

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SCOTT ALLAN HENRY  
(CRD No. 2302642),

Respondent.

*Disciplinary Proceeding*  
No. 2008013969501

Hearing Officer— Rochelle S. Hall

**DEFAULT DECISION**

February 22, 2010

**The Respondent was barred for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to respond in any manner to requests for information, and for violating Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose a felony charge on his Form U4.**

**Appearances**

Karen E. Whitaker, Senior Regional Counsel, George C. McGuigan, Jr., Senior Regional Counsel, and Andrew Favret, Regional Chief Counsel, Dallas, Texas, for the FINRA Department of Enforcement.

No appearance by or for Scott Henry.

**DECISION**

**I. Introduction**

The FINRA Department of Enforcement filed a Complaint in this proceeding on September 17, 2009. In its Complaint, Enforcement charged that the Respondent, Scott Allan Henry, violated Conduct Rule 2110, Membership and Registration Rule Interpretive Material ("IM") 1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to disclose a felony charge on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Enforcement also charged that Henry

violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information.<sup>1</sup>

Henry did not answer or otherwise respond to the Complaint. Consequently, on December 22, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of Karen E. Whitaker and three exhibits. Henry did not reply to the motion.<sup>2</sup>

## **II. Jurisdiction and Origin of the Complaint**

### **A. Jurisdiction**

Henry completed and signed a Form U4 on February 27, 2008, for member firm Emerald Ventures, LLC ("Emerald"). Emerald filed the form on March 18, 2008. Although Henry passed the Series 22 and 63 examinations in May 2008, he never became registered in any capacity. On June 23, 2008, Emerald filed a Uniform Termination Notice for Securities Industry Regulation ("Form U5") stating that it had terminated Henry's employment. He has not since been associated with a FINRA member firm.<sup>3</sup>

Henry has not been associated with a FINRA member firm since June 23, 2008.<sup>4</sup> Nevertheless, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) FINRA requested information from Henry when it still retained jurisdiction over him, i.e., within two years following

---

<sup>1</sup> The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at [www.finra.org/Rules](http://www.finra.org/Rules). On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57.

<sup>2</sup> The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

<sup>3</sup> Complainant's Exhibit (CX)-1; Whitaker Declaration ("Whitaker Decl."), ¶ 5.

<sup>4</sup> CX-1; Whitaker Decl., ¶ 6.

Emerald's filing of Henry's Form U5; and (2) the Complaint was filed within two years after Henry's failure to respond to FINRA's requests for information.<sup>5</sup>

### **B. Origin of the Complaint**

The investigation leading to the filing of the Complaint began when FINRA received a Form U5 filed by Emerald stating that it had terminated Henry's employment because he had failed to disclose a felony charge on his Form U4.<sup>6</sup>

### **III. Respondent's Default**

On September 16, 2009, Enforcement sent the Complaint and Notice of Complaint to Henry by first-class and certified mail (return receipt requested) to his residential address recorded in the Central Registration Depository ("CRD Address"). The first-class mailing was not returned; however, the certified mailing was returned signed by "Scott Henry."<sup>7</sup> Henry did not respond to the Complaint.<sup>8</sup>

In early October 2009, Henry contacted FINRA Staff and provided a more current address. The address was identical to the CRD Address, except for the last two digits of the zip code ("Secondary Address"). On October 28, 2009, Enforcement served Henry with the Complaint and Second Notice of Complaint, by first-class and certified mail, to his CRD Address and the Secondary Address. The first-class mailings were not returned; however, the certified mailings were returned marked "Unclaimed" and "Return to Sender." The Second Notice of Complaint directed Henry to file an answer to the

---

<sup>5</sup> See Article V, Sec. 4(a), FINRA By-Laws, available at [www.finra.org/Rules](http://www.finra.org/Rules) (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

<sup>6</sup> Whitaker Decl., ¶ 8; CX-1.

<sup>7</sup> Whitaker Decl., ¶ 30; CX-1, CX-2.

<sup>8</sup> Whitaker Decl., ¶¶ 30-31; CX-2.

Complaint by November 16, 2009. To date, Henry has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.<sup>9</sup>

Henry defaulted by failing to answer the Complaint.<sup>10</sup> Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.

#### **IV. Violations**

##### **A. Willful Failure to Disclose a Felony Charge on Form U4**

The Complaint alleges that Henry violated Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to disclose a felony charge on his Form U4.

According to the Complaint, on August 29, 2007, in an indictment issued by a Texas grand jury, Henry was charged with the felony offense of indecency with a child. On or about February 27, 2008, in connection with his employment at Emerald, Henry completed and signed a Form U4, which was sent to FINRA's CRD. Question 14A(1)(b) of Form U4 asked: "Have you ever: (a)...(b) been charged with a felony?" Henry falsely answered "no" to this question. By signing the Form U4, Henry confirmed that he had reviewed all of the information on the form and that it was complete and accurate. Nevertheless, Henry failed to disclose his felony charge. The Complaint charged that Henry's failure to do so was willful.

---

<sup>9</sup> Whitaker Decl., ¶¶ 32-34; CX-1, CX-3.

<sup>10</sup> *Dep't. of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at \*5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at \*20 (9<sup>th</sup> Cir. Aug. 12, 1998)).

Conduct Rule 2110 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.<sup>11</sup> The accuracy of an applicant's Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability "to monitor and determine the fitness of securities professionals."<sup>12</sup>

The allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Henry willfully failed to disclose information requested on his Form U4, as required by FINRA By-Laws. Accordingly, the Hearing Officer finds that Henry violated FINRA's By-Laws, NASD Conduct Rule 2110, and IM-1000-1.

#### **B. Failure to Respond to Requests for Information**

The Complaint alleges that Henry violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to three written requests, made pursuant to Procedural Rule 8210, for information concerning a 2007 felony charge of indecency with a child that Henry failed to disclose on his Form U4.

According to the Complaint, on August 6, 2008, FINRA Staff sent the first request for information by first-class and certified mail to Henry at his CRD Address. The return receipt for the certified mailing was returned to FINRA with Henry's signature. The first-class mailing was not returned. Henry did not respond to the August 6 request.<sup>13</sup>

---

<sup>11</sup> IM-1000-1 provides that the filing of registration information that "is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade" in violation of Rule 2110. *See also Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

<sup>12</sup> *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (*citing Alton*, 52 S.E.C. at 382); *see also Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at \*19-20 (Jan. 14, 2005) (recognizing that "the candor and forthrightness of applicants is critical to the effectiveness of the screening process").

<sup>13</sup> Complaint, ¶¶ 11-14.

On August 26, 2008, FINRA Staff sent a second request for information to Henry at his CRD Address by first-class and certified mail. The return receipt for the certified mailing was returned to FINRA with Henry's signature. The first-class mailing was not returned. Henry called FINRA Staff twice to request extensions of time in which to respond to the request. The Staff gave Henry an extension of time, to September 23, 2008, to respond; however, he never responded to the August 26 request.<sup>14</sup>

On September 29, 2008, FINRA Staff sent a third request for information to Henry at his CRD Address by first-class and certified mail. The return receipt for the certified mailing was returned to FINRA marked "Return to Sender" and "Unclaimed." The first-class mailing was not returned. Henry did not respond to the September 29 request.<sup>15</sup>

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this Default Decision, that Henry failed to respond in any manner to three requests for information, thereby violating Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2110.<sup>16</sup>

## **V. Sanctions**

### **A. Willful Failure to Disclose a Felony Charge on Form U4**

FINRA Sanction Guidelines ("Guidelines") governing sanctions for false and misleading Forms U4 direct adjudicators to consider the nature and significance of the

---

<sup>14</sup> Complaint, ¶¶ 15-19.

<sup>15</sup> Complaint, ¶¶ 19-22.

<sup>16</sup> *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at \*19, n. 28 (July 1, 2008); *Anthony H. Barkate*, 57 S.E.C. 488, 489, n. 1 (2004); *Dep't. of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at \*5 (N.A.C. Nov. 2, 2001).

information at issue when determining sanctions.<sup>17</sup> The Guidelines direct adjudicators to consider two relevant “principal considerations” when determining sanctions: (1) the nature and significance of the information at issue; and (2) whether [the] failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.<sup>18</sup>

Henry’s felony charge was material and would have been significant to broker dealers and investors. The National Adjudicatory Council (“NAC”) has determined that information on the Form U4 is material if a reasonable employer reading the Form would “view the disclosure of the omitted information as significantly altering the total mix of information available.”<sup>19</sup> Furthermore, the NAC has made clear that “[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is] presumed that essentially all the information that is reportable on the Form U4 is material.”<sup>20</sup> In this case, Henry had been charged with a felony. The NAC has consistently held that criminal history is material.<sup>21</sup>

Henry’s failure to disclose the felony charge was also willful. “Willfulness” is established by a showing that a person “knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”<sup>22</sup> A finding of willfulness does not require intent to violate the law or specific rule; it simply requires

---

<sup>17</sup> FINRA Sanction Guidelines 73 (2007), [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

<sup>18</sup> *Id.*, 73.

<sup>19</sup> *Dep’t. of Enforcement v. Knight*, 2004 NASD Discip. LEXIS 5, at \*14 (N.A.C. Apr. 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

<sup>20</sup> *Id.*, at \*13.

<sup>21</sup> *Dep’t. of Enforcement v. Jason A. Craig*, 2007 FINRA Discip. LEXIS 16 (N.A.C. Dec. 27, 2007); *Dep’t. of Enforcement v. Andrew C. Knight*, 2004 NASD Discip. LEXIS 5 (N.A.C. Apr. 27, 2004).

<sup>22</sup> *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at \*8, n. 2 (Sep. 30, 1997).

intent to commit the act that constitutes the violation.<sup>23</sup> Enforcement states that it has in its files a copy of Henry's Form U4. On the same Form U4 on which Henry failed to disclose the felony indecency charge, he did disclose two 1999 felony charges involving possession of controlled substances. It is unlikely that he would recall two 1999 felony charges yet forget the 2007 felony charge. Indeed, Enforcement notes that its files contain evidence that when Emerald confronted Henry about the felony indecency charge, he admitted that he did not disclose the information because he was embarrassed.<sup>24</sup> The Hearing Officer finds that Henry's failure to disclose the 2007 felony charge on his Form U4 was willful. Therefore, Henry was subject to statutory disqualification.<sup>25</sup>

The record contains no evidence of mitigating factors. Accordingly, the Hearing Officer will bar Henry from associating with any member firm in any capacity for his failure to disclose his felony charge on his Form U4.

#### **B. Failure to Respond to Requests for Information**

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.<sup>26</sup> When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.<sup>27</sup> For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a

---

<sup>23</sup> *Dep't. of Enforcement v. Knight*, C10020060, 2004 NASD Discip. LEXIS 5, at \*10 (N.A.C. Apr. 27, 2004).

<sup>24</sup> Motion for Entry of Default Decision, p. 3.

<sup>25</sup> FINRA By-Laws, Article III, Sec. 4.

<sup>26</sup> *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000).

<sup>27</sup> *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

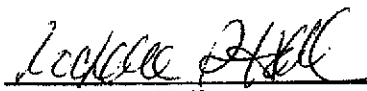
request for information issued pursuant to Rule 8210.<sup>28</sup> Henry failed to respond in any manner to three requests for information. There is no evidence of any mitigating facts that would justify a sanction of less than a bar.

Accordingly, the Hearing Officer finds that Henry should be barred from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

#### **VI. Order**

For failing to disclose a felony charge on his Form U4, in violation of Conduct Rule 2110, IM-1000-1 and Article V, Section 2 of FINRA's By-Laws, and for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110, Scott Allan Henry is barred from associating with any member firm in any capacity. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

**SO ORDERED.**

  
Rochelle S. Hall  
Hearing Officer

Copies to: Scott A. Henry (*via overnight courier and first-class mail*)  
Karen E. Whitaker, Esq. (*via electronic and first-class mail*)  
George C. McGuigan, Jr., Esq. (*via electronic and first-class mail*)  
Andrew A. Favret, Esq. (*via electronic and first-class mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)

---

<sup>28</sup> FINRA Sanction Guidelines 35 (2007), [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

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

Department of Enforcement,

Complainant,

v.

Scott Allan Henry  
(CRD No. 2302642),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2008013969501

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Respondent Scott Allan Henry ("Henry") willfully failed to disclose a felony charge on a Uniform Application for Securities Industry Registration or Transfer form ("Form U4"). Henry also failed to respond to requests for information.

**RESPONDENT AND JURISDICTION**

2. Henry completed and signed a Form U4 on February 27, 2008 for member firm Emerald Ventures, LLC. Henry never registered in any capacity with Emerald Ventures. On June 23, 2008, Emerald Ventures terminated the employment of Henry. Since being terminated from Emerald Ventures, Henry has not been associated with any other FINRA member firm.

3. The violations alleged herein occurred while Henry was associated with Emerald Ventures, LLC. FINRA has jurisdiction to file this complaint against Henry pursuant to Article V, Section 4 of FINRA's By-Laws which provides for a two-year period of retained jurisdiction.

#### **FIRST CAUSE OF ACTION**

(Henry Failed to Disclose a Felony Charge)  
(NASD Conduct Rule 2110, NASD Membership and  
Registration Rule IM-1000-1, and FINRA By-Law Article V, Section 2)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. In an Indictment dated August 29, 2007, issued by a Grand Jury in Bexar County, Texas, Henry was charged with the felony offense of indecency with a child.
6. On or about February 27, 2008, Henry applied for registration with FINRA through member firm Emerald Ventures, LLC, and in connection therewith, he completed and signed a Form U4 attesting to the fact that he had reviewed all of the information on the Form U4, and that all of the answers on the Form U4 were true and complete.
7. Even though Henry had signed the Form U4 attesting to the fact that all of the answers on his Form U4 were true and complete, he failed to disclose any information about the felony charge of indecency with a child.
8. By failing to disclose facts on the Form U4 concerning his felony charge for indecency with a child, Henry submitted, or caused to be submitted, a Form U4 to FINRA that was materially false and inaccurate. Henry's failure to disclose on the Form U4 his felony charge of indecency with a child was willful.

9. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110, NASD Membership and Registration Rule IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by Respondent Scott Allan Henry.

**SECOND CAUSE OF ACTION**

(Henry Failed to Respond to Requests for Information)  
(NASD Conduct Rule 2110 and NASD Procedural Rule 8210)

10. The Department realleges and incorporates by reference paragraphs 1-8 above.
11. By letter dated August 6, 2008, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that Henry provide the staff with a written response to questions concerning the felony charge of indecency with a child which he had failed to disclose on his Form U4. The due date for the requested information was August 20, 2008.
12. The August 6<sup>th</sup> letter was mailed, via certified mail and first class mail, to Henry at his CRD residential address.
13. Henry received the August 6<sup>th</sup> letter because he signed the Domestic Return Receipt card for the certified mailing. The copy of the August 6<sup>th</sup> letter that was mailed to Henry via first class mail has never been returned to FINRA.
14. Henry never provided a response to the staff's August 6<sup>th</sup> letter.
15. By letter dated August 26, 2008, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that Henry provide the previously requested information. As with the August 6<sup>th</sup> letter, the staff mailed the August 26<sup>th</sup> letter to Henry at his CRD residential address. The August 26<sup>th</sup> letter was mailed to Henry via certified mail and first class mail, and it contained a due date of September 9, 2008.

16. On or about August 28, 2008, Henry placed a telephone call to FINRA and spoke with the staff examiner who had mailed the August 26<sup>th</sup> letter to him. During that conversation, Henry stated that he would provide the requested information.
17. In addition to telling that staff examiner that he would provide the requested information, Henry also signed the Domestic Return Receipt card for the certified mailing of the August 26<sup>th</sup> letter. The copy of the August 26<sup>th</sup> letter that was sent to Henry via first class mail has never been returned to FINRA.
18. On or about September 10, 2008, Henry placed another telephone call to FINRA and spoke with the staff examiner who had sent him the August 26<sup>th</sup> request letter. During that conversation, Henry requested additional time to provide the requested information. The staff examiner granted Henry until September 23, 2008, to provide the previously requested information.
19. Henry never provided a response to the August 26<sup>th</sup> letter. Accordingly, by letter dated September 29, 2008, FINRA staff again requested, pursuant to NASD Procedural Rule 8210, that Henry provide the previously requested information. In this letter, the staff informed Henry that even though he had been given until September 23, 2009, to provide the previously requested information, the staff had not received any information from him. The staff also informed Henry that he had until October 13, 2009, to provide the requested information.

20. As with the previous request letters, the staff mailed the September 29<sup>th</sup> letter to Henry at his CRD residential address via certified mail and first class mail.
21. Unlike the earlier certified mailings, the certified mailing of the September 29<sup>th</sup> letter was returned to FINRA marked "Return to Sender" and "Unclaimed." The copy of the September 29<sup>th</sup> letter that was sent to Henry via first class mail has never been returned to FINRA.
22. Henry never provided a response to the August 6<sup>th</sup>, August 26<sup>th</sup> or September 29<sup>th</sup> request letters.
23. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Scott Allan Henry.

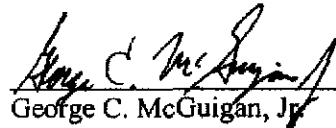
#### **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) 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 First Cause of Action, was willful; the omitted information was material; and the omission to state material facts was on a Form U4 application.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date: September 16, 2009



George C. McGuigan, Jr.  
Senior Regional Counsel  
Andrew Favret  
Associate Vice President  
and Regional Chief Counsel  
FINRA - Department of Enforcement  
12801 North Central Expressway, Suite 1050  
Dallas, Texas 75243  
(972) 716-7608; Fax: (972) 716-7646  
george.mcguigan@finra.org