

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TODD AUSTIN
(CRD No. 5262341),

Respondent.

Disciplinary Proceeding
No. 2008014753601

Hearing Officer – LBB

DEFAULT DECISION

November 11, 2010

For willfully filing misleading and inaccurate amendments to his Form U4 in violation of NASD Conduct Rule 2110 and IM-1000-1, Respondent is barred from associating with any FINRA member firm in any capacity. Respondent is also barred for falsifying a document and submitting the falsified document to FINRA and his firm, thereby violating NASD Conduct Rule 2110.

Appearances

Paul D. Taberner, Senior Regional Counsel, Boston, Massachusetts, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on June 25, 2010, asserting two causes of action against Respondent Todd Austin ("Respondent"). The first cause of action charges Respondent with willfully filing misleading and inaccurate amendments to his Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of NASD Conduct Rule 2110 and IM-1000-1. The second

000056319 2010

cause of action charges Respondent with falsifying a document and submitting the falsified document to FINRA and his firm, in violation of NASD Conduct Rule 2110.¹

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On September 20, 2010, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.²

I. Respondent

Respondent was employed by FINRA member firm Biremis Corporation ("Biremis") as its controller from November 2006 until November 20, 2008. Respondent first became registered with FINRA as a Financial and Operations Principal on March 21, 2007. Biremis terminated Respondent's employment on November 20, 2008, for materially misleading the firm with respect to his conviction in a criminal matter. Respondent has not been associated with a FINRA member firm since November 20, 2008. Biremis filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on November 26, 2008, notifying FINRA of the circumstances of the termination of Respondent's employment. Complaint ¶ 2; Decl. ¶ 5; CX-1.

Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within

¹ 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 NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct.

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration Supporting a Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited herein as "CX-____."

two years after the termination of his registration with a member firm, and it charges him with misconduct while he was associated with a member firm.

II. Origin of the Investigation

This matter arose as a referral to the Department of Member Regulation by FINRA's Regulatory Review and Disclosure Department, which expressed concerns about the timeliness of Respondent's disclosure of the criminal charges against him and that Respondent might be subject to statutory disqualification as a result of the criminal case. Decl. ¶ 6.

III. Respondent's Default

On June 25, 2010, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class mail and FedEx International Priority at his residential address in Canada listed in the Central Registration Depository ("CRD").³ The Complaint and Notice of Complaint sent by first-class mail were not returned to FINRA. On July 1, 2010, the Complaint and Notice of Complaint sent by FedEx were returned marked "Retrieve Pkg! Wrong Address." FINRA staff learned from FedEx that "A. Palma" had accepted and signed for the package on June 29, 2010. Soon thereafter, the recipient asked FedEx to retrieve the package because Respondent no longer lived at that address. Respondent did not answer or otherwise respond to the Complaint. Decl. ¶¶ 30-32; CX-2.

On July 26, 2010, Enforcement served the Complaint and Second Notice of Complaint on Respondent at his CRD address by first-class mail and FedEx International Priority. On August 5, 2010, the Complaint and Second Notice of Complaint sent by FedEx were returned to FINRA marked "Moved." The Complaint and Second Notice of Complaint sent by first-class

³ Respondent identified his CRD address as his current address in an affidavit dated January 16, 2009. Decl. ¶ 30.

mail were not returned to FINRA. Respondent has not responded to the Complaint. Decl. ¶¶ 33-36; CX-3.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding.⁴ By failing to respond, he defaulted.

IV. Facts

Respondent's initial Form U4 seeking registration as a FINOP was filed with FINRA on December 5, 2006. Complaint ¶ 4. On January 9, 2007, the Cobourg, Ontario, Canada Police Service filed a Criminal Information with the Town of Cobourg Superior Court charging Respondent with 28 violations of the Criminal Code of Canada while he was employed as controller for Northumberland County, Ontario, Canada. Among other things, the Information charged Respondent with seven counts of breach of trust by a public official, two counts of theft in excess of \$5,000, and seven counts of fraud. The Information alleged that Respondent had misused \$29,000 that he had taken from various county accounts. Complaint ¶¶ 1, 5.

Within days of being charged, Respondent informed his supervisor at Biremis that criminal charges had been filed against him, but he materially misrepresented the nature and factual circumstances surrounding the criminal charges. For example, Respondent informed his supervisor that the criminal charges against him resulted from a misunderstanding involving the transfer of funds from one account to another. In fact, the criminal charges involved allegations that Respondent had taken funds from county bank accounts to pay his personal expenses.

Complaint ¶ 7.

⁴ Rule 9134(a)(3) provides, "Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery."

On February 15, 2007, Respondent filed an amended Form U4, again seeking to register with FINRA as a FINOP. Respondent falsely indicated on the amended Form U4 that he had never been charged with any felony or misdemeanor involving fraud or the wrongful taking of property. Complaint ¶ 8.

Respondent again amended his Form U4 on October 3, 2007, disclosing the criminal charges, and describing them as misdemeanors. In the Criminal Disclosure Reporting Page ("DRP"), Respondent indicated that he had been charged with breach of trust, fraud, and theft. Complaint ¶ 9. On or about October 9, 2007, Respondent pleaded guilty and was convicted of two counts of breach of public trust, an indictable offense under Canadian law, and one count of theft under \$5,000, a hybrid offense under Canadian law.⁵ Respondent did not inform Biremis of his guilty plea and conviction. Complaint ¶ 10.

Respondent filed another amended Form U4 on January 16, 2008. The amended Form U4 was identical to the one filed on October 3, 2007. The amended Form U4 did not disclose that he had pleaded guilty and been convicted of two counts of breach of public trust and one count of theft under \$5,000. Complaint ¶ 11.

Respondent filed another amended Form U4 on January 23, 2008. He answered "Yes" to question 14B(1)(b), which asked whether he had ever been charged with a misdemeanor involving fraud or the wrongful taking of property. On the accompanying Criminal DRP, he did not disclose that he had pleaded guilty and been convicted of two counts of breach of public trust and one count of theft under \$5,000. Instead, he falsely stated that on January 14, 2008, the fraud and theft charges, and all related charges, were withdrawn and dropped. Complaint ¶ 12.

⁵ Canadian law does not categorize criminal violations as felonies and misdemeanors. Offenses are divided into three categories: indictable offenses, summary convictions, and hybrid offenses. The least serious offenses are summary convictions and the most serious are indictable offenses. For hybrid offenses, the prosecutor has discretion to prosecute the crime as either an indictable offense or summary conviction.

On February 25, 2008, Respondent was sentenced to ten months of house arrest, two years of probation following the period of house arrest, and 60 hours of community service. Under the terms of his house arrest, he was permitted to travel to work in Toronto. Respondent did not disclose this sentence to Biremis, and failed to update his Form U4 to reflect his sentence. Complaint ¶ 13.

Respondent again updated his Form U4 on September 4, 2008, providing the same false criminal disclosures as in the January 23, 2008 version.

On or about April 30, 2008, Respondent provided FINRA's CRD/Public Disclosure Department with an altered copy of the Conditional Sentencing Order from his criminal case, dated October 9, 2007. Respondent altered the document by removing the reference to his conviction for one count of theft under \$5,000. In about October or November of 2008, Respondent also provided Biremis with a copy of the altered document. Complaint ¶ 15; Decl. ¶¶ 26-27.

V. Violations

A. Respondent Willfully Violated NASD Conduct Rule 2110 and IM-1000-1 by Failing to Disclose Material Facts on His Form U4

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such ... reasonable information with respect to the applicant as [FINRA] may require." Applicants must complete a Form U4 disclosing, among other things, information concerning whether the applicants have been charged with any felonies or with certain misdemeanors. FINRA uses Form U4 "to monitor and determine the fitness of securities professionals."⁶ Submitting a Form U4 that is inaccurate or incomplete so as to be

⁶ *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *33 (N.A.C. Feb. 12, 2007), citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996).

misleading may be deemed conduct inconsistent with just and equitable principles of trade.⁷

Respondent responded falsely on four Forms U4 filed with FINRA, providing false information about his criminal matter.⁸

The false information that Respondent submitted was material. "The test of materiality is whether the omitted information would have 'significantly altered the total mix of information made available.'"⁹ Criminal information is material.¹⁰ By submitting multiple materially false Forms, Respondent violated NASD Conduct Rule 2110 and IM-1000-1.¹¹

Respondent's violation was willful. The definition of willfulness is very broad. Under the securities laws, willfulness means that Respondent voluntarily committed the act that constituted the violation, and does not require proof of an intent to violate the laws or rules.¹² Respondent intentionally provided the information on his Form U4 that was materially inaccurate concerning his criminal matter.

⁷ See IM-1000-1; *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *16 (Dec. 7, 2009), *appeal docketed*, No. 10-429-ag (2d Cir. Feb. 3, 2010).

⁸ The Complaint does not charge that the October 3, 2007, Form U4 was false.

⁹ *Scott Mathis*, 2009 SEC LEXIS 4376, at *29 (citation omitted).

¹⁰ *Dep't of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *15 (Dec. 18, 2009).

¹¹ The Hearing Officer does not make any finding with respect to the allegations in first cause of action that Respondent made material misrepresentations to Biremis because the Complaint does not clearly charge these misrepresentations as a separate offense, although Enforcement discusses the allegations in its default motion. The misrepresentations are mentioned in paragraphs 7, 10, and 13 of the Complaint, but the heading of the first cause of action is "Willful Filing of Misleading and Inaccurate Form U4 Amendments." Paragraph 17, the charging paragraph in the first cause of action, is ambiguous, stating, "By failing to disclose the criminal charges and conviction and by repeatedly submitting Forms U4 with false and misleading information, Austin violated NASD Conduct Rule 2110 and IM-1000-1." In light of the bars imposed for the first and second causes of action, it is unnecessary to decide whether the first cause of action adequately charges Respondent with making misrepresentations to his firm.

¹² *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *13, n.11 (Aug. 19, 2010).

The Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and IM-1000-1 by willfully submitting materially false information on four Forms U4.¹³

B. Respondent Violated NASD Conduct Rule 2110 by Falsifying a Document and Submitting the Falsified Document to FINRA and His Firm

Respondent submitted false information to FINRA and Biremis when he submitted the altered Conditional Sentencing Order from his criminal case.

Submitting false information to FINRA staff can subvert FINRA's ability to perform its regulatory function. As the SEC has stated in a matter involving providing false information in response to a request for information, "[T]he failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry."¹⁴ A representative who submits false information to his firm where the document becomes part of the firm's books and records also violates Rule 2110's requirement that representatives observe high standards of commercial honor and just and equitable principles of trade.¹⁵

Respondent violated NASD Conduct Rule 2110 by altering his Conditional Sentencing Order and submitting the falsified document to FINRA and his firm.

VI. Sanctions

The Department of Enforcement recommends a bar for each cause of action. The Hearing Officer finds that both violations were egregious, and that a bar is the appropriate sanction for each.

¹³ Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") states that a person who files an application for association with a member of a self-regulatory organization, and who willfully omits any material fact in that application, is statutorily disqualified from participating in the securities industry. See 15 U.S.C. § 78c(39)(F); see also FINRA By-Laws Art. III, Sec. 4. Accordingly, Respondent is statutorily disqualified.

¹⁴ *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *32 (Aug. 22, 2008).

¹⁵ *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *6 (N.A.C. Aug. 7, 2009); *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *22-23 (Aug. 22, 2008) (submission of false information to one's member firm is inconsistent with just and equitable principles of trade, in violation of Rule 2110).

A. Sanctions for Submission of a False Form U4

For filing a false, misleading, or inaccurate Form U4, the FINRA Sanction Guidelines (“Guidelines”) recommend a suspension of five to 30 business days and a fine of \$2,500 to \$50,000. The Guidelines recommend a longer suspension or a bar in egregious cases, such as those involving false, inaccurate, or misleading filings, and those involving the failure to disclose or timely disclose a statutory disqualification. *FINRA Sanction Guidelines* at 73-74 (2007). Respondent’s violation was egregious because it involved the willful filing of multiple false forms. In addition, two principal considerations are particularly relevant here as aggravating factors: the nature and significance of the information, and whether the information resulted in a statutorily disqualified person remaining associated with a firm. Complete and accurate disclosure of information about a criminal charge for dishonesty in the handling of other people’s money would be very important for both FINRA and Respondent’s firm, especially in light of Respondent’s position as controller for the firm, a similar position to the one he held for Northumberland County, where as controller he stole money from the county. In addition, as a further aggravating factor, the nature of the conviction would have resulted in Respondent’s statutory disqualification because it involved theft and breach of public trust by misappropriation of funds.¹⁶

Respondent’s violation was egregious. A bar is the appropriate sanction.

B. Sanctions for Falsifying a Document and Submitting the Falsified Document to FINRA and Respondent’s Member Firm

Enforcement cites the Guideline for forgery and falsification of records as the most analogous Guideline for the falsification of the Conditional Sentencing Order and the submission of the altered document to FINRA and Biremis. The Guideline for forgery and falsification of

¹⁶ See Exchange Act Sections 3(a)(39)(F) and 15(b)(4)(B)(iii), 15 U.S.C. § 78c(39)(F), and 15 U.S.C. § 78o(4)(B)(iii).

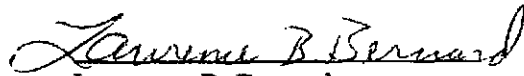
records recommends a suspension of up to two years where mitigating factors exist, and a bar in egregious cases. *Guidelines* at 39.¹⁷ There are no mitigating factors here. In addition, the nature of the falsified document, one of the principal considerations, is an aggravating factor. The Conditional Sentencing Order, a government document, was very important to FINRA and Respondent's firm.

This violation was also egregious. A bar is the appropriate sanction.

VII. Conclusion

Respondent is barred from associating with any FINRA member firm in any capacity for willfully filing misleading and inaccurate amendments to his Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of NASD Conduct Rule 2110 and IM-1000-1. Respondent is also barred for falsifying a document and submitting the falsified document to FINRA and his firm, thereby violating NASD Conduct Rule 2110.

The bars will be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Todd Austin (*via courier and first-class mail*)
Paul D. Taberner, Esq. (*via first-class and e-mail*)
Mark A. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

¹⁷ The Guidelines also recommend consideration of a fine, but in light of the bar imposed for both causes of action, no fine is imposed.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

TODD AUSTIN
(CRD No. 5262341),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2008014753601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In January 2007, Todd Austin (Austin) was arrested and charged by the Town of Cobourg, Ontario, Canada Superior Court with numerous criminal violations, including Fraud, Theft and Breach of Trust by a Public Officer. According to the allegations, Austin misappropriated funds from various government accounts while he was employed as Controller for Northumberland County, Ontario, Canada. At the time he was charged, Austin was employed by FINRA member firm Biremis Corporation (Biremis) as its Controller. On numerous occasions between the time he was charged in January 2007 until his termination from Biremis in November 2008, Austin provided Biremis with materially inaccurate information relating to the criminal charges against him. Austin also willfully misrepresented material facts concerning the criminal case against him in at least four Form U4 amendments filed with Web

CRD. Further, Austin falsified court documents and provided them to both Biremis and FINRA. Austin's conduct violated NASD Conduct Rule 2110 and IM-1000-1.

RESPONDENT AND JURISDICTION

2. In November 2006, Respondent Austin began working as Controller for Biremis and its several affiliated companies. On March 21, 2007, Austin first became registered with FINRA as a Financial and Operations Principal (FINOP) through Biremis, where he remained associated until November 20, 2008. Although Respondent Austin has not been associated with a FINRA member firm since November 20, 2008, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

FIRST CAUSE OF ACTION

Willful Filing of Misleading and Inaccurate Form U4 Amendments (Violations of NASD Conduct Rule 2110 and IM-1000-1)

3. The Department realleges and incorporates by reference paragraphs 1 through 2 above.

4. On December 5, 2006, Austin filed an initial Form U4 with Web CRD, seeking his registration with FINRA as a FINOP.

5. On January 9, 2007, the Cobourg, Ontario, Canada Police Service filed a Criminal Information with the Town of Cobourg Superior Court charging Austin with 28 violations of the Criminal Code of Canada. Specifically, the Information alleged against Austin, among other things, seven counts of Breach of Trust by a Public Official, two counts of Theft in excess of

\$5,000 and seven counts of Fraud. According to the Information, Austin had misused approximately \$29,000 he had taken from various county accounts.

6. As these charges involved, among other things, allegations of fraud and theft, they were material facts required to be disclosed by Austin on his Form U4. Moreover, Austin was obligated to disclose the fraud and theft allegations, regardless of whether they were charged as felonies or misdemeanors.

7. Within days of being charged, Austin informed his supervisor at Biremis that criminal charges had been filed against him. During this conversation, however, Austin materially misrepresented the nature of and factual circumstances surrounding the criminal charges. For example, Austin informed his supervisor that the criminal charges against him resulted from a misunderstanding involving the transfer of funds from one account to another. Austin failed to inform his supervisor, however, that the transfer of funds alleged in the criminal charges actually involved the movement of money from county bank accounts to pay his personal expenses. Moreover, Austin willfully failed to update his Form U4 to disclose the material fact that he had been charged with multiple counts of Theft and Fraud.

8. On February 15, 2007, Austin filed an amended Form U4, again seeking his registration with FINRA as a FINOP. In this filing, Austin willfully failed to disclose material information regarding his criminal history. Specifically, in the February 15, 2007 Form U4, Austin falsely indicated that he had never been charged with any felony or misdemeanor involving fraud or the wrongful taking of property.

9. On October 3, 2007, Austin filed another amended Form U4 with Web CRD. In the October 3, 2007 Form U4, Austin finally disclosed the criminal charges against him, describing them all as misdemeanors. In the related Criminal Disclosure Reporting Page (DRP)

to the October 3, 2007 Form U4 amendment, Austin indicated that formal charges were brought in Cobourg, Ontario, Canada on January 9, 2007 with charges of Breach of Trust, Fraud, and Theft. Austin also stated in the DRP that indicated that the charges did not involve a felony and that all charges were pending.

10. On or about October 9, 2007, Austin pleaded guilty and was convicted of two counts of Breach of Public Trust, an indictable offense under Canadian law, and one count of Theft under \$5,000, a hybrid offense under Canadian Law.¹ Austin, however, did not inform Biremis of his guilty plea and resulting conviction, which, pursuant to Article III, Section 4 of the FINRA By-Laws, made him statutorily disqualified from employment in the securities industry. Instead, Austin took substantial and repeated steps to hide his criminal conviction and statutory disqualification status from his employer.

11. On January 16, 2008, Austin filed another amended Form U4 with Web CRD. This amended Form U4 and accompanying Criminal DRP were identical to the amendment Austin filed on October 3, 2007. In the January 16, 2008, Form U4 amendment, Austin willfully failed to disclose material information relating to his criminal history. Specifically, in the January 16, 2008, amended Form U4 filing Austin failed to disclose that on October 9, 2007, he had pleaded guilty and was convicted of two counts of Breach of Public Trust and one count of Theft under \$5,000.

¹ Canadian law does not categorize criminal violations as misdemeanors and felonies as is done in the United States. Canadian penal law is federalized and contained in the Criminal Code of Canada. Offenses are divided into three categories: indictable offenses, summary convictions, and hybrid offenses. The least serious offenses are summary convictions and the most serious are indictable offenses. Hybrid offenses give the prosecutor discretion to prosecute the crime as either an indictable offense or summary conviction.

12. On January 23, 2008, Austin filed yet another amended Form U4 with Web CRD. In the January 23, 2008 filing, Austin again willfully failed to disclose, and made material misrepresentations regarding, his criminal history. Specifically, in that amended Form U4, Austin again answered "Yes" to question 14B(1)(b), which asked whether he had ever been charged with a misdemeanor involving fraud or the wrongful taking of property as specified in question 14B(1)(a). On the accompanying Criminal DRP, however, Austin did not disclose that in October 2007 he had pleaded guilty and was convicted of two counts of Breach of Public Trust and one count of Theft under \$5,000. Instead, Austin falsely stated in the Criminal DRP that on January 14, 2008, the Fraud and Theft charges were "withdrawn/dropped." The Criminal DRP further stated that "all charges related to Question 14(1)(B) [sic] have been dropped/withdrawn."

13. On February 25, 2008, Austin was sentenced to ten months of house arrest, two years of probation following the period of house arrest and 60 hours of community service work for his conviction on two counts of Breach of Public Trust and one count of Theft under \$5,000. Pursuant to his house arrest sentence, Austin was allowed to, among other things, travel to work in Toronto. Austin, however, failed to inform Biremis that, rather than the charges against him having been dropped, he had instead been convicted and sentenced for Breach of Trust and Theft. Austin also willfully failed to update his Form U4 to reflect this material fact.

14. On September 4, 2008, Austin filed yet another amended Form U4 with Web CRD. In the September 4, 2008 Form U4 amendment, Austin again willfully failed to disclose material information and willfully made material misrepresentations regarding his criminal history. Specifically, Austin again answered "Yes" to question 14B(1)(b), which asked whether he had ever been charged with a misdemeanor involving fraud or the wrongful taking of property

as specified in question 14B(1)(a). On the accompanying Criminal DRP, however, Austin again falsely stated that the charges of fraud, theft, and possession of stolen property, which Austin characterized as all misdemeanors, were dismissed before a plea was entered. Further, Austin falsely stated on that DRP that all available documents had been submitted to FINRA.

15. At some point after his conviction on October 9, 2007 but before his termination from Biremis on November 20, 2008, Austin provided FINRA's CRD/Public Disclosure Department with an altered copy of the Conditional Sentencing Order from his criminal case, dated October 9, 2007. Austin altered the document by removing the reference to his conviction for one count of theft under \$5,000. In or about October/November 2008, Austin also provided Biremis with the altered copy of the Conditional Sentencing Order.

16. On November 26, 2008, Austin caused a final Form U4 amendment to be filed, accurately disclosing the details and relevant dates of the criminal charges against and conviction of Austin. Biremis filed a Form U5 on the same date terminating Austin's registration with the firm as of November 20, 2008.

17. By failing to disclose the criminal charges and conviction and by repeatedly submitting Forms U4 with false and misleading information, Austin violated NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF ACTION

Falsifying Records/Providing False and Misleading Records to FINRA and Biremis (Violations of NASD Conduct Rule 2110)

18. The Department realleges and incorporates by reference paragraphs 1 through 17 above.

19. As noted in paragraph 15 above, Austin, at some point between October 9, 2007 and November 20, 2008, altered the Conditional Sentencing Order from his criminal case and

then provided the falsified document to FINRA's CRD/Public Disclosure Department to address concerns about the status of his criminal case.

20. In or about October/November 2008, Austin also provided Biremis with the altered Conditional Sentencing Order.

21. By altering the Conditional Sentencing Order from his criminal case and then providing the falsified record to Biremis and FINRA, Austin violated NASD Conduct Rule 2110.

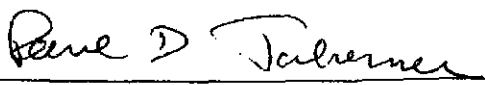
RELIEF REQUESTED

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; and
- 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: 6/25/2010


Paul D. Taberner
Senior Regional Counsel
John M. D'Amico
Regional Chief Counsel
FINRA Department of Enforcement
99 High Street, Suite 900
Boston, MA 02110
(617) 532-3425; Fax: (202) 721-8322
paul.taberner@finra.org
john.d'amico@finra.org