

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL RYAN PETRUSKA  
(CRD No. 4907900),

Respondent.

Disciplinary Proceeding  
No. 2022076149301

Hearing Officer–MJD

**HEARING PANEL DECISION**

December 10, 2024

**Respondent willfully failed to amend his Form U4 to disclose a felony charge, in violation of Article V, Section 2(c) of FINRA’s By-Laws, and FINRA Rules 1122 and 2010. For this misconduct, Respondent is suspended from associating with any FINRA member firm in any capacity for one month and fined \$5,000.**

*Appearances*

For the Complainant: Michael Perkins, Esq., Suhani Patel, Esq., Kevin Hartzell, Esq., and Matthew M. Ryan, Esq. Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Michael Ryan Petruska, *pro se*

**DECISION**

**I. Introduction**

Individuals seeking to become registered with a FINRA member firm must complete and file with FINRA a Uniform Application for Securities Industry Registration or Transfer (Form U4). Thereafter, the registered person must keep the information on the Form U4 current and accurate. The Form U4 asks, among other things, whether the person has ever been charged with a felony.

On February 21, 2024, FINRA’s Department of Enforcement filed a Complaint against Michael Ryan Petruska alleging that, while registered with FINRA through an association with member firm Equitable Advisors, LLC (“Equitable” or the “Firm”), Petruska willfully failed to amend his Form U4 to disclose that he had been charged with a felony, in violation of Article V, Section 2(c) of FINRA’s By-Laws, and FINRA Rules 1122 and 2010. In his Answer, Petruska

stated that he did not have enough information to either admit or deny most of the allegations in the Complaint but denied that any failure to disclose the felony charge was willful.

A hearing was held before a FINRA disciplinary Hearing Panel on September 24, 2024. Petruska conceded that he failed to amend his Form U4 to disclose the felony charge but argued that the failure to do so was not willful. After considering the evidence, the Hearing Panel finds that Petruska willfully failed to amend his Form U4 to disclose a felony charge, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. For the misconduct alleged in the Complaint, the Hearing Panel imposes a one-month suspension in all capacities and a \$5,000 fine.

## **II. Findings of Fact**

### **A. Petruska's Background**

Petruska first became registered with FINRA through his association with Equitable in March 2005.<sup>1</sup> He was registered as a General Securities Representative through Equitable from March 2005 through August 2022, and as a General Securities Principal from May 2011 through August 2022.<sup>2</sup> On August 30, 2022, Equitable filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that it had discharged Petruska effective August 29, 2022, based on his "making a late disclosure of a criminal matter."<sup>3</sup> He has not been associated with a FINRA member firm since then.<sup>4</sup>

Although Petruska is no longer registered or associated with a FINRA member, he is subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws because: (1) Enforcement filed the Complaint within two years after August 30, 2022, which was the effective date of termination of Petruska's registration through Equitable; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.<sup>5</sup>

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<sup>1</sup> Joint Exhibit ("JX-") 1, at 3-5.

<sup>2</sup> Amended Stipulations ("Stip.") ¶¶ 1-2.

<sup>3</sup> JX-5, at 1-2; Stip. ¶ 7. On January 12, 2023, Equitable amended Petruska's Form U5 to answer "yes" to Question 7C(2), which asks, "While employed by or associated with your *firm*[,] was the individual . . . charged with any *felony*?" Stip. ¶ 8.

<sup>4</sup> JX-1, at 3.

<sup>5</sup> See Answer ("Ans.") (Mar. 28, 2024) ¶ 5 (admitting that Petruska is subject to FINRA's jurisdiction in this disciplinary proceeding).

## **B. Origin of Investigation**

This disciplinary proceeding originated from FINRA's investigation of the Form U5 for Petruska filed by Equitable on August 30, 2022.<sup>6</sup>

## **C. Petruska Is Arrested and Charged with a Felony**

On June 30, 2022, the Trial Court of Massachusetts, District Court Department, issued a criminal complaint against Petruska.<sup>7</sup> The complaint charged Petruska with assault and battery.<sup>8</sup> The charge is a felony under Massachusetts law.<sup>9</sup>

On July 5, 2022, local police detectives arrested Petruska and gave him a copy of the criminal complaint.<sup>10</sup> The next day, July 6, 2022, Petruska was arraigned.<sup>11</sup> Accordingly, no later than July 6, 2022, Petruska knew that he had been charged with a felony.<sup>12</sup>

## **D. Petruska Fails to Disclose the Felony Charge to Equitable and Fails to Update His Form U4 to Reflect the Criminal Charge**

After his arrest and arraignment, Petruska did not contact anyone at Equitable to inform the Firm of the criminal charge.<sup>13</sup> He also did not update his Form U4 to disclose the felony charge.<sup>14</sup> Petruska testified that he did not report the felony charge, at least in part, because he was afraid Equitable would terminate him.<sup>15</sup> He also believed that the charge might be reduced or dismissed, and he wanted to know how the case would proceed before reporting the matter to the Firm.<sup>16</sup>

In early August 2022, Equitable learned that someone in Petruska's branch office had been arrested but the Firm did not know who it was.<sup>17</sup> On August 17, 2022, Equitable learned that Petruska had been arrested.<sup>18</sup> The same day, two individuals from Equitable's human

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<sup>6</sup> Stip. ¶ 10.

<sup>7</sup> JX-7.

<sup>8</sup> JX-7; Stip. ¶ 4.

<sup>9</sup> Stip. ¶ 5.

<sup>10</sup> Hearing Transcript ("Tr.") 68-69, 111.

<sup>11</sup> Tr. 75; Stip. ¶ 3.

<sup>12</sup> Tr. 75; Stip. ¶ 6.

<sup>13</sup> Tr. 74, 80.

<sup>14</sup> Tr. 80.

<sup>15</sup> Tr. 80, 82.

<sup>16</sup> Tr. 82-84.

<sup>17</sup> JX-23, at 1.

<sup>18</sup> JX-23, at 1.

resources department contacted Petruska via videoconference.<sup>19</sup> During the conference call, Petruska reported for the first time that he had been arrested.<sup>20</sup> He did not inform the two human resources employees of the nature of the allegations or that the charge was a felony.<sup>21</sup> He also did not update his Form U4 to disclose the felony charge.<sup>22</sup>

On August 23, 2022, Petruska again spoke with one of the individuals from the Firm's human resources department. On this occasion, an in-house attorney participated in the call.<sup>23</sup> During this meeting, Petruska disclosed for the first time the nature of the criminal charge and acknowledged that the charge was a felony under Massachusetts law.<sup>24</sup> The attorney asked Petruska if he had updated his Form U4 to disclose the charge and Petruska responded that he had not.<sup>25</sup> The Firm attorney directed Petruska to Section 1.4 of the Firm's Compliance Manual, which addresses the requirement to disclose certain criminal charges on the Form U4.<sup>26</sup> Petruska never updated his Form U4 to disclose the felony charge.<sup>27</sup>

#### **E. Petruska Was Aware of the Requirement to Update His Form U4**

At all relevant times, the Form U4 Question 14A(1)(b) asked, "Have you ever . . . been *charged* with any *felony*?"<sup>28</sup> If the answer is "yes," the Form U4 requires the registered person or applicant for registration to provide certain details about the felony charge.<sup>29</sup> Petruska testified at the hearing that he was aware of the requirement to keep his Form U4 current and to update it within 30 days if any answer to a question on the Form U4 changed.<sup>30</sup>

While Petruska was associated with Equitable, the Firm maintained procedures and issued guidance related to a registered representative's obligation to update the Form U4. Section 2.5 of Equitable's Compliance Manual addressed amendments to Form U4 applications and provided examples of events that require a Form U4 amendment, including if an associate "is charged with, has pleaded guilty to, or has been convicted of a felony."<sup>31</sup> Petruska testified that

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<sup>19</sup> Tr. 95-96.

<sup>20</sup> Tr. 95-96.

<sup>21</sup> Tr. 96-97.

<sup>22</sup> Tr. 97.

<sup>23</sup> Tr. 97-98.

<sup>24</sup> Tr. 98-100.

<sup>25</sup> Tr. 99-100.

<sup>26</sup> JX-16, at 2; JX-23, at 3.

<sup>27</sup> Tr. 100.

<sup>28</sup> See JX-3, at 7; JX-4, at 8.

<sup>29</sup> See JX-3, at 7; JX-4, at 8.

<sup>30</sup> Tr. 43.

<sup>31</sup> JX-17, at 1.

he had access to and reviewed the Firm's Compliance Manual.<sup>32</sup> During Petruska's employment with Equitable, the Firm also issued a Field Bulletin reminding registered representatives that they "must immediately notify their branch supervisors" if they "become involved in a criminal matter (such as arrested, indicted, convicted or entered a plea)" and to update their Form U4 if required.<sup>33</sup>

In November 2021, Petruska attended Equitable's 2021 Annual Compliance meeting.<sup>34</sup> The PowerPoint presentation for the meeting included reminders related to Form U4 amendments, including the 30-day timeframe to report changes on the Form U4.<sup>35</sup> The last page of the presentation reminded registered representatives "to promptly amend your FINRA Form U4 and disclose reportable events, including, but not limited to, . . . felony charges and misdemeanor charges involving investments."<sup>36</sup>

In March 2022, three months before he was arrested, Petruska completed a 2022 Associate Interview Questionnaire.<sup>37</sup> The first question on the form required Petruska to confirm that he reviewed his Form U4, and the second question asked him whether the information on his Form U4 was accurate.<sup>38</sup> Petruska responded "yes" to both questions.<sup>39</sup> He also testified at the hearing that he reviewed his completed Form U4 in March 2022, including the disclosure question related to felony charges.<sup>40</sup> Therefore, by the time of his arrest in July 2022, Petruska should have been familiar with the necessary steps required to update his Form U4 and notify his employer about his felony charge.

Before his arrest in July 2022, Petruska demonstrated that he understood the requirement to keep his Form U4 updated and that he knew the process for doing it. For example, in March 2020, the IRS filed a tax lien against Petruska.<sup>41</sup> Shortly after learning of the tax lien, Petruska contacted Equitable's compliance department to report it.<sup>42</sup> Within 30 days of learning of the lien, he updated his Form U4 to respond affirmatively to Question 14M, which asks whether he had any unsatisfied liens or judgments filed against him.<sup>43</sup> He also disclosed additional details

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<sup>32</sup> Tr. 39-42.

<sup>33</sup> JX-22, at 2.

<sup>34</sup> JX-19.

<sup>35</sup> JX-18, at 45.

<sup>36</sup> JX-18, at 48.

<sup>37</sup> JX-21.

<sup>38</sup> JX-21, at 1.

<sup>39</sup> JX-21, at 1.

<sup>40</sup> Tr. 64.

<sup>41</sup> Tr. 44-45; JX-3, at 12-13.

<sup>42</sup> Tr. 48, 150.

<sup>43</sup> Tr. 45; JX-3, at 10; JX-4, at 11.

about the lien on the applicable Disclosure Reporting Page (“DRP”).<sup>44</sup> In this instance, Petruska took the necessary steps to fulfill the 30-day timeframe required to update his Form U4. This was not the case here.

### III. Conclusions of Law

#### A. Petruska Failed to Amend His Form U4 to Disclose a Felony Charge

In the sole cause of action of the Complaint, Enforcement charged Petruska with violating Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010 by willfully failing to amend his Form U4 to disclose the felony charge.

Article V, Section 2(c) of FINRA’s By-Laws requires that “[e]very application for registration” filed with FINRA, including the Form U4, must be “kept current at all times” and that a supplementary amendment must be filed “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” FINRA Rule 1122 provides that “[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.” Failure to timely amend a Form U4 also constitutes a violation of FINRA Rule 2010.<sup>45</sup>

Registered representatives have an obligation to fully disclose all material facts in response to the questions on the Form U4 as “[t]he accuracy of an applicant’s Form U4 ‘is critical to the effectiveness’ of [FINRA’s] ability ‘to monitor and determine the fitness of securities professionals.’”<sup>46</sup> The information on the Form U4 is also important to employers and members of the public.<sup>47</sup> Registered individuals have a continuing obligation to timely update information on the Form U4 when changes occur.<sup>48</sup> The requirement “to provide accurate information and to amend the Form U4 to provide current information assures regulatory

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<sup>44</sup> Tr. 45-46; JX-3, at 12-13; JX-4, at 13-14.

<sup>45</sup> *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*12 (Mar. 15, 2016) (“Failing to timely amend a Form U4 when required violates . . . the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under . . . FINRA Rule 2010.”), *aff’d*, 672 F. App’x 865 (10th Cir. 2016).

<sup>46</sup> *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*23 (NAC July 27, 2007) (quoting *Rosario R. Ruggiero*, Exchange Act Release No. 37070, 1996 SEC LEXIS 990, at \*7-10 (Apr. 5, 1996)), *aff’d*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *petition for review denied*, 319 F. App’x 184 (3d Cir. 2009).

<sup>47</sup> *Dep’t of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at \*14 (NAC Mar. 16, 2017), *aff’d*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *petition for review denied*, 750 F. App’x 821 (11th Cir. 2018).

<sup>48</sup> *McCune*, 2016 SEC LEXIS 1026, at \*11; *see also Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*25 (Apr. 18, 2013) (“Because Form U4 is so important, every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment.”), *aff’d*, 575 F. App’x 1 (D.C. Cir. 2014).

organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing.”<sup>49</sup> A registered representative must comply with the Form U4 requirements and any failure to disclose cannot be excused based on a lack of knowledge or understanding of the Form U4’s requirements.<sup>50</sup>

Question 14A(1)(b) on the Form U4 asks in plain language whether an applicant has ever “been *charged* with any felony.” FINRA defines “charged” as “being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).”<sup>51</sup> Petruska was charged via a complaint and the charge is a felony under Massachusetts law.<sup>52</sup> Petruska knew that he had been charged with a felony no later than July 6, 2022, the date of his arraignment.<sup>53</sup> He also knew of his obligation to update his Form U4 whenever a prior answer on the form changed.<sup>54</sup> Yet he chose not to report the felony charge to Equitable until August 23, 2022, and he never amended his Form U4 to disclose the felony charge.

Petruska concedes that he failed to update his Form U4 to disclose the felony charge but claims he was unclear on the disclosure requirements for criminal matters at the time of his arrest.<sup>55</sup> He testified that, following his arrest, he researched the Firm’s compliance materials and found guidance that stated that registered representatives “should” report a felony arrest to the Firm.<sup>56</sup> He interpreted this guidance to mean that he was not “required” to report the charge to Equitable.<sup>57</sup> But Petruska never asked anyone in the Firm’s compliance department or anyone else at Equitable whether he was required to report the arrest and felony charge.<sup>58</sup> The requirement to amend a Form U4 is based on FINRA Rules, and a registered representative is “presumed to know and abide by FINRA Rules.”<sup>59</sup> Petruska’s failure to disclose the felony charge cannot be excused for any lack of understanding of the Form U4 requirements.<sup>60</sup>

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<sup>49</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*25-26 (quoting *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at \*17-18 (Oct. 10, 2011)).

<sup>50</sup> *Id.* at \*31; *Robert F. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*23 (Nov. 9, 2012).

<sup>51</sup> See FINRA Form U4 Explanation of Terms, [www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf](http://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf).

<sup>52</sup> Stip. ¶¶ 4-5.

<sup>53</sup> Stip. ¶ 6.

<sup>54</sup> Tr. 43.

<sup>55</sup> Tr. 80, 88.

<sup>56</sup> Tr. 87-88.

<sup>57</sup> Tr. 88.

<sup>58</sup> Tr. 87.

<sup>59</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*21 (quoting *Dep’t of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at \*23 (NAC Aug. 19, 2010)).

<sup>60</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*31.

We find that, by failing to amend his Form U4 to disclose the felony charge, Petruska violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, as alleged in the Complaint.

**B. Petruska's Failure to Update His Form U4 Was Willful and the Information He Did Not Disclose Was Material**

We also find that Petruska's failure to update his Form U4 was willful and the information he failed to keep accurate was material. As a consequence, he is also subject to statutory disqualification.<sup>61</sup>

**1. Petruska Acted Willfully**

To find willfulness, we need only find that the person charged "voluntarily committed the acts that constituted the violation."<sup>62</sup> The person need not know that he or she is violating a FINRA Rule.<sup>63</sup> An associated person's failure to update a Form U4 constitutes a willful violation if the person "charged with the duty knows what he is doing."<sup>64</sup>

Petruska knew by July 6, 2022, that he had been charged with a felony,<sup>65</sup> and he intentionally did not disclose it to Equitable. Indeed, Petruska testified during the hearing that he did not notify Equitable of the felony charge because, at least in part, he was afraid he would be fired.<sup>66</sup> He also wanted to know how the case would proceed and whether the charge might be

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<sup>61</sup> Article III, Section 4 of FINRA's By-Laws states that a person is subject to disqualification from association with a FINRA member if such person is subject to any "statutory disqualification" as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). Exchange Act Section 3(a)(39)(F) states that a person is subject to disqualification from association with a FINRA member if such person "has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, . . . any material fact which is required to be stated therein." See, e.g., *McCune*, 2016 SEC LEXIS 1026, at \*13-23 (finding that applicant was statutorily disqualified for willfully failing to amend Form U4); *Amundsen*, 2013 SEC LEXIS 1148, at \*37-41 (finding applicant was statutorily disqualified for willfully providing false material information and excluding information on Form U4); *Dep't of Enforcement v. The Dratel Grp., Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at \*18 (NAC May 6, 2015) (holding that individual respondent was statutorily disqualified because he willfully failed to disclose material information on his Form U4).

<sup>62</sup> *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at \*13 (Dec. 22, 2008); see also *McCune*, 2016 SEC LEXIS 1026, at \*15 ("If [applicant] voluntarily committed the acts that constituted the violation, then he acted willfully.").

<sup>63</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*20 (citing *McCune*, 2016 SEC LEXIS 1026, at \*15); see also *Mathis v. SEC*, 671 F.3d 210, 217 (2d. Cir. 2012) (citing *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)).

<sup>64</sup> *Dep't of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at \*19 (NAC May 21, 2018) (quoting *Wonsover*, 205 F.3d at 414).

<sup>65</sup> Stip. ¶ 6.

<sup>66</sup> Tr. 80.



reduced or dismissed before reporting the matter to the Firm.<sup>67</sup> Had Equitable not learned of the criminal charge from other sources, Petruska likely would not have reported it. Petruska testified that he ultimately was acquitted of the charge following a trial in April 2024.<sup>68</sup>

At the hearing, Petruska tried to distinguish his failure to report the felony charge to anyone at Equitable from his obligation to amend his Form U4.<sup>69</sup> He testified that he chose not to report the felony charge to the Firm due to his fear of being terminated but he was unclear about his reporting obligations as they relate to the Form U4.<sup>70</sup> However, whether or not he knew he was violating FINRA Rules by not updating his Form U4 to disclose the felony charge is not relevant to determining willfulness. A willful violation means that the person charged with the duty knew what they were doing.<sup>71</sup> Petruska's own testimony makes clear that he knew what he was doing.<sup>72</sup> It is not necessary to also find that Petruska was aware of the FINRA Rule he was violating or that "he acted with a culpable state of mind."<sup>73</sup>

At the hearing, Petruska directed the Hearing Panel to two 2002 Office of Hearing Officers decisions, *Department of Enforcement v. Harris* and *Department of Enforcement v. Dixon*, where hearing panels found that the respondents did not act willfully when they failed to disclose a criminal charge.<sup>74</sup> But neither case is persuasive here. In *Harris*, the respondent filed an initial Form U4 with his firm and responded "no" to the question of whether he had ever been charged with a felony.<sup>75</sup> Six years before completing the Form U4 and while in college, the respondent was charged with three felonies related to conduct that arose during a homecoming

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<sup>67</sup> Tr. 82-84. Petruska's expectation shortly after his arrest that the charge might be reduced or dismissed does not negate willfulness. *See Craig*, 2008 SEC LEXIS 2844, at \*12-13, \*24 (finding failure to disclose felony charge on Form U4 willful even though respondent believed the charges would be reduced).

<sup>68</sup> Tr. 138-39.

<sup>69</sup> *See* Tr. 116-17.

<sup>70</sup> Tr. 114-16.

<sup>71</sup> *Holeman*, 2018 FINRA Discip. LEXIS 12, at \*19 (noting that, in order to find a willful violation of a federal securities law, there must be a finding that the person charged with the duty knew what they were doing) (citing *Wonsover*, 205 F.3d 408 at 414).

<sup>72</sup> Petruska testified at the hearing:

The fact that it was in front of mind with everything else going on at the time is why I didn't disclose the charges immediately. I did fully intend to have a discussion with my firm. I was fully aware that this issue was coming out. Tr. 123.

He also testified that had he known that a late amendment to a Form U4 could result in something more than a fine or suspension, he would have reported it immediately to the Firm. Tr. 120-21.

<sup>73</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*38 (quoting *Craig*, 2008 SEC LEXIS 2844, at \*13).

<sup>74</sup> *See Dep't of Enforcement v. Harris*, No. C07010084, 2002 NASD Discip. LEXIS 27 (OHO May 31, 2002); *Dep't of Enforcement v. Dixon*, No. C3A020020, 2002 NASD Discip. LEXIS 35 (OHO Nov. 6, 2002).

<sup>75</sup> *Harris*, 2002 NASD Discip. LEXIS 27, at \*2.

party.<sup>76</sup> The *Harris* hearing panel found that the respondent's failure to disclose the felony charges on his Form U4 was not willful, noting it had been six years since the incident, the actions giving rise to the charges did not appear at first to be so serious as to constitute felonies, and the charges were quickly reduced and then later dismissed.<sup>77</sup> Here, Petruska was charged with a felony while registered with Equitable. He was aware of the felony charge but did not want to bring it the Firm's attention until he knew how or if the case would proceed.<sup>78</sup> He only reported the matter after the Firm learned of the arrest and asked Petruska about it.

In *Dixon*, the respondent was charged with four felonies the year before she became registered with FINRA through a member firm.<sup>79</sup> Before completing her initial Form U4, two of the charges were dismissed and the other two were reduced to misdemeanors.<sup>80</sup> In her initial Form U4, she did not disclose the felony charges.<sup>81</sup> She testified that prior to filing the Form U4 she asked her mentor, an experienced salesperson at the firm, who advised her to answer "no" to the question on the Form U4 involving felony charges.<sup>82</sup> The hearing panel found that she violated FINRA Rules by failing to disclose the felony charge on her Form U4 but did not act willfully.<sup>83</sup> The *Dixon* hearing panel noted that before completing the Form U4 the respondent sought advice from her mentor at the firm who advised her not to disclose the charges, and then voluntarily disclosed the charges on a DRP the firm later provided her.<sup>84</sup> The panel found that her voluntary disclosures to the mentor and on the DRP were inconsistent with a finding that she willfully failed to disclose the charges on her Form U4.<sup>85</sup> Petruska, on the other hand, did not disclose the arrest to anyone at Equitable until the Firm confronted him about the charge. Even then, he initially only admitted that he had been arrested and did not disclose that he had been charged with a felony.<sup>86</sup> Several days later, he told the Firm that the charge was a felony.<sup>87</sup>

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<sup>76</sup> *Id.* at \*2-3.

<sup>77</sup> *Id.* at \*12.

<sup>78</sup> Tr. 83-84.

<sup>79</sup> *Dixon*, 2002 NASD Discip. LEXIS 35, at \*3.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at \*2.

<sup>82</sup> *Id.* at \*8.

<sup>83</sup> *Id.* at \*8, \*14. Enforcement also conceded at the hearing that it had not proven the respondent willfully provided a false answer on her Form U4. *Id.* at \*8.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Tr. 96-99.

<sup>87</sup> Tr. 98-99.

## 2. The Omitted Information About the Felony Charge Was Material

As noted above, we also find that the felony charge filed against Petruska was material. “In the context of Form U4 disclosures, a fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available.”<sup>88</sup> “[E]ssentially all of the information that is reportable on the Form U4 may be considered to be material.”<sup>89</sup> A registered representative’s criminal history has consistently been found to be material information.<sup>90</sup>

Given the nature of the felony charge against Petruska, a reasonable employer would have viewed the information as relevant in determining whether to continue to employ him.<sup>91</sup> In fact, Petruska did not report the charge to Equitable because he believed the Firm would terminate him.<sup>92</sup> We therefore find that Petruska’s felony charge was material.

## IV. Sanctions

In determining the appropriate sanctions, the Hearing Panel considered FINRA’s Sanction Guidelines (“Guidelines”), which include the General Principles Applicable to All Sanction Determinations (“General Principles”), Principal Considerations in Determining Sanctions (“Principal Considerations”), and violation-specific principal considerations. The Hearing Panel also considered all relevant facts and circumstances, including the nature of the underlying misconduct and any potential aggravating and mitigating factors.

The General Principles state that “[d]isciplinary sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.”<sup>93</sup> The Guidelines also provide that sanctions should be “a meaningful deterrent and reflect the seriousness of the misconduct at issue” and “significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar

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<sup>88</sup> *McCune*, 2016 SEC LEXIS 1026, at \*21-22; *see also Tucker*, 2012 SEC LEXIS 3496, at \*27 (“We have also deemed omitted facts material when they ‘would have assumed actual significance in the deliberations of’ the representative’s employers, regulators, and investors.”) (citing *Mathis*, 2009 SEC LEXIS 4376, at \*31).

<sup>89</sup> *Toth*, 2007 NASD Discip. LEXIS 25, at \*34.

<sup>90</sup> *See Dep’t of Enforcement v. Craig*, No. E8A20004095901, 2007 FINRA Discip. LEXIS 16, at \*11 n.9 (NAC Dec. 27, 2007) (“We have previously found that criminal history is material information.”), *aff’d*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at \*19 (Dec. 22, 2008); *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at \*15 (NAC Dec. 18, 2009) (holding that criminal history is material); *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at \*14 (NAC Apr. 27, 2004) (“A reasonable employer would have viewed two felony charges as extremely relevant to any employment decision; therefore, we find the nondisclosure of those felonies as altering the total mix of information available and thereby material.”).

<sup>91</sup> *See Knight*, 2004 NASD Discip. LEXIS 5, at \*14; *Craig*, 2008 SEC LEXIS 2844, at \*19.

<sup>92</sup> Tr. 80, 82.

<sup>93</sup> FINRA Sanction Guidelines at 2 (General Principles, No. 1) (2024), <http://www.finra.org/rules-guidance/oversight-enforcement/sanction-guidelines>.

misconduct.”<sup>94</sup> To that end, adjudicators should “tailor sanctions to respond to the misconduct at issue.”<sup>95</sup>

The Guidelines for failing to timely update a Form U4 recommend a fine of \$5,000 to \$20,000 and to consider a suspension in any or all capacities for a period of 10 business days to six months.<sup>96</sup> Where aggravating factors predominate, adjudicators should consider a suspension in any or all capacities of up to two years or, where the respondent demonstrated an intent to conceal information or mislead, a bar.<sup>97</sup>

The Guidelines recommend that adjudicators consider several factors applicable specifically to this violation, including the nature of the information at issue and whether the omission was done to conceal information from the firm.<sup>98</sup> Both factors are aggravating in this case. Here, the nature of the felony charge created a potential reputational risk to Equitable and had a serious impact on Petruska’s employability in the securities industry. The information also would have been important to prospective customers considering whether to work with him. Furthermore, Petruska intentionally concealed the felony charge from Equitable because he was afraid the Firm would fire him if he disclosed it, and he wanted to wait to see if the charge would be reduced or dismissed.<sup>99</sup> We consider these to be aggravating factors.<sup>100</sup>

The Guidelines also direct adjudicators to consider sanctions previously imposed by other regulators or previous corrective action imposed by a firm based on the same conduct.<sup>101</sup> Equitable terminated Petruska for the same conduct charged in the Complaint. When a firm has terminated a respondent’s employment based on the same conduct at issue in a subsequent FINRA disciplinary proceeding, adjudicators should consider whether a respondent “has demonstrated that the termination qualifies for any mitigative value, keeping in mind the goals of investor protection and maintaining high standards of business conduct.”<sup>102</sup> A respondent has the

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<sup>94</sup> Guidelines at 2 (General Principles, No. 1).

<sup>95</sup> Guidelines at 3 (General Principles, No. 3).

<sup>96</sup> Guidelines at 108.

<sup>97</sup> Guidelines at 108.

<sup>98</sup> Guidelines at 108 (Principal Consideration Nos. 1 (the nature and significance of the information at issue) and 3 (whether the omission of information was done in an intentional effort to conceal information or in an attempt to mislead)).

<sup>99</sup> Tr. 80, 82-84, 87.

<sup>100</sup> While these are aggravating factors, we do not find that aggravating factors “predominate” for the purpose of determining sanctions in this case.

<sup>101</sup> Guidelines at 5 (General Principles, No. 7).

<sup>102</sup> Guidelines at 6 (General Principles, No. 7).

burden to prove that the termination “has materially reduced the likelihood of misconduct in the future.”<sup>103</sup>

Under the circumstances of this case and considering Petruska’s testimony and the evidence presented, we find that Petruska’s termination materially reduces the likelihood of further misconduct and mitigates the sanctions we impose. His testimony at the hearing suggests that he understands the severe consequences of willfully failing to amend his Form U4 when required. Indeed, Petruska was terminated by Equitable over two years ago as a result of his failure to disclose the felony and he has not been associated with any other FINRA member since then.

Petruska claimed during the hearing that he incorrectly relied on advice he received from his criminal defense attorney about the disclosure of his felony charge.<sup>104</sup> FINRA’s Sanction Guidelines advise that we may consider whether a respondent demonstrated reasonable reliance on competent legal advice.<sup>105</sup> “To constitute mitigation, however, the claim must have sufficient content and sufficient supporting evidence.”<sup>106</sup> For us to find Petruska’s reliance on counsel mitigating for sanctions purposes, he would need to prove that he made full and complete disclosure to competent legal counsel familiar with the requirements for maintaining an accurate Form U4, sought advice related specifically to disclosing felony charges on Forms U4, obtained that advice, and then reasonably relied on it.<sup>107</sup> The record contains no such evidence. Indeed, Petruska conceded that his criminal defense attorney did not practice in the securities area, did not know what a Form U4 was, and was not hired to give him advice on his Form U4 reporting obligations.<sup>108</sup> We therefore find that any claimed reliance on counsel is not a mitigating factor.

We have considered that Petruska had worked in the securities industry without incident for more than 17 years before his termination. He cooperated with Enforcement’s investigation. We also note that he testified honestly and in a forthright manner during the hearing. Lastly,

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<sup>103</sup> Guidelines at 5 (General Principles, No. 7). *See also Saad v. SEC*, 873 F.3d 297, 302-03 (D.C. Cir. 2017), *aff’d*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216 (Aug. 23, 2019), *petition for review denied*, No. 19-1214, 2020 U.S. App. LEXIS 35153 (D.C. Cir. Nov. 6, 2020) (recognizing that a firm’s disciplinary action prior to regulatory detection may be considered mitigating).

<sup>104</sup> Tr. 123-24. Petruska did not assert reasonable reliance on legal counsel as an affirmative defense to the charge but did testify that he discussed the matter with his criminal defense attorney. *Id.*

<sup>105</sup> Guidelines at 7 (Principal Consideration No. 7) (whether the respondent demonstrated reasonable reliance on competent legal or accounting advice).

<sup>106</sup> *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*38 (Nov. 14, 2008), *petition for review denied*, 347 F. App’x 692 (2d Cir. 2009).

<sup>107</sup> *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at \*52 (Sept. 13, 2010) (“The [legal] advice must be based on full and complete disclosure, and the respondent asserting reliance must produce ‘actual advice from an actual lawyer.’”); *Berger*, 2008 SEC LEXIS 3141, at \*43 (rejecting reliance on counsel as mitigating of sanctions where respondent failed to show full disclosure to the attorney and the content of the attorney’s advice).

<sup>108</sup> Tr. 124.

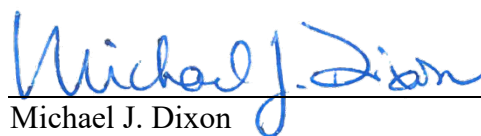
Petruska was ultimately exonerated of the felony charge. Although these circumstances are not mitigating, they persuade us to impose sanctions at the low end of the ranges recommended by the Guidelines.

The Form U4 is “critical to the effectiveness of the screening process used to determine who may enter (and remain in) the [securities] industry. It ultimately serves as a means of protecting the investing public.”<sup>109</sup> In light of all the factors present in this case, we find that Petruska’s misconduct warrants a \$5,000 fine and a one-month suspension.<sup>110</sup>

## V. Order

For willfully failing to update his Form U4 to disclose a felony charge, in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010, Respondent Michael Ryan Petruska is suspended from associating with any FINRA member firm in any capacity for one month and fined \$5,000. Because Petruska’s misconduct was willful and the information he failed to disclose was material, he also is subject to statutory disqualification. Petruska is also ordered to pay the costs of the hearing in the amount of \$2,311.97, which includes a \$750 administrative fee and \$1,561.97 for the cost of the transcript.

If this Decision becomes FINRA’s final disciplinary action, the suspension of Michael Ryan Petruska shall become effective with the opening of business on February 3, 2025. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this Decision becomes FINRA’s final disciplinary action in this proceeding.



Michael J. Dixon  
Hearing Officer  
For the Hearing Panel

Copies to:

Michael J. Petruska (via email, overnight courier, and first-class mail)  
Michael Perkins, Esq. (via email)  
Suhani Patel, Esq. (via email)  
Kevin Hartzell, Esq. (via email)  
Matthew M. Ryan, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)

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<sup>109</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*24 (quoting *Tucker*, 2012 SEC LEXIS 3496, at \*18).

<sup>110</sup> The Panel considered and rejected without discussion all other arguments by the parties.