice attempted to create the impression that American sanctioned the sale of the Covol private placements or that it sold similar products. The third consideration is whether the respondent sold away to customers of his member firm. The evidence shows that some of the customers who invested in Covol private placements were customers of American, but that evidence does not name any specific customers or reveal the specific number of customers of American who invested in Covol.

The last two principal considerations are whether verbal notice was given to the member firm and whether the firm specifically prohibited the sales. Although Rice gave American verbal notice that he would be participating in the Covol private placements, that notice was incomplete because he did not disclose that he had received, or might, receive compensation. He was specifically told by American that he could not receive compensation, and, after he did receive compensation, he did not promptly notify

American of that fact. It was only after investigations by state and federal regulatory authorities that he finally notified American of one aspect of the compensation. Rice received the 8,417 shares of Covol in March 1996. His first written notification of any compensation to American -- a notification that did not mention the 8,417 shares at all -- was not until September 1997, eight months after he received the 1099 from Covol that reported the $10,000 in commissions. His failure to disclose his compensation on a timely basis was deliberate and prompted only by the regulatory investigations. Had there not been any regulatory investigation, there is no reason to believe that Rice would have made any disclosure at all. Accordingly, in order to assure that Rice will, in the future, conform his conduct to the requirements of the NASD Conduct Rules, the Hearing Panel orders him to pay a fine in the amount of $130,363 (the amount of the financial benefit he received from the private placement transactions), suspends him in all capacities for a period of one year, and orders him to requalify in all capacities by examination.

Failure to Disclose Information on the Form U-4

The NASD Sanction Guidelines for false filings of forms or amendments call for a fine of $2,500 to $50,000, and consideration of a suspension in any or all capacities for five to 30 business days. NASD Guidelines 77 (2001 ed.). A principal consideration in determining the sanction is the nature and significance of the information at issue. Implicitly, a “yes” or “no” answer is significant and material to any question properly requiring such an alternative response. One of the alternatives is true; the other is false. In particular, the answer to Question 23 E(3) on the Form U-4 (whether an individual was the reason for an investment related business to have its authorization to do business

denied) affords employers and prospective employers the opportunity to assess the fitness of an employee for employment. Because that information is publicly disclosed through the NASD Website, existing and potential customers may assess whether to do business with the person filing the Form U-4. A false answer to Question 23 E(3) compromises the integrity of the NASD's public disclosure program and deprives employers and customers of information essential to their business and investment decisions.

Enforcement seeks a fine of $5,000 and a suspension of 10 business days for Rice's violations. The Hearing Panel finds no mitigating circumstances to warrant a lesser sanction. At the hearing, Rice testified that he did not know that he had a duty to update the Form U-4 because he relied on others to complete the Form and tell him when he had to file it:

> …I wasn't used to entering things myself on the system and the CRD. I was – I'd always been a broker. I never – the broker-dealers always came to me and they says (sic) "We need to update your U-4. We need to do this in the CRD. Again, that wasn't a – there was (sic) just so few things. Usually it's just when you moved and they did all of the work they did, all of the work of that paperwork. And I just – I just wasn't familiar with it. I didn't know something needed to be done, needed to be entered.

Tr. 182. Rice's testimony is evidence of the same "inattention to detail" that was cited as support for the denial of BSC's application for membership:

> To operate a member firm in compliance with all applicable securities industry rules requires an attention to detail. However, your written statement evidences that you are prone to act with an "inattention to detail," and that you apparently consider such a trait to be a justification for not complying with important rules designed for the protection of investing customers.

CX 15, at 6. The decision denying the application was dated September 20, 1999. Four days later, Rice signed the first of the Form U-4s that answered Question 23 E(3) in the negative. It was only in the face of regulatory investigations that Rice

eventually filed a Form U-4 that truthfully answered that question in the affirmative. Accordingly, the Hearing Panel agrees with the recommendation of Enforcement and, for this violation of Article V of the NASD By-laws and Conduct Rule 2110, fines Rice $5,000, and suspends him in all capacities for 10 business days.

Conclusion

Having engaged in private securities transactions for compensation without giving American prior written notice or receiving prior written approval from American, in violation of Conduct Rules 2110 and 3040, Jay R. Rice is fined $130,363, suspended in all capacities for 12 months, and ordered to requalify by examination in all capacities. Having failed to disclose information on a Form U-4, in violation of Conduct Rule 2110 and Membership and Registration Rule IM-1000-1, Jay R. Rice is fined $5,000, and suspended in all capacities for 10 business days.

These sanctions shall become effective on a date determined by the Association, but not sooner than 30 days from the date this Decision becomes the final disciplinary action of the Association; except that, if this Decision becomes the final disciplinary action of the Association, the suspensions shall run concurrently and commence at the opening of business on Monday, February 4, 2002, and end at the close of business on Tuesday, February 4, 2003.

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Alan W. Heifetz
Hearing Officer
For the Hearing Panel

Copies to:

Via First Class Mail and Overnight Courier
Jay R. Rice

Via First Class Mail and Facsimile
Mark J. Griffin, Esq.
Roger D. Hogoboom, Jr., Esq.
Rory C. Flynn, Esq.