

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PYRAMID FINANCIAL CORPORATION
(CRD No. 23181),

and

JOHN HSU
(CRD No. 1190718)

Respondents.

Disciplinary Proceeding
No. 20080116005-01

Hearing Officer – MAD

DEFAULT DECISION

March 3, 2011

Respondent Pyramid is fined a total of \$55,000, jointly and severally with Respondent Hsu: a \$35,000 fine for willfully failing to preserve electronic communications, in violation of Exchange Act Rule 17a-4 and Conduct Rule 2110, and a \$20,000 fine for failing to comply with AML rules and regulations, in violation of 31 C.F.R. § 103.100 and Conduct Rules 3011 and 2110. Respondent Hsu is: (1) fined \$35,000, jointly and severally with Pyramid, and suspended for 30 business days in all capacities for failing to cause his firm to preserve electronic communications in accordance with Exchange Act Rule 17a-4, in violation of Conduct Rule 2110; (2) fined \$20,000, jointly and severally with Pyramid, for failing to comply with AML rules and regulations, in violation of Conduct Rules 3011 and 2110; (3) barred in all principal capacities for signing and submitting inaccurate certifications to FINRA, in violation of Conduct Rule 2110; and (4) fined \$10,000 and suspended for 15 business days in all capacities for willfully failing to amend his Form U4, in violation of Article V, Section 2(c) of the FINRA By-Laws and Conduct Rule 2010.

Appearances

Mark A. Graves, Senior Regional Counsel, San Francisco, CA, for the Department of Enforcement.

No appearance by or on behalf of Respondents Pyramid Financial Corporation and John Hsu.

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DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on October 14, 2010.¹ The Complaint charges Respondents Pyramid Financial Corporation ("Pyramid") and John Hsu ("Hsu") with violations stemming from FINRA's routine examination of Pyramid in 2008. The Complaint alleges that Pyramid willfully failed to preserve electronic communications, in violation of Securities Exchange Act Rule 17a-4 and Conduct Rule 2110; and failed to comply with certain anti-money laundering ("AML") rules and regulations, in violation of 31 C.F.R. §103.100² and Conduct Rules 3011 and 2110. The Complaint alleges that Hsu (1) failed to cause his firm to preserve electronic communications in accordance with Exchange Act Rule 17a-4, in violation of Conduct Rule 2110; (2) failed to comply with AML rules and regulations, in violation of Conduct Rules 3011 and 2110; (3) signed and submitted inaccurate certifications to FINRA, in violation of Conduct Rule 2110; and (4) willfully failed to amend his Form U4, in violation of Article V, Section 2(c) of the FINRA By-Laws and Conduct Rule 2010.³

Pyramid and Hsu defaulted by failing to answer or otherwise respond to the Complaint. On January 10, 2011, Enforcement filed a Motion for Entry of Default Decision with the Office

¹ Enforcement initially filed the Complaint with the Office of Hearing Officers on July 21, 2010; however, Enforcement refiled it on October 14, 2010, because it had only served Respondent Hsu at his business address, not his residential address.

² Regulation 31 C.F.R. §103.100 is a Department of Treasury regulation derived from the Bank Secrecy Act.

³ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the conduct rules that were in effect at the time of Respondent's misconduct. Conduct Rule 2110 was renumbered as Rule 2010 in the Consolidated Rulebook without substantive change. The applicable rules are available at www.finra.org/rules.

of Hearing Officers, together with the Declaration of Mark A. Graves ("Graves Decl.") and 10 exhibits. Respondents did not respond to the motion.

II. Respondents

Pyramid became a FINRA member in June 1988.⁴ The firm conducted a general securities business from its main office in Cupertino, CA, and a branch in Temecula, CA.⁵ Pyramid employed four registered individuals in its two offices.⁶ FINRA cancelled the firm's membership and registration on December 23, 2010, due to a failure to pay fees.⁷

Hsu founded Pyramid in 1988.⁸ From June 1989 until Pyramid's membership termination, he was registered with FINRA as a general securities representative and a general securities principal.⁹ He was the firm's president and Chief Compliance Officer ("CCO"), and became its Anti-Money Laundering Officer ("AML Officer") in April 2002.¹⁰ He was not associated with a broker-dealer prior to forming Pyramid. Hsu's association and registration with Pyramid was terminated on December 23, 2010, without the filing of a Uniform Termination Notice for Securities Industry Registration ("Form U5"), due to Pyramid's membership cancellation.¹¹ Hsu has not registered or associated with another FINRA member firm since his registration was terminated with Pyramid.¹²

⁴ Graves Decl. ¶ 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; CX-1, at 2.

⁸ Graves Decl. ¶ 6.

⁹ CX-2, at 2.

¹⁰ Graves Decl. ¶ 6.

¹¹ *Id.*

¹² *Id.*

III. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after December 23, 2010, the date FINRA cancelled Pyramid's membership, which resulted in the termination of Hsu's registration, and (2) the Complaint charges them with misconduct that occurred while Pyramid was a FINRA member firm.¹³

IV. Respondents' Default

Enforcement served Pyramid with the Notice of Complaint and Complaint by certified mail (return receipt requested) at its business address recorded in the Central Registration Depository ("CRD") on October 14, 2010.¹⁴ The United States Postal Service ("USPS") returned the certified return receipt, signed by Hsu, on October 15, 2010.¹⁵ On November 15, 2010, Enforcement served Pyramid with the Second Notice of Complaint and Complaint by certified mail (return receipt requested) at its CRD Address.¹⁶ The certified mailing of the Second Notice of Complaint was returned to Enforcement, marked "unclaimed."¹⁷

On October 14, 2010, Enforcement served Hsu with the First Notice of Complaint and Complaint by certified mail (return receipt requested) at his two CRD Addresses (CRD Address 1 and 2).¹⁸ Both certified mailings were returned unclaimed.¹⁹ On November 15, 2010, Enforcement served Hsu with the Second Notice of Complaint and Complaint by certified mail

¹³ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹⁴ Graves Decl. ¶ 10; CX-5.

¹⁵ Graves Decl. ¶ 10; CX-5, at 8.

¹⁶ Graves Decl. ¶ 12; CX-8.

¹⁷ Graves Decl. ¶ 12; CX-8, at 5.

¹⁸ Graves Decl. ¶ 11; CX-6-7.

¹⁹ Graves Decl. ¶ 11; CX-8-10.

(return receipt requested) at his CRD addresses.²⁰ The USPS returned the certified mailings marked "return to sender unclaimed."²¹ To date, Respondents have not responded to the Complaint.

The Hearing Officer finds that Respondents received actual notice of this proceeding. Hsu, Pyramid's president, signed for the First Notice of Complaint, which apprised him of allegations against both Respondents. Accordingly, the Hearing Officer finds that Pyramid and Hsu defaulted by failing to answer or otherwise respond to the Complaint.

V. Findings of Fact and Conclusions of Law

A. Failure to Preserve Electronic Communications

The Securities Exchange Act Rule 17a-4(b)(4) requires that a broker-dealer preserve all communications related to its business for a period of not less than three years, the first two years in an easily accessible place. Rule 17a-4(f) establishes conditions for the preservation of required records using electronic storage media such as computers. One of those conditions is that the electronic storage media must preserve the records exclusively in a non-rewriteable, non-erasable format. As such, retaining the records in a manner that allows them to be deleted or altered is impermissible.

From January 2007 through February 2008, Hsu and another Pyramid registered person sent and received electronic communications related to Pyramid's business using personal email accounts.²² They sent the emails to Pyramid's clearing firm and FINRA.²³ The personal email accounts were not linked to Pyramid's email preservation system.²⁴ The business-related emails

²⁰ Graves Decl. ¶ 13; CX-8.

²¹ Graves Decl. ¶ 13; CX-9-10.

²² Graves Decl. ¶ 16.

²³ *Id.*

²⁴ *Id.*

sent to and received by the personal email accounts were also erasable.²⁵ FINRA staff obtained the emails from the clearing firm, but the same emails had been deleted from Pyramid's computers.²⁶

Hsu, as the CCO, was responsible for Pyramid's compliance with Rule 17a-4.²⁷ Because he personally sent and received a number of these emails and Pyramid had been previously cited for email preservation deficiencies,²⁸ the Hearing Officer finds that Pyramid willfully failed to preserve electronic communications, in violation of Exchange Act Rule 17a-4 and Conduct Rule 2110. Hsu violated Conduct Rule 2110 by failing to ensure that Pyramid preserved its emails in accordance with Exchange Act Rule 17a-4.

B. Failure to Comply with AML Rules and Regulations

Respondents failed to comply with AML rules and regulations in three ways: (1) they failed to access Financial Crimes Enforcement Network ("FinCEN"), the bureau within the United States Department of the Treasury that administers the implementation of regulations under the Bank Secrecy Act ("BSA"), and review records; (2) they failed to develop and implement a written AML program reasonably designed to achieve compliance with the BSA and implementing regulations; and (3) they failed to properly conduct annual independent tests of its AML program in 2005, 2006, and 2007. Each of these violations is addressed separately below.

1. FinCEN Access

Treasury Regulation 31 C.F.R. § 103.100 requires broker-dealers to review their account records to determine whether they maintain, or have maintained, securities accounts for any

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* ¶ 17.

²⁸ *Id.* ¶ 16.

individual, entity, or organization identified by the FinCEN in its periodic communications. To comply with this requirement, a broker-dealer periodically accesses FinCEN's secure information system electronically and compares its current and previous accounts with the names of individuals, entities, and organizations listed in FinCEN's system.

From May 2005 through February 2008, Hsu, as Pyramid's AML Officer, was responsible for Pyramid's AML compliance.²⁹ He failed to access FinCEN's secure information network, failed to review the listed names, and failed to determine whether any of Pyramid's current or former securities customers were identified parties.³⁰ The Hearing Officer finds that as a result of these failures Pyramid violated 31 C.F.R. § 103.100 and Conduct Rule 2110, and Hsu violated Conduct Rule 2110 by causing his firm to violate 31 C.F.R. § 103.100.

2. Written AML Program

Conduct Rule 3011(b) requires Pyramid to develop and implement a written AML compliance program reasonably designed to achieve compliance with the BSA and its implementing regulations. Pyramid's written AML compliance program was not reasonably designed to achieve compliance with 31 C.F.R. § 103.100.³¹ It did not address the requirement to determine whether the firm was maintaining, or had maintained, accounts for the individuals, entities, and organizations identified by FinCEN.³² Hsu was responsible for the adequacy of Pyramid's written AML program.³³ The Hearing Officer finds that Respondents violated Conduct Rules 3011(b) and 2110 by failing to develop and implement a written AML program reasonably designed to achieve compliance with 31 C.F.R. § 103.100.

²⁹ *Id.* ¶ 18.

³⁰ *Id.* ¶ 18.

³¹ *Id.* ¶ 19.

³² *Id.*

³³ *Id.*

3. Annual Independent Testing

Conduct Rule 3011(c) requires Pyramid to conduct an independent test of its AML compliance program each year. IM-3011-1 specifically provides that independent testing may not be conducted by the designated AML compliance person. Hsu was the firm's designated AML compliance person in 2005, 2006, and 2007, and was responsible for Pyramid's compliance with the independent test requirement.³⁴ In 2005 and 2006, Pyramid failed to conduct an annual independent test.³⁵ In 2007, Hsu conducted the test himself,³⁶ which did not satisfy the independent test requirement. The Hearing Officer finds that Pyramid and Hsu violated Conduct Rules 3011(c) and 2110 in 2005, 2006, and 2007 by failing to conduct independent tests of Pyramid's AML compliance program.

C. **Falsification of Certifications Regarding Email Preservation**

On May 17, 2006, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Pyramid,³⁷ which stated that the firm failed to preserve business-related electronic communications in accordance with Rule 17a-4.³⁸ The sanctions required the firm to, among other things, certify to [FINRA] at specified intervals in a written attestation, signed by the firm's president, that Pyramid "has retained e-mail as required by SEC Rule 17a-4."³⁹ Pyramid provided four certifications for the period from December 28, 2006, through April 11, 2008, all of which were signed by Hsu.⁴⁰ Each certification stated that "Pyramid Financial

³⁴ *Id.* ¶ 20.

³⁵ *Id.* ¶ 21.

³⁶ *Id.*

³⁷ *Id.* ¶ 22.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* ¶¶ 23, 24.

continue [sic] using a professional third party e-mail retention service ... backing up all of the Company's emails...."⁴¹

As described above, between January 2007 and February 2008, electronic communications pertaining to Pyramid's business were sent to and received from personal email accounts controlled by Hsu and another Pyramid registered person.⁴² These communications were not captured by a professional third-party retention service.⁴³ Accordingly, the representations in all four certifications were false because each certification covered a period during which the personal account communications were not preserved.⁴⁴ Further, to the extent that Hsu intended to certify, as required by the AWC, that Pyramid had retained its emails as required by Rule 17a-4, that certification was inaccurate because the personal email account communications were not preserved in accordance with Rule 17a-4.⁴⁵

The Hearing Officer finds that by signing and submitting certifications that contained inaccurate information, Hsu engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and violated Conduct Rule 2110.

D. Failure to Amend Form U4

Pursuant to Article V, Section 2(c) of the FINRA By-Laws, Hsu is required to keep his application for registration current by supplementary amendments, to be submitted not more than 30 days after he learns of the facts or circumstances giving rise to the need to amend. Questions 14C through 14G on the Form U4 pertain to Regulatory Action Disclosures.⁴⁶ Question 14E,

⁴¹ *Id.* ¶ 24.

⁴² *Id.* ¶ 16.

⁴³ *Id.* ¶ 25.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 31.

items (1)-(4), specifically identify certain outcomes of self-regulatory disciplinary actions that require disclosure by means of "yes" answers.⁴⁷ Question 14G requires a "yes" answer if the registered person has "been notified, in writing, that [he is] now the subject of any ... investigation that could result in a 'yes' answer to any part of 14A, B, C, D, or E."⁴⁸ The instructions to the Form U4, in relevant part, define an "investigation" to include FINRA investigations "after the 'Wells' notice has been given or after a person associated with a member ... has been advised by the staff that it intends to recommend formal disciplinary action

....⁴⁹

On March 29, 2010, Enforcement sent Hsu and Pyramid, at the firm's then-current CRD address, a "Wells Notice," a written notification that FINRA staff intended to recommend the initiation of formal disciplinary action against each of them.⁵⁰ The Wells Notice informed Hsu of the obligation to amend his Form U4 to disclose that he was the subject of a regulatory investigation, and advised both Respondents that they could make a "Wells" submission in response to the proposed charges.⁵¹ On April 28, 2010, Enforcement learned that Hsu claimed that he had not received the Wells Notice because the firm had moved to a new location.⁵² Enforcement then received a telephone call from Hsu during which Hsu provided his firm's facsimile number and his email address so that the Wells Notice could be sent to him by facsimile or electronically.⁵³ Enforcement attempted to send the Wells Notice to the firm's

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* ¶ 27.

⁵¹ *Id.*

⁵² *Id.* ¶ 28.

⁵³ *Id.*

facsimile number on several occasions, but was unsuccessful each time.⁵⁴ On April 28, 2010, Enforcement sent the Wells Notice to Hsu by email.⁵⁵ The staff received an electronic return receipt, which indicated that the email was successfully delivered to Hsu's email address on April 28, 2010.⁵⁶

The Wells Notice stated that Enforcement was recommending formal disciplinary action against Hsu for certain violations, including violations that could result in a bar or suspension.⁵⁷ Accordingly, Hsu was required to amend his Form U4 to answer "yes" to Question 14G.⁵⁸ Hsu had spoken to Enforcement and received the Wells Notice. He failed to amend his Form U4 to provide the required "yes" response.⁵⁹ The Hearing Officer finds that Hsu willfully violated Article V, Section 2(c) of the FINRA By-Laws and Conduct Rule 2010.

VI. Sanctions

A. Recordkeeping

The FINRA Sanction Guidelines ("Guidelines") for recordkeeping violations recommend a fine of \$1,000 to \$10,000, and a suspension of the firm or responsible individual for up to 30 business days. In an egregious case, the Sanction Guidelines recommend a fine of \$10,000 to \$100,000; and suggest a lengthier suspension, or expulsion or a bar.⁶⁰

Pyramid previously settled allegations that it violated Exchange Act Rule 17a-4 and Conduct Rule 2110 by failing to preserve business-related electronic correspondence. Since then,

⁵⁴ *Id.*

⁵⁵ *Id.* ¶ 29.

⁵⁶ *Id.*

⁵⁷ *Id.* ¶ 32.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ FINRA Sanction Guidelines 29 (2010), available at www.finra.org/sanctionguidelines.

the firm engaged a third-party vendor to preserve the firm's emails. While Pyramid took the necessary step to establish an email preservation system, it did not ensure that the system captured business-related emails sent on personal email accounts. In light of the steps Pyramid took since its previous disciplinary action, the Hearing Officer determines that the appropriate remedial sanction is a fine of \$35,000, jointly and severally between Pyramid and Hsu, and a 30 business-day suspension of Hsu in all capacities for this violation.

B. Anti-Money Laundering

The Guidelines do not specifically address violations of Conduct Rule 3011. However, in substance, the rules requiring firms to implement AML programs are supervisory requirements. Accordingly, the Hearing Officer considered the guidelines for supervisory violations in determining the appropriate remedial sanction in this case.⁶¹ The Guidelines for failing to supervise recommend a fine of \$5,000 to \$50,000. They also recommend that adjudicators consider suspending the responsible individual in all supervisory capacities for 30 business days.⁶²

Here, the violation is aggravated by the fact that Hsu failed to check the FinCEN system for three years. In this case, Enforcement did not uncover any substantive AML problems at Pyramid that were linked to the violations at issue. Accordingly, the Hearing Officer determines that the appropriate remedial sanction is a \$20,000 fine, jointly and severally for Pyramid and Hsu, and a 15 business-day suspension of Hsu in all principal capacities.

⁶¹ See *Department of Enforcement v. Domestic Securities, Inc.*, No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *21 n.9 (N.A.C. Oct. 2, 2008).

⁶² Sanction Guidelines 105.

C. False Certifications

For forgery and falsification of records, the Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Guidelines recommend a bar.⁶³ The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the nature of the falsified document and whether respondent had a good faith, but mistaken, belief of express or implied authority.⁶⁴

Applying the applicable Guidelines, the Hearing Officer finds that Hsu's violation was egregious. The false certifications were provided to FINRA pursuant to a disciplinary sanction. Hsu sent and received business related emails using his personal email account. Accordingly, he knew, or should have known, that Pyramid was not capturing all of its business related email. There are no mitigating circumstances. The Hearing Officer bars Hsu in all principal capacities for this violation.

D. Failure to Amend Form U4

For filing a false, misleading, or inaccurate Form U4, or failing to file necessary amendments to a Form U4, the Guidelines recommend that an individual be fined from \$2,500 to \$50,000 and suspended in all capacities for five to 30 business days. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years, or a bar.⁶⁵ Here, not only was Hsu the president of Pyramid, but he was also the individual at the firm responsible for updates to Form U4s. The Hearing Officer finds that the appropriate remedial sanction for Hsu is a \$10,000 fine and a suspension of 15 business days in any and all capacities.

⁶³ *Id.* at 37.

⁶⁴ *Id.*

⁶⁵ *Id.* 71-72.

VII. Order

Based on careful consideration of all the evidence, the Hearing Officer imposes the following sanctions:

A. Pyramid

Pyramid is fined a total of \$55,000 as follows:

Pyramid is fined \$35,000, jointly and severally with Hsu, for willfully failing to preserve electronic communications, in violation of Exchange Act Rule 17a-4 and Conduct Rule 2110, as alleged in the First Cause of the Complaint.

Pyramid is fined \$20,000, jointly and severally with Hsu, for failing to comply with AML rules and regulations, in violation of 31 C.F.R. § 103.100 and Conduct Rules 3011 and 2110, as alleged in the Second Cause of the Complaint.

B. Hsu

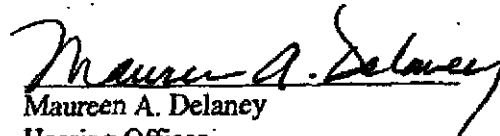
Hsu is fined \$35,000, jointly and severally with Pyramid, and suspended, in all capacities, for 30 business days for failing to cause his firm to preserve electronic communications in accordance with Exchange Act Rule 17a-4, in violation of Conduct Rule 2110, as alleged in the First Cause of the Complaint.

Hsu is fined \$20,000, jointly and severally with Pyramid, for failing to comply with AML rules and regulations, in violation of Conduct Rules 3011 and 2110, as alleged in the Second Cause of the Complaint. In light of the bar in all principal capacities imposed for the Third Cause of the Complaint, the 15 business-day suspension in all principal capacities is not imposed.

Hsu is barred in all principal capacities for signing and submitting inaccurate certifications to FINRA, in violation of Conduct Rule 2110, as alleged in the Third Cause of the Complaint.

Hsu is fined \$10,000 and suspended for 15 business days in all capacities for willfully failing to amend his Form U4, in violation of Article V, Section 2(c) of the FINRA By-Laws and Conduct Rule 2010, as alleged in the Fourth Cause of the Complaint.

If this Decision becomes FINRA's final disciplinary action in this proceeding, the foregoing suspensions, which shall run consecutively, shall begin at the opening of business, on Monday, April 4, 2011, and end at the close of business on Tuesday, June 7, 2011. The bar in all principal capacities shall become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding. The monetary sanction for Pyramid will be due and payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. The fines for Hsu shall be due and payable when and if he seeks to re-enter the securities industry.


Maureen A. Delaney
Hearing Officer

Copies to:

John Hsu (*via overnight courier and first-class mail*)
Pyramid Financial Corporation (*via overnight courier and first-class mail*)
Mark A. Graves, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

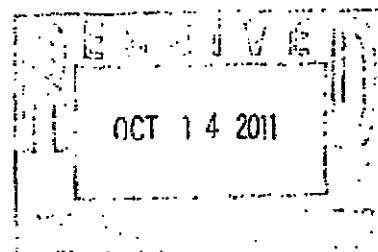
Pyramid Financial Corporation
(CRD No. 23181),

and

John Hsu
(CRD No. 1190718),

Respondents.

DISCIPLINARY PROCEEDING
No. 20080116005-01



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This Complaint addresses violations noted in the 2008 routine examination of Pyramid Financial Corporation (Pyramid). The violations include the firm's failure to comply with 31 CFR. 103.100, which requires broker-dealers to determine whether they maintain, or have maintained, accounts for persons, entities and associations listed in FinCEN's Secure Information Sharing System, its failure to develop and implement a written anti-money laundering program reasonably designed to achieve compliance with 31 CFR 103.100, its failure to conduct an independent test of its Anti-Money Laundering Compliance Program (AMLCP) in 2005 and 2006, and the inadequate and non-independent test of its AMLCP in 2007. The Complaint also

alleges that the firm failed to preserve electronic communications related to its business as such during the period January 2007 through February 2008 and that Respondent John Hsu falsely certified to FINRA that the firm was in compliance with Exchange Act Rule 17a-4 from December 28, 2006, through April 11, 2008. In addition, Hsu willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) within 30 days of his receipt of written notice to disclose that he was the subject of a FINRA investigation.

RESPONDENTS AND JURISDICTION

2. Pyramid has been a FINRA member since June 1989. The firm's five registered persons conduct a general securities business from Pyramid's main office in Cupertino, California.
3. John Hsu has been registered with Pyramid as a general securities representative and general securities principal since he founded the firm in 1988. He currently serves as its President, Chief Compliance Officer and AML Compliance Officer.

FIRST CAUSE OF ACTION

(Failure to Preserve Electronic Communications – Violations of Exchange Act Rule 17a-4 and NASD Conduct Rule 2110 by Respondent Pyramid and NASD Conduct Rule 2110 by Respondent Hsu)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. During the period from approximately January 1, 2007, through approximately February 29, 2008, Respondent Hsu and FSH (a/k/a NSH or NS), a person registered with Pyramid, sent and received electronic communications related to Pyramid's business as such using personal e-mail accounts. The personal e-mail accounts were

not linked to the "LiveOffice" system that was used by Pyramid to preserve e-mails sent to and received by the firm's e-mail server as required by Exchange Act Rule 17a-4; therefore, "LiveOffice" did not preserve these electronic communications. Further, the business-related e-mails sent to and received by the personal e-mail accounts were not otherwise preserved in accordance with Rule 17a-4. Therefore, during the period from approximately January 1, 2007, through approximately February 29, 2008, Respondent Pyramid willfully violated Rule 17a-4 of the Securities Exchange Act of 1934 and violated NASD Conduct Rule 2110 on each occasion that the firm failed to preserve an electronic communication as required by the Rule.

6. Respondent Hsu was responsible for Pyramid's compliance with Rule 17a-4. He failed to cause Pyramid to preserve the electronic communications sent to and received by his and FSH's personal e-mail accounts in accordance with Rule 17a-4, as more fully described in paragraphs 4 and 5 above. Each instance in which business-related e-mails were not preserved as required by Rule 17a-4 constituted a separate and distinct violation of NASD Conduct Rule 2110 by Respondent Hsu.

SECOND CAUSE OF ACTION

(Failure to Comply with Anti-Money Laundering Laws and Rules -- Violations of NASD Conduct Rules 2110 and 3011 by Respondents Pyramid and Hsu)

7. The Department realleges and incorporates by reference paragraphs 1-3, 5 and 6, above.
8. During the period from approximately May 1, 2005, through approximately February 29, 2008, Hsu was responsible for Pyramid's compliance with 31 CFR 103.100,

which requires a broker-dealer to review its account records to determine whether it maintains, or has maintained, securities accounts for any individual, entity or organization identified by the Financial Crimes Enforcement Network (FinCEN) in its periodic communications. To comply with this requirement, a broker-dealer periodically accesses FinCEN's secure information system *electronically* and compares its current and previous accounts with the names of individuals, entities and organizations listed thereon.

9. During the period from approximately May 1, 2005, through approximately February 29, 2008, Hsu failed to access FinCEN's secure information network, failed to review the listed names and failed to determine whether Pyramid's current or former securities customers included any of the identified parties. These failures caused Respondent Pyramid to violate 31 CFR 103.100 and NASD Conduct Rule 2110, and constituted violations of NASD Conduct Rule 2110 by Respondent Hsu.
10. NASD Conduct Rule 3011(b) requires Pyramid to develop and implement a written anti-money laundering compliance program reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder. The firm's written anti-money laundering compliance program was not reasonably designed to achieve compliance with 31 CFR 103.100, in that it did not address the requirement to determine whether the firm was maintaining, or had maintained, accounts for the individuals, entities and organizations identified by FinCEN and made available through SISS. Hsu was responsible for the adequacy of Pyramid's written anti-money laundering program. The failure to develop and implement a *written anti-money laundering program reasonably designed to achieve compliance*

with 31 CFR 103. 100 constituted violations of NASD Conduct Rules 3011(b) and 2110 by Respondents Pyramid and Hsu.

11. NASD Conduct Rule 3011(c) requires Pyramid to conduct an independent test of its AMLCP each year. The firm's AMLCP provides that the required annual independent test will be conducted before the end of the third calendar quarter. Hsu was the firm's designated anti-money laundering compliance person in 2005, 2006 and 2007, and was responsible for Pyramid's compliance with the independent test requirement.
12. In 2005 and 2006, Hsu failed to cause Pyramid to conduct an annual independent test. In 2007, Hsu conducted the test himself; however, IM-3011-1 specifically provides that independent testing may not be conducted by the designated anti-money laundering compliance person. Therefore, Hsu failed to cause Pyramid to conduct an independent test as required.
13. By reason of the conduct described in paragraphs 10 and 11, above, Respondent Pyramid and Respondent Hsu violated NASD Conduct Rules 3011(c) and 2110 in 2005, 2006 and 2007.

THIRD CAUSE OF ACTION

(Falsely Certifying to Preservation of E-mails in Compliance with Rule 17a-4 –
Violations of NASD Conduct Rule 2110 by Respondent Hsu)

14. The Department realleges and incorporates by reference paragraphs 1-3, 5, 6 and 8-13, above.
15. On or about May 17, 2006, FINRA accepted a Letter of Acceptance, Waiver and Consent submitted by Respondent Pyramid. The AWC included, *inter alia*, findings

that the firm failed to preserve business-related electronic communications in accordance with Rule 17a-4 and sanctions requiring the firm to:

- a. Establish and implement procedures reasonably designed to verify the adequacy and effectiveness of its system for preserving electronic communications, including procedures to review preserved e-mails, determine that all required communications were preserved and make and keep a record of such reviews and determinations; and
 - b. Certify to [FINRA] at specified intervals in a written attestation, signed by the firm's president, that Pyramid "has retained e-mail as required by SEC Rule 17a-4."
16. Pyramid provided certifications for the period from on or about December 28, 2006, through on or about April 11, 2008. The certification dated April 16, 2007, pertained to the period from December 28, 2006, through April 15, 2007. The certification dated October 11, 2007, pertained to the period from April 16, 2007, through October 10, 2007. The certification dated January 11, 2008, pertained to the period from October 11, 2007, through January 10, 2008. The certification dated April 15, 2008, pertained to the period from January 11, 2008, through April 14, 2008.
17. Hsu signed each certification identified in paragraph 15 above. Each such certification represented that "Pyramid Financial continue [sic] using a professional third party e-mail retention service, Advisor Mail from LiveOffice. Advisor Mail is backing up all of the Company's emails..."

18. As more fully described in paragraphs 5 and 6, above, electronic communications pertaining to Pyramid's business as such were sent to and received from personal e-mail accounts controlled by Hsu and FSH. These communications, which occurred between January 1, 2007, and February 29, 2008, were not captured by LiveOffice Advisor Mail. Therefore, the representations in the certifications that Advisor Mail was "backing up all of the Company's e-mails" were inaccurate because each certification pertained to a period during at least part of which the personal account communications were not preserved by Advisor Mail. Further, to the extent that Hsu intended to certify, as required by the AWC, that Pyramid had retained e-mail as required by Rule 17a-4, that certification was inaccurate because the personal account communications were not preserved in accordance with Rule 17a-4.
19. Hsu knew or should have known that he and FSH were using personal e-mail accounts for business-related communications and he knew or should have known that such conduct caused the certifications he signed to include inaccurate representations about Pyramid's compliance with Rule 17a-4. By signing and submitting certifications that contained inaccurate information, Respondent Hsu engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and violated NASD Conduct Rule 2110.

FOURTH CAUSE OF ACTION

(Failure to Amend Form U4 to Disclose FINRA Investigation – Violations of Article V, Section 2(c) of the FINRA By-Laws and FINRA Rule 2010 by Respondent Hsu)

20. The Department realleges and incorporates by reference paragraphs 1-3, 5, 6, 8-13 and 15-19, above.

21. On or about March 29, 2010, the Department sent to Hsu and to Pyramid, at the firm's then-current business address as reflected in the Central Registration Depository system, written notification that FINRA staff intended to recommend the initiation of formal disciplinary action as to the firm and as to Hsu. The written notification informed Hsu of the obligation to amend his Form U4 to disclose that he was the subject of a regulatory investigation and advised Pyramid and Hsu that either or both of them could make a "Wells" submission in response to the proposed charges.
22. On or about April 28, 2010, the Department was advised by other FINRA staff that Hsu claimed that he had not received the "Wells Notice" described in paragraph 20 above, noting that the firm had moved to a new business location. The Department then received a telephone call from Hsu during which Hsu provided his firm's facsimile number and his electronic mail address so that the March 29, 2010, "Wells" letter could be sent to him by facsimile and/or electronically. On or about April 29, 2010, Pyramid amended the applicant information section of its Form BD to change its business address.
23. On April 28, 2010, the Department sent the "Wells Notice" to Hsu by electronic mail after several attempts to send it to the firm's facsimile number as provided by Hsu had failed. The electronic mail was sent to Hsu at [REDACTED] which is Hsu's e-mail address on the firm's e-mail server. The staff received an electronic return receipt, which indicated that the e-mail was successfully delivered to Hsu's e-mail address on April 28, 2010.

24. Pursuant to Article V, Section 2(c) of the FINRA By-Laws, Hsu is required to keep his application for registration current by supplementary amendments, to be submitted not more than 30 days after he learns of the facts or circumstances giving rise to the need to amend. Questions 14C through 14G on the Form U4 pertain to Regulatory Action Disclosures. Question 14E, items (1)-(4) specifically identify certain outcomes of self-regulatory disciplinary actions that require disclosure by means of "yes" answers. Question 14G requires a "yes" answer if the registered person has "been notified, in writing, that [he is] now the subject of any ... investigation that could result in a 'yes' answer to any part of 14A, B, C, D, or E." The instructions to the Form U4, in relevant part, define an "investigation" to include FINRA investigations "after the 'Wells' notice has been given or after a person associated with a member ... has been advised by the staff that it intends to recommend formal disciplinary action"
25. The March 29, 2010, letter, sent to Hsu electronically on April 28, 2010, clearly communicated that Hsu was receiving a "Wells" notice and that the Department intended to recommend formal disciplinary action against him for the violations noted therein. Because the violations included NASD rules, and because a bar or suspension could result from findings of violation, the investigation described in the March 29, 2010, letter could result in a "yes" answer to question 14E(2) and 14E(4). Therefore, Hsu was required to amend his Form U4 on or before May 28, 2010, to answer "yes" to Question 14G. As of the date hereof, Hsu has willfully failed to amend his Form U4, or cause it to be amended to provide the required "yes" answer, in violation of Article V, Section 2(c) of the By-Laws and FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Respondent's conduct, as alleged in the Fourth Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.
- D. make specific findings that Respondent Pyramid willfully violated Exchange Act Rule 17a-4.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 20, 2010



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