

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PETER KAI CHANG
(CRD No. 3219768),

Respondent.

Disciplinary Proceeding
No. 20080153481-01

Hearing Officer – MC

DEFAULT DECISION

May 25, 2010

Respondent violated Conduct Rule 2110 by willfully failing to amend his Form U4 to disclose that he was charged with four felonies and convicted of two felony charges. Consequently, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances

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

No appearance by or on behalf of Respondent Peter Kai Chang.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint against Respondent Peter Kai Chang (“Chang”) on January 8, 2010. The Complaint contains a single Cause of Action alleging that Chang violated Conduct Rule 2110¹ by willfully failing to amend his Uniform

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 Chang’s alleged misconduct. The applicable rules are available at www.finra.org/rules.

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Application for Securities Industry Registration or Transfer ("Form U4") as required by Article V, Section 2(c) of the FINRA By-Laws and NASD IM-1000-1. Because Chang did not file an Answer to the Complaint, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), supported by the Declaration of Mark A. Graves and four exhibits, on April 9, 2010.²

II. Findings of Fact and Conclusions of Law

A. Chang is Subject to FINRA's Jurisdiction

Chang became registered as a general securities representative and a corporate securities representative through a FINRA member firm in 2003. Between April 2003 and October 2008, Chang was registered with four member firms. Most recently, Chang was registered with FINRA through MetLife Securities, Inc. ("MetLife") from January 2007 until October 2008, when MetLife terminated his employment. Since then, Chang has not been registered or associated with a FINRA member firm.³

The Complaint alleges that Chang's misconduct occurred while he was registered with FINRA through MetLife. Enforcement filed the Complaint less than two years after Chang's registration was terminated. Consequently, pursuant to Article V Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Chang for the purposes of this disciplinary proceeding.

B. Chang Defaulted

Enforcement served the Complaint and Notice of Complaint upon Chang by first-class certified mail at his most recent address recorded in the Central Registration Depository ("CRD address") on January 8, 2010. The certified mail receipt was returned to Enforcement indicating that the mailing was accepted at Chang's CRD address on January 9, 2010, by a person who

² Enforcement's exhibits will be referred to as "CX-_" with the appropriate exhibit number. References in this Default Decision to the Declaration will be referred to as "Decl." or "Graves Decl." with citation to specific paragraphs.

³ Decl. ¶ 5; CX-1.

signed the name "S. Haddad."⁴

Because Chang did not file an Answer to the Complaint,⁵ Enforcement served the Complaint and Second Notice of Complaint upon him at his CRD address by first-class certified mail on February 16, 2010. Enforcement received the return receipt indicating that the mailing was accepted at the CRD address on February 17, 2010, by a person who signed the name "Mike Abercrombe."⁶ As before, Chang failed to file an Answer or otherwise respond to the Complaint.

By serving the Complaint, First Notice of Complaint, and Second Notice of Complaint upon Chang at his CRD address by first-class certified mail, Enforcement complied with the service requirements of Procedural Rule 9134.⁷ By failing to file an Answer, Chang defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons given below, the Default Motion is granted.⁸

C. Chang Violated Conduct Rule 2110 by His Willful Failure to Amend His Form U4 to Disclose Material Information

The Form U4 requires registered representatives to disclose (i) if they have ever been charged with a felony, and (ii) if they have ever entered a plea of guilty or no contest to a felony in any foreign, domestic, or military court. Article V, Section 2(c) of the FINRA By-Laws requires registered representatives to keep their Forms U4 current by filing supplementary

⁴ Decl. ¶ 8; CX-3, p. 11. In addition, Chang had previously confirmed the accuracy of the CRD address by giving it as the return address on a letter he had written to a FINRA investigator in April 2009. Decl. ¶ 7.

⁵ Decl. ¶ 9.

⁶ *Id.*, CX-4.

⁷ *Dep't of Enforcement v. 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) (*citing Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁸ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Graves Declaration and the exhibits filed by Enforcement.

amendments within 30 days of learning of any fact that requires amendment. Furthermore, IM-1000-1 imposes upon registered representatives the obligation to keep their registration filings accurate and complete, with the warning that failure to do so may be deemed conduct inconsistent with just and equitable principles of trade, potentially exposing them to disciplinary action.

Section 3(a)(39)(F) of the Securities Exchange Act of 1934 makes a willful failure to disclose any material fact, which is required to be disclosed on an application for association with a member firm of a self-regulatory organization, cause for statutory disqualification from participating in the securities industry. Essentially all of the information the Form U4 requires to be reported is material,⁹ as is any required information about a registered representative that a reasonable employer would find relevant.¹⁰ Willful failure of a registered representative to disclose material information on a Form U4, therefore, subjects the representative to statutory disqualification from participating in the securities industry.¹¹

On or about December 15, 2006, when he began his employment with MetLife, Chang completed his initial Form U4 at the firm. At that time, Chang disclosed to MetLife that he had been charged in 2003 with the misdemeanor offense of possessing a false license. Chang informed MetLife that the charge was later dismissed and that he had initially failed to disclose

⁹ *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *10 (N.A.C. Apr. 27, 2004). Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on a Form U4. "[T]he candor and forthrightness of applicants is critical to the effectiveness of the screening process" because the Form U4 is used by FINRA, other self-regulatory organizations, state regulators, and broker-dealers to determine and to monitor the fitness of securities professionals. *Guang Lu*, Exch. Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005), *aff'd*, 179 Fed. App'x. 702 (D.C. Cir. 2006).

¹⁰ *Dep't of Enforcement v. Mathis*, C10040052, 2008 FINRA Discip. LEXIS 49, at *25 (Dec. 12, 2008).

¹¹ *Id.*, *17-18.

the matter because he thought that he needed to report only charges that culminated in convictions.¹²

On or about October 17, 2008, MetLife filed a Form U5 notifying FINRA that the firm had terminated Chang's employment. MetLife stated the reason for the termination was that Chang had failed to inform MetLife that he had been criminally charged and convicted in 2008.¹³

FINRA staff investigated, gathering additional information from MetLife and obtaining records of criminal proceedings against Chang in the Superior Court of California for San Mateo County.¹⁴

FINRA's investigation revealed that a criminal complaint was filed against Chang on February 25, 2008. The complaint charged Chang with four offenses, all of which were felonies under California law. They were: (i) fleeing and attempting to elude a police pursuit and driving with willful and wanton disregard for the public safety while armed with a firearm; (ii) stealing a vehicle while possessing a firearm; and (iii) two violations involving willful and unlawful carrying of a loaded firearm in a public place or street.¹⁵ Court records showed that on March 26, 2008, Chang entered a plea of no contest to the felony charges of fleeing and attempting to elude a police pursuit and of possessing a vehicle without the consent of its owner. The plea agreement recommended a six-month jail term, with work release, and referral to a court program. The court accepted the plea and imposed the recommended sentence. Court records

¹² Decl. ¶ 18.

¹³ Decl. ¶ 12.

¹⁴ Decl. ¶ 13.

¹⁵ Decl. ¶ 14.

did not disclose the disposition of the two weapons charges, but Chang informed the staff that they were dropped pursuant to the plea agreement.¹⁶

MetLife provided FINRA staff with sections of the firm's compliance manuals and bulletins it had circulated during Chang's employment relating to the responsibility of associated persons to provide the firm with information needed for Form U4 amendments. A provision of the manual in effect when Chang joined MetLife explicitly required representatives to inform the firm whenever they were charged with a crime, arrested, convicted or entered a plea of guilty or no contest. Another section required representatives to report immediately on their Form U4 any criminal or judicial action taken against them.¹⁷

In August 2007, MetLife issued a notice directing its representatives to report criminal actions against them via a fax number, to enable the firm to amend their Forms U4. The procedure remained in effect throughout the rest of Chang's tenure with MetLife. Subsequently, on April 23, 2008, MetLife re-issued the notice to its representatives; this was approximately one month after Chang entered his no contest plea.¹⁸

While Chang was associated with MetLife, the firm required its representatives to sign periodic affirmations attesting to their understanding of MetLife's compliance requirements. On or about January 18, 2007, Chang initialed a section of an attestation stating, "I must notify my branch office manager and/or Corporate Ethics and Compliance immediately" upon being involved in "any legal, regulatory or disciplinary proceedings" or "being charged with any criminal offense."¹⁹ This was only five weeks before Chang was charged with the four felonies.

¹⁶ Decl. ¶ 15.

¹⁷ Decl. ¶ 19.

¹⁸ Decl. ¶ 20. MetLife re-issued the notice to its representatives approximately one month after Chang entered his no contest plea.

¹⁹ Decl. ¶ 21.

During FINRA's investigation of this matter, Chang answered "no" to a written question asking if he had disclosed the criminal proceeding brought against him to MetLife. Chang gave no explanation for his failure to do so.²⁰

These facts, as alleged in the Complaint and supported by the Graves Declaration and the exhibits filed by Enforcement, are sufficient to substantiate, for the purposes of this Default Decision, that Chang violated Conduct Rule 2110 by failing to disclose criminal charges brought against him, and the disposition of those charges, as required by Article V, Section 2(c) of FINRA's By-Laws and IM-1000-1. Chang's omissions were material because his Form U4 required disclosure of the information and because it is clear that MetLife, having repeatedly directed Chang to report such events, found the information relevant, as would any reasonable employer. Furthermore, Chang's failures to disclose were willful, because MetLife repeatedly made him aware of the necessity of disclosing any criminal charge or conviction, yet he nonetheless chose not to do so, thus subjecting himself to statutory disqualification.

III. Sanctions

For a failure to amend a Form U4, the FINRA Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and consideration of a suspension for five to 30 business days; in egregious cases, the Guidelines recommend consideration of a longer suspension or a bar.²¹

In this case, there are numerous aggravating factors that, taken together, demonstrate the seriousness of Chang's misconduct. There are no apparent mitigating circumstances.

Two Principal Considerations in Determining Sanctions for failing to file amendments to Forms U4 are particularly applicable to this case. The first is the nature and significance of the information Chang failed to disclose. The second is whether the failure to disclose resulted in an

²⁰ Decl. ¶ 23.

²¹ *FINRA Sanction Guidelines*, pp. 73-74.

associated person remaining associated with a member firm when the person would have otherwise been statutorily disqualified.²²

When Chang failed to disclose the fact that he was charged with four felony offenses, he withheld information that was clearly significant and about which any reasonable FINRA member firm employer would wish to be informed. Subsequently, when the court accepted Chang's no contest plea, it entered convictions on the two felony counts to which Chang pleaded. By entering the felony convictions, the court caused Chang to be subject to statutory disqualification. Under the two relevant Principal Considerations, these are significantly aggravating factors.

At least four Principal Considerations in Determining Sanctions also supply guidance, and underscore the seriousness of Chang's misconduct.

First, Chang did not accept responsibility or acknowledge his misconduct to MetLife prior to detection by the firm.²³ Instead, MetLife learned of Chang's misconduct from a state regulatory agency. While registered with MetLife, Chang was also an insurance agent with Metropolitan Life Insurance Company. On September 15, 2008, approximately seven months after the criminal complaint was filed against Chang, the California Department of Insurance summarily revoked Chang's insurance licenses because of the criminal convictions. MetLife only learned of Chang's criminal prosecution when it received the Order of Summary Revocation that the Department of Insurance sent to Chang at his business address.²⁴

²² *Guidelines*, p. 73.

²³ Principal Consideration No. 2, *Sanction Guidelines*, p. 6.

²⁴ Decl. ¶ 17.

Second, as noted above, Chang had, years earlier, initially failed to report misdemeanor charges brought against him.²⁵ Even though he claimed to MetLife that he had mistakenly believed he was obligated to report only charges that resulted in convictions, the incident provides context suggesting that the misconduct in this case is not isolated but is part of a pattern over an extended period.²⁶

Third, Chang's failure to inform MetLife of the felony charges in this case was clearly willful, knowing and intentional, not merely negligent.²⁷ As noted above, MetLife, by the notices it circulated to its representatives, had repeatedly informed Chang of his obligation to report any criminal charge filed against him so that the firm could properly amend his Form U4. Chang initialed an attestation that he was cognizant of this responsibility. Thus, his failure to comply could not be the product of mistake or ignorance. Furthermore, MetLife's diligence in ensuring that Chang was aware of his reporting responsibility effectively served as a warning to Chang that his failure to do so would violate FINRA rules relating to Form U4 amendments.²⁸

For all these reasons, Enforcement's characterization of Chang's misconduct as egregious is fair and accurate. Under these circumstances, Enforcement's recommendation for the imposition of a bar is appropriate.

IV. Order

Respondent Peter Kai Chang is barred from associating with any FINRA member firm in any capacity for violating Conduct Rule 2110 by willfully failing to amend his Form U4 to disclose the material information that he had been charged with four felonies and convicted of

²⁵ Decl. ¶ 18.

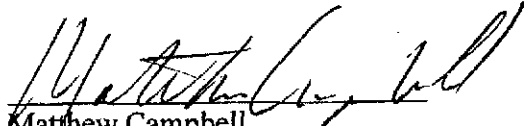
²⁶ Principal Consideration No. 8, *Sanction Guidelines*, p. 6.

²⁷ Principal Consideration No. 13, *Sanction Guidelines*, p. 7.

²⁸ Principal Consideration No. 15, *Sanction Guidelines*, p. 7.

two felony charges. His willful failure statutorily disqualifies Chang from participating in the securities industry.

If this Default Decision becomes FINRA's final disciplinary action in this proceeding, the bar shall become effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Peter Kai Chang (via FedEx 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.

Peter Kai Chang (CRD No. 3219768),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080153481-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On February 25, 2008, Respondent Peter Kai Chang, while registered with a FINRA member firm, was charged with four felonies. On March 26, 2008, Chang pled no contest to two felonies and two felony charges were dismissed. Chang failed to timely update his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose the no contest plea.

RESPONDENT AND JURISDICTION

2. Respondent Peter Kai Chang first entered the securities industry on April 21, 1999, when he associated with a FINRA member firm. On December 18, 2006, Respondent Chang became associated as a General Securities Representative of FINRA member firm MetLife Securities, Inc. Respondent Chang remained continuously registered

with MetLife until the firm terminated his registration on October 7, 2008, due to his failure to disclose timely the criminal action more fully discussed below.

3. Pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA has jurisdiction over Respondent Chang for purposes of this Complaint.

**FIRST CAUSE OF ACTION
(FAILURE TO AMEND FORM U4 (NASD CONDUCT RULE 2110))**

4. The Department realleges and incorporates by reference paragraphs 1 – 3 above.
5. Pursuant to Article V, Section 2(c) of the FINRA By-Laws in effect during the period relevant to this Complaint, the information provided on a Form U4 is to be kept current by means of amendments not later than 30 days after the subject of the Form U4 learns of "the facts and circumstances giving rise to the amendment."
6. On or about February 25, 2008, Respondent Chang was charged in a criminal complaint with the following felonies:
 - a. California Vehicle Code Section 2800.2 for willfully and unlawfully evading the police; U4 (NASD CONDUCT RULE 2110)
 - b. California Vehicle Code Section 10851(A) for possession of a stolen vehicle;
 - c. California Penal Code Section 12031(A)(1) for willfully and unlawfully carrying a loaded firearm on his person / vehicle while in a public place or street in connection with Count 1; and

- d. California Penal Code Section 12031(A)(1) for willfully and unlawfully carrying a loaded firearm on his person / vehicle while in a public place or street in connection with Count 2.
7. The filing of the criminal complaint on or about February 25, 2008, caused Respondent Chang's Form U4 to become inaccurate, and it gave rise to an obligation on Respondent Chang's part to submit an amendment to the Form U4 with a "yes" answer to Question 14(A)(1)(b), which reads "have you ever been charged with any felony?" The amendment was required to be submitted on or before March 26, 2008.
8. On March 26, 2008, Chang entered a plea of no contest to Counts 1 and 2 above. The plea was accepted and he was convicted. The plea and conviction required an amendment to his Form U4 to provide a "yes" answer to Question 14(A)(1)(a), which reads "have you ever been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to any felony?" The conviction caused Chang to be statutorily disqualified; therefore, the amendment to disclose the plea and conviction was required to be submitted on or before April 7, 2008.
9. As a result of the charges and plea described in paragraphs 6 and 8 above, Chang's Form U4 as of April 7, 2008, should have included a "yes" answer to Question 14(A)(1)(b) to disclose the charges set forth in Counts 3 and 4 above and a "yes" answer to Question 14(A)(1)(a) to disclose the "no contest" plea to Counts 1 and 2 above.

10. On or about February 25, 2008, Chang knew that he had been charged in a criminal complaint with four felonies. On or about March 26, 2008, Chang knew that he had entered a plea of no contest to two felonies.
11. From April 7, 2008, through on or about October 7, 2008, when his registration through MetLife was terminated, Chang willfully omitted to disclose the criminal charges and the plea of no contest described above on his Form U4. The criminal charges and the plea constituted material information. Further, his willful omission caused his employer to associate a person subject to a statutory disqualification for approximately six months.
12. As a result of the foregoing acts, practices and conduct, Respondent Chang acted in contravention of Article V, Section 2(c) of the FINRA By-Laws and in violation of NASD IM-1000-1, and thus committed a violation of 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.
- C. Make specific findings that Respondent Chang'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.

REQUESTED

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 8, 2010



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