

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

David A. Aarvig (CRD No. 2639190),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2014042544201

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between June 2010 and September 4, 2014, David A. Aarvig was charged with three felonies in three different states, and willfully failed to report the felonies on his Form U4 on each occasion, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. Aarvig's misconduct was further aggravated by his submission of false compliance questionnaires to his broker-dealer, in which he failed to report that he had been charged with a felony during the relevant period, in violation of FINRA Rule 2010.

**RESPONDENT AND JURISDICTION**

2. Aarvig first entered the securities industry in July 1995 as a Municipal Securities Representative with a FINRA-registered firm. He became registered with the same firm as a General Securities Representative in November 1996 and as a General Securities Sales Supervisor in August 1996. Aarvig was registered as a General Securities Representative and as

a General Securities Sales Supervisor with Morgan Stanley, a FINRA-registered firm, from June 2009 until October 7, 2014. Although Aarvig is no longer registered or associated with a FINRA member, 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 effective date of termination of Aarvig's registration with a FINRA member firm, namely, October 8, 2014, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

## **BACKGROUND**

### **Form U4 Disclosure Requirements**

3. At all times relevant to this Complaint, registered representatives completing a Form U4 were asked in Question 14A(1)(b), "Have you ever been charged with any felony?"

4. If a registered representative affirmatively answered Question 14A(1)(b) of the Form U4, he then would be required to provide on a Criminal Disclosure Page detailed information about the alleged felony, including the date of the charge, the forum in which the charge was filed, and a description and disposition of the charge.

5. Article V, Section 2(c) of FINRA's By-Laws requires associated persons to keep their Form U4 "current at all times by supplementary amendments" and to amend Form U4 "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." In complying with Article V, Section 2(c) of FINRA's By-Laws, an associated person is required to report that he or she has been charged with a felony within 30 days of being charged.

6. Pursuant to FINRA Rule 1122, the filing by a registered representative of a Form U4 that "is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct

inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.”

7. A violation of Article V, Section 2(c) of FINRA’s By-Laws or FINRA Rule 1122 is also a violation of FINRA Rule 2010. FINRA Rule 2010 provides that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.”

Indeed, Section 3.5.1.1 of Morgan Stanley’s Compliance Manual, entitled “Form U4 Potentially Reportable Events,” specifically provided that “Arrests, citations, charges, court hearings, sentencing, etc., as related to alleged criminal activity must be reported, including misdemeanors related to traffic incidents (DUI, DWI, leaving the scene, etc.)”

8. A person subject to a statutory disqualification cannot be associated with any FINRA member firm. A person is subject to a statutory disqualification under Article III, Section 4 of FINRA’s ByLaws and Section 3(a)(39)(F) of the Securities Exchange Act of 1934 if he, among other things, has willfully made or caused to be made a false or misleading statement, or willfully failed to state any material fact which is required to be stated, in a Form U4. An act is willful if it is volitional; that is, if a person performs the act intentionally. The person need not know or intend that his action violates any regulation or law. *Tager v. SEC*, 244 F. 2d 5, 8 (2d Cir. 1965). It is enough if a person knows, or reasonably should know, under the particular facts and circumstances that his conduct is improper. *Christopher LaPorte*, Exchange Act Rel. No. 39171, 1997 SEC LEXIS 2058, at \*8 n.2 (Sep. 30, 1997). Simply put, “willfully” merely requires the intentional doing of the wrongful acts- no knowledge of the rule or regulation is required. *Wonsover v. SEC*, 205 F. 3d, 408, 414 (D.C. Cir. 2000).

**FIRST CAUSE OF ACTION**  
**Aarvig Failed to Timely and Accurately Disclose Material Facts on Forms U4**  
**Violations of Article V, Section 2(c) of FINRA's By-Laws, FINRA Rule 1122 and FINRA**  
**Rule 2010**

**Wisconsin Felony Charge**

9. The Department realleges and incorporates by reference paragraphs 1-8 above.
10. On June 24, 2010, Aarvig was arrested for Operating with a Prohibited Alcohol Content of 0.02% or more and Operating Under the Influence ("OUI") in the state of Wisconsin, and was charged by the State of Wisconsin with a felony and a misdemeanor, respectively.<sup>1</sup>
11. On July 15, 2010, the felony charge was dismissed by the court as part of a plea agreement.<sup>2</sup> On April 27, 2011, Aarvig pled guilty to the misdemeanor and was required to serve 120 days of jail time.<sup>3</sup>
12. Between June 24, 2010, and July 15, 2010, Aarvig knew or should have known that he had been charged with a felony, and that he needed to amend his Form U4 to disclose the felony charge, a material fact, within 30 days after learning of it.<sup>4</sup>
13. On January 25, 2012, Aarvig filed a Form U4 amendment to report that he had settled an arbitration action in which he had been named as a respondent, but willfully failed to disclose the Wisconsin felony charge on the Form U4.
14. In fact, Aarvig willfully failed to timely amend his Form U4 to report the Wisconsin felony charge until September 4, 2014, more than four years after his arrest and plea agreement,<sup>5</sup> and only after Morgan Stanley had questioned Aarvig about the charge.

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<sup>1</sup> OTR Exhibit 23, p. 3.

<sup>2</sup> OTR Exhibit 23, p. 1.

<sup>3</sup> *Id.*

<sup>4</sup> OTR Interview, p. 176.

<sup>5</sup> OTR Exhibit 23, p.2

15. As a result of the foregoing conduct, Aarvig violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

**Illinois Felony Charge**

16. The Department realleges and incorporates by reference paragraphs 1-14 above.

17. On April 2, 2012, Aarvig was arrested for Driving Under the Influence of Alcohol in the state of Illinois and was initially charged with a misdemeanor by the State of Illinois.<sup>6</sup>

18. On October 2, 2013, the misdemeanor was subsequently dismissed for a felony enhancement, and Aarvig was charged by the State of Illinois with a felony on October 24, 2013.<sup>7</sup>

19. On February 27, 2015, Aarvig was sentenced to serve 180 days work release, ordered to pay \$3,232 in costs and fees, and placed on probation for three years.

20. During an on-the record interview ("OTR") taken of Aarvig by FINRA on June 16, 2015, Aarvig admitted to being charged with a felony on October 24, 2013, but he claimed he did not become aware of the felony indictment and charge until November 2013.<sup>8</sup>

21. However, Aarvig willfully failed to timely amend his Form U4 to report the felony indictment, a material fact, until September 4, 2014, almost an entire year after he acknowledged learning about the felony charge,<sup>9</sup> and only after Morgan Stanley had questioned Aarvig about the charge.

22. As a result of the foregoing conduct, Aarvig violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 2010.

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<sup>6</sup> OTR Interview – Exhibit 20, p. 5.

<sup>7</sup> OTR Interview, p. 170; OTR Interview – Exhibit 20, p. 2-3.

<sup>8</sup> OTR Transcript, p. 70, 154; Exhibit 11

<sup>9</sup> OTR Interview - Exhibit 22, p.1.

### **New York Felony Charge**

23. The Department realleges and incorporates by reference paragraphs 1-22 above.

24. On July 12, 2013, Aarvig was arrested and charged with Third Degree Criminal Mischief, a class E felony, by the City of New York, New York, and was taken to the police station.<sup>10</sup>

25. Aarvig knew or should have known that he had been charged with a felony. On the same day, July 12, 2013, Aarvig was brought to court for his arraignment, where the charges were reduced to a disorderly conduct, a misdemeanor, and he was fined \$120.<sup>11</sup>

26. Aarvig filed a Form U4 amendment on September 4, 2014, but willfully failed to disclose the New York felony charge on the Form U4.

27. In fact, although Aarvig was required to amend his Form U4 to report this event within 30 days of his knowledge that he was charged with a felony, he did not file an amended Form U4 disclosing his New York felony charge while registered with Morgan Stanley.

28. The NY felony charge brought against Aarvig constituted a material fact, and Aarvig's failure to amend his Form U4 to disclose it was willful.

29. As a result of the foregoing conduct, Aarvig violated of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

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<sup>10</sup> Statement of James Meisch in Response to FINRA's Request – Exhibit 11 and OTR Exhibit 12, p 5 of 6.

<sup>11</sup> Statement of James Meisch in Response to FINRA's Request – Exhibit 11.

**SECOND CAUSE OF ACTION**  
**False Attestations on Firm's Annual Compliance Questionnaire**  
**Violations of FINRA Rule 2010**

30. The Department realleges and incorporates by reference paragraphs 1-29 above.

31. While associated with Morgan Stanley, Aarvig misled his firm by completing compliance questionnaires on or about May 21, 2012 and on or about June 23, 2014, in which he failed to disclose his criminal arrests and charges.

32. The compliance questionnaire completed on May 21, 2012 specifically asked, "Have you, in the past 12 months, been arrested and/or charged with a felony, misdemeanor, or had any statutory disqualifications? Aarvig answered, "No."<sup>12</sup>

33. The foregoing attestation was false in light of Aarvig being arrested and charged with a misdemeanor in Illinois on April 2, 2012.

34. The compliance questionnaire completed on June 23, 2014 specifically asked, "Have you, in the past 24 months, been arrested, convicted and/or charged with a felony, misdemeanor, or had any statutory disqualifications, as defined by Section 3(a)(39) of the Exchange Act? (include any charges that have been expunged or dismissed)." Aarvig answered, "No."<sup>13</sup>

35. The foregoing attestation was false in light of Aarvig was arrested and charged a felony in New York on July 12, 2013, and with a felony in Illinois on October 24, 2013.

36. As a result of the foregoing conduct, Aarvig committed violations of FINRA Rule 2010.

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<sup>12</sup> Questionnaire dated May 21, 2012.

<sup>13</sup> Questionnaire dated June 23, 2014.

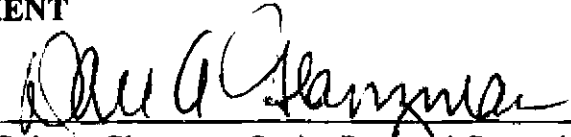
## **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent Aarvig committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the 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 27, 2016

  
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