BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Jeff Ng Stamford, CT, Respondent.	DECISION Complaint No. 2009019369302 Dated: April 24, 2013

Respondent failed to notify his employer firm that he had undisclosed outside brokerage accounts at two other member firms, and he failed to notify those firms that he was associated with a FINRA member firm. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Leo Orenstein, Esq. and Sandra Harris, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Jeff Ng ("Ng") appeals a June 14, 2012 Amended Hearing Panel decision pursuant to FINRA Rule 9311. The Hearing Panel found that Ng failed to notify his employer firm in writing that he had undisclosed outside brokerage accounts at two other member firms, and he failed to notify those other firms that he was associated with a FINRA member firm, in violation of NASD Rules 3050(c) and 2110, and FINRA Rule 2010.[1] The Hearing Panel suspended Ng for two years, fined him $25,000, and ordered him to pay costs. After an independent review of the record, we affirm the Hearing Panel's findings and the sanctions it imposed.

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[1] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

I. Factual and Procedural Background

Ng entered the securities industry in 1982. From 1985 to 2001, Ng was employed by Prudential Securities, Inc. In November 2001, he joined AllianceBernstein Investments, Inc. ("AllianceBernstein" or "Firm") and was registered as a general securities representative and a financial and operations principal from February 13, 2003, until August 26, 2009. Beginning in 2003, Ng worked in the Client Guideline Management Group at AllianceBernstein, which was responsible for ensuring that investments were made in accordance with the clients' investment constraints and guidelines. Ng is not currently employed in the industry.

While Ng was associated with AllianceBernstein, he maintained a total of nine outside brokerage accounts - four accounts in his name, one account in his wife's name, an account for each of his two children, and two accounts he opened in the name of "Critical Mass, a Partnership" ("Critical Mass"). Ng disclosed to the Firm five of the brokerage accounts that he maintained at E*Trade Securities, LLC. Ng stipulated that he did not disclose the two Critical Mass accounts, one of which he maintained at E*Trade and the other at TD Ameritrade, Inc. (together, "Executing Members").[2] He also admitted during his hearing testimony that he did not disclose the other two accounts that he maintained at TD Ameritrade. The complaint only charged Ng with failure to disclose the two Critical Mass accounts.

A. Critical Mass E*Trade Account

In August 1994, while associated with Prudential Securities, Ng opened the Critical Mass E*Trade account. Ng personally signed the E*Trade account application and is listed on the account documents as the account holder. Ng's brother also signed the application as the co-account holder. Ng made all of the trading decisions in the account.

The E*Trade account application included the following question: "Is Account Holder . . . employed by or affiliated with a securities firm . . .? If yes, please specify the company." Ng placed a "-" (dash) in the space provided for the response, rather than disclosing that he was associated with Prudential. Ng did not update his account information when he went to work at AllianceBernstein in 2001 and did not disclose his association with AllianceBernstein to E*Trade.

The account application also requested information concerning the applicant's occupation and number of years with the applicant's employer. Ng provided false information about his occupation, listing his occupation as "Landscape Architect" and his years with employer as "10 years." Ng admitted that his responses were false.

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[2] On March 12, 2012, prior to the hearing in this matter, Enforcement and Ng submitted a Stipulation as to Facts in which Ng stipulated to liability.

B. Critical Mass TD Ameritrade Account

In October 2003, two years after joining AllianceBernstein, Ng and his wife opened an account, also in the name of Critical Mass, at TD Ameritrade. Ng signed the TD Ameritrade account application and identified himself as "General Partner." The application contained the following statement in the section entitled "Trustee/Authorized Agent/Officer Information": "Check here if you are licensed or employed by a registered broker/dealer. **We must receive a compliance letter along with this application.**" The section of the application entitled "Entity Information" contained a similar statement. Ng did not respond in the affirmative to either statement as he was required, nor did he submit a compliance letter to TD Ameritrade reflecting his association with AllianceBernstein.

As with his E*Trade account, Ng did not include accurate information concerning his employment in his TD Ameritrade account application. Rather, Ng listed his occupation as "Landscaper" and his employer as "Landscaping, Inc."

Furthermore, AllianceBernstein maintained a list of "Designated Brokerage Accounts," which delineated the approved designated broker-dealers at which the Firm's employees could maintain brokerage accounts. TD Ameritrade was not on AllianceBernstein's list of approved outside brokerage firms and Ng never sought an exception to this policy.

C. Ng's Reporting Obligations to AllianceBernstein

During his association with AllianceBernstein, Ng had specific reporting obligations concerning his securities accounts and his trading in those accounts. At no time after becoming associated with AllianceBernstein did Ng disclose the existence of either of the Critical Mass accounts. Ng was required to submit Annual Holdings Reports and Quarterly Transactions Reports, in which he would disclose his "Employee Related Accounts" and his holdings in those accounts as of a given date. Ng did not disclose either the E*Trade or the TD Ameritrade Critical Mass accounts on any of these annual reports during his employment even though he made the required disclosures for his other E*Trade accounts. [3]

Ng also submitted no less than three Annual Certificate of Compliance forms in which he acknowledged receipt of the Firm's Code of Business Conduct and Ethics, which included the Firm's Personal Trading Policies and Procedures. He certified that he read and understood the Code, recognized that he was subject to its provisions, and acknowledged that he must report any violations to the Firm's legal and compliance department. Ng represented that he was in compliance with AllianceBernstein's Code of Business Conduct and Ethics, including its requirements that he maintain and report his securities holdings and transactions in his personal accounts and conduct his personal securities trading activities in accordance with AllianceBernstein's policies. These representations were untrue, given that he had not disclosed either of the Critical Mass accounts or his trading in those accounts.

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[3] Ng's obligations to report began in 1994 when he opened the first Critical Mass account at E*Trade.

D. Ng's Sale of Restricted Securities and Violations of Required Holding Periods in the Critical Mass Accounts

Ng engaged in securities transactions in both Critical Mass accounts while he was associated with AllianceBernstein, including transactions in AllianceBernstein Holding LP,[4] which, at the time of Ng's trading activity, was on the Firm's restricted list. Ng did not disclose that he had engaged in trading, including the purchase and sale of AllianceBernstein Holding LP in the TD Ameritrade Critical Mass account in August 2007 and the E*Trade Critical Mass account in January 2008. Although Ng did not have authorized access to material non-public information in his position with the Firm with respect to AllianceBernstein Holding LP, the transactions in those securities violated AllianceBernstein's policies.

Ng's trading activity in these Critical Mass accounts also violated the Firm's mandatory buy and hold period. The AllianceBernstein Code of Business Conduct and Ethics states that employees are subject to a mandatory buy and hold period for all individual securities held in personal accounts, for 12 months. Ng admitted to violating the Firm's policy. In the Stipulations filed by the parties, Ng admitted on August 16, 2007, he purchased 65 shares of AllianceBernstein Holding LP for his TD Ameritrade Critical Mass account and sold the shares five days later. In addition, Ng stipulated that on January 18, 2008, he purchased 300 shares of AllianceBernstein Holding LP for his E*Trade Critical Mass account and proceeded to sell those shares 10 days later.

E. Ng's Resignation from AllianceBernstein

Jeff Silver ("Silver"), vice-president and counsel for AllianceBernstein, testified at the hearing that the Firm was unaware of the E*Trade Critical Mass account until E*Trade contacted the Firm about the account.[5] E*Trade reported to Silver that Ng had assured E*Trade that the account was "non-reportable" under AllianceBernstein's policies. Silver then followed up with Ng about the E*Trade account. In a conversation with Ng on August 6, 2009, Ng denied that he had any active involvement with the E*Trade account. Ng told Silver and another AllianceBernstein employee in the legal department that the E*Trade account was an older account that he had started with two other individuals and that he had since withdrawn from active involvement with the account. However, the following day, Ng sent Silver an email in which Ng admitted that he had misled Silver and that, in fact, "[i]n recent

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[4] AllianceBernstein Holding LP is a publicly traded limited partnership whose units are listed on the New York Stock Exchange.

[5] Silver testified that one of his employees received a call from E*Trade's back office, asking whether the Firm was aware of Ng's Critical Mass account. Silver believed that the Critical Mass account raised red flags when E*Trade noticed during a cross-compliance check that only five out of Ng's six accounts at E*Trade were coded for inclusion in AllianceBernstein's data.

years, [he] had researched and directed the vast majority of trades in the Critical Mass account in violation of the notification and (often) the required holding period per investment at AllianceBernstein." Ng apologized for misleading Silver and summarized his conduct as follows:

> I knowingly did not follow all of the personal trading requirements at AllianceBernstein. Other than my personal opinion that [AllianceBernstein's] one yr holding period per investment is a bit over-the-top, there is no excuse for not following the rules for the Critical Mass account.

Although Ng apologized for misleading Silver about the E*Trade account, Ng continued to hide the existence of his TD Ameritrade accounts, including the Critical Mass account.

AllianceBernstein terminated Ng's employment on August 21, 2009. AllianceBernstein filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA on August 26, 2009, in which it reported that it had permitted Ng to resign on August 21, 2009, for a "compliance violation."

II. Procedural History

FINRA commenced its investigation of this matter based on the Firm's filing of the Form U5. The Department of Enforcement ("Enforcement") filed its complaint against Ng on August 11, 2011, alleging that Ng failed to provide written notice of his outside brokerage accounts to AllianceBernstein, and he failed to provide written notice of his association with AllianceBernstein to the brokerage firms where he maintained his outside accounts, in violation of NASD Rules 3050(c) and 2110, and FINRA Rule 2010.[6]

At the beginning of the hearing on April 4, 2012, the Hearing Panel confirmed that Ng stipulated to liability and that the only issue before the Hearing Panel was a determination of sanctions. Enforcement called Ng and two other witnesses to testify at the hearing - the Firm's vice-president and counsel Silver and Andrew S. LoVerso ("LoVerso"), a Senior Investigator with FINRA's Central Review Group. Ng testified on his own behalf.

III. Discussion

A. FINRA Has Jurisdiction Over Ng

As an initial matter, Ng contends that FINRA lacks jurisdiction over him because he has an expired "license" and "works in a position that does NOT require FINRA oversight and is currently employed by a non-sponsoring firm." He further maintains that his failures to

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[6] In addition, although not set forth as a separate cause of action, the complaint alleges that Ng executed trades of AllianceBernstein Holding LP's securities in his outside accounts without AllianceBernstein's approval and notwithstanding that the Firm's securities were on its restricted list at that time.

disclose do not implicate investor protection or market integrity,[7] and that he did not choose to become a registered representative[8] during the relevant time frame, and, as such, FINRA should not and cannot maintain jurisdiction over him.

Ng's arguments miss the mark in every instance. Although Ng is not currently registered with a FINRA member firm, FINRA maintains jurisdiction over these disciplinary proceedings. First, Ng was a registered representative at the time of the conduct in question, as well as at the time of his termination; thus FINRA's jurisdiction over Ng is proper, regardless of the reasons behind his registration. *See* Section 4 of Article V of the FINRA's By-Laws. [9]

Secondly, FINRA's By-Laws also confer jurisdiction over Ng simply because Enforcement's complaint was filed within two years following the termination of his association with AllianceBernstein, a FINRA member firm. *Id.*

It appears that in his brief Ng also is arguing that because of the nature of his position at AllianceBernstein he was not an "associated person" over whom FINRA would have jurisdiction. Even ignoring the fact that FINRA has jurisdiction over Ng for the reasons articulated above, such an argument fails as well. Article I of FINRA's By-Laws provides that a "person associated with a member," includes "a natural person engaged in the . . . securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation."

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[7] Ng's contention that NASD Rule 3050 does not implicate investor protection is patently incorrect, and is illustrative of his continued attempts to underplay the significance of NASD Rule 3050's protections. Ng "purposely thwarted safeguards intended to protect the integrity and transparency of the securities industry, and in so doing, created an environment ripe for customer abuse." *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, *24-25 (Feb. 24, 2012).

[8] Ng maintains that his former employer, Prudential, required him to register for reasons involving a global settlement between Prudential and regulators. FINRA rules make no distinction regarding the reasons for registration. Regardless of the impetus, Ng was a registered representative.

[9] A person whose association with a member firm has been terminated, or a person whose registration has been revoked, is still subject to FINRA jurisdiction for purposes of an enforcement action if the complaint is filed within:

(i) two years after the termination of registration;
(ii) two years after the effective date of revocation or cancellation of registration; or
(iii) in the case of an unregistered person, two years after the date upon which such person ceased to be associated with the member.

Ng's position at AllianceBernstein was that of "Client Guideline Management Team Leader." In this position, Ng was tasked with "ensuring that post trade compliance is performed for the firm and [to] oversee the management of one of the departments four teams." Ng's position required him to "take a proactive approach in determining the true impact of compliance violations, researching the root causes, and reporting the results to portfolio management." In all aspects of his job, Ng supported the securities business of AllianceBernstein and his work was part the Firm's core function. Although he did not sell securities to the public, he provided support for the Firm's supervision of securities sales and, by extension, its securities business. Customer contact, handling securities and customer funds, and the receipt of transaction-based compensation are not mandatory elements for determining associated person status. *See Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *3 (Sept. 14, 1998) (finding that an unregistered person who received an hourly wage, answered telephones, photocopied, prepared sales reports and received and opened packages was an associated person); *Vladislav Steven Zubkis*, Exchange Act Release No. 40409, 1998 SEC LEXIS 1904, at *12 (Sept. 8, 1998) (finding that individual who acted as chief executive officer of an issuer whose stock the firm sold, paid some firm expenses, sometimes "took care of" firm registered representatives, and possessed some firm documents was an associated person); *cf. Dist. Bus. Conduct Comm. v. Paramount Invs. Int'l*, Complaint No. C3A940048, 1995 NASD Discip. LEXIS 248, at *11-13 (NASD NBCC Oct. 20, 1995) (finding that individual acted as an associated person in case in which individual did not interact with customers).

Ng's job responsibilities included ensuring that AllianceBernstein's post trade compliance was performed, and he was tasked with interpreting and analyzing investment management agreements, among other compliance-related activities. We deem these activities to be a facet of the Firm's securities business. AllianceBernstein relies on the compliance support that Ng and others like him provide. His purposeful interaction with Firm employees who bought and sold securities and interacted with Firm customers made him one of many integral parts of AllianceBernstein's broad securities business. Based on the above, we find that Ng was both a registered and an associated person, thereby conferring FINRA jurisdiction.[10]

B. Ng Failed To Provide Written Notice of His Outside Brokerage Accounts and Employment at AllianceBernstein

We affirm the Hearing Panel's findings that Ng violated NASD Rules 3050(c) and 2110, and FINRA Rule 2010, which provide that an associated person shall notify his member

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[10] When Ng registered with FINRA, he agreed to abide by its rules. *See Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006).

firm in writing about any accounts he maintains at another brokerage firm and notify the other brokerage firm in writing about his association with the employer firm.[11]

NASD Rule 3050(c) requires associated persons to disclose outside brokerage accounts:

> A person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated.

NASD Rule 3050(c) required that Ng provide written notice of his outside brokerage accounts to AllianceBernstein. The record, however, demonstrates that Ng did not make the required disclosures to the Firm. Ng stipulated that he failed to notify AllianceBernstein in writing that he maintained the Critical Mass accounts at E*Trade and TD Ameritrade. His failure to disclose these accounts was not mere oversight. Indeed, Ng had actually complied with Rule 3050(c) when he disclosed the other E*Trade accounts to AllianceBernstein. Ng's failure to provide the Firm with written notice of his Critical Mass accounts violated NASD Rules 3050(c) and 2110. *See Lu*, 2005 SEC LEXIS 117, at *19 (finding that applicant violated NASD Rule 3050(c) and Rule 2110 by failing to notify both employer firm and brokerage firm, in writing, that he was exercising discretionary authority over a brokerage account while he was associated with employer); *Brian Prendergast*, Exchange Act Release No. 44632, 2001 SEC LEXIS 1533, at *34-35 (August 1, 2001) (finding that applicant opened an account at member firm without giving prior written notice to employer firm).

Ng also failed to provide E*Trade and TD Ameritrade with written notice of his broker-dealer employment in violation of NASD Rule 3050(c). Ng admitted that he did not notify the executing members of his employment with AllianceBernstein. The E*Trade account application included the following question: "Is Account Holder . . . employed by or affiliated with a securities firm . . .? If yes, please specify the company." Ng placed a "-" (dash) in the space provided for the response, rather than disclosing that he was associated with Prudential.

The application also requested information concerning the applicant's occupation and years with employer. Ng provided false information about his occupation, listing his occupation as "Landscape Architect" and his years with employer as "10 years." Ng admitted that his responses were false.

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[11] A violation of any FINRA rule, including NASD Rule 3050(c), constitutes a violation of NASD Rule 2110. *See Guang Lu,* Exchange Act Release No. 51047, 2005 SEC LEXIS 117, at *14, *15 n.17 (Jan. 14, 2005) (finding that applicant's violation of NASD Rule 3050(c) violated just and equitable principles of trade articulated under NASD Rule 2110).

As with the E*Trade application, the TD Ameritrade application contained a section entitled "Trustee/Authorized Agent/Officer Information," which required the following information: "Check here if you are licensed or employed by a registered broker/dealer. **We must receive a compliance letter along with this application**." The section of the application entitled "Entity Information" contained a similar statement but substituted "any Trustee/Officer/Authorized Agent." Ng did not check the designated boxes to indicate that he was employed by a broker-dealer, nor did he submit a compliance letter to TD Ameritrade, even though at the time Ng completed and signed the TD Ameritrade application he was associated with AllianceBernstein. In addition, in the spaces on the TD Ameritrade application for "Occupation" and "Employer Name," Ng responded "Landscaping" and "Landscaping Inc.," respectively. These responses were false as Ng was associated with AllianceBernstein, and he was not employed as a landscaper.

IV. Sanctions

The Hearing Panel found Ng's conduct egregious, fined Ng $25,000, and suspended him in all capacities for two years. As explained in further detail below, we affirm the Hearing Panel's sanction determination.

FINRA's Sanction Guidelines ("Guidelines") for violations of NASD Rule 3050(c) recommend a fine of $1,000 to $25,000.[12] In egregious cases, the Guidelines suggest a suspension of up to two years, or a bar.[13]

In evaluating the appropriate sanctions to impose, the Guidelines provide three principal considerations specific to NASD Rule 3050 violations, two of which apply in this case.[14] These considerations are in addition to the principal considerations contained within the Guidelines that apply in every disciplinary case.[15]

The first relevant guideline specific consideration is "[w]hether violative transactions presented real or perceived conflicts of interest for the employer firm and/or customers."[16]

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12 *FINRA Sanction Guidelines* 16 (2011), http://www.finra.org/web/groups/industry/ @ip/@enf/@sg/documents/industry/p011038.pdf. [hereinafter *Guidelines*]

13 *Id.* (Transactions for or by Associated Persons - Failure to Comply with Rule Requirements).

14 Ng's failures to disclose do not implicate one of the three principal considerations applicable to Rule 3050 violations: whether violative transaction(s) involved violations of the Restrictions on the Purchase and Sale of Initial Public Offerings. *Id.*

15 *Id.* at 6-7.

16 *Id.* at 16.

NASD Rule 3050(c) assists in the prevention of potential and actual conflicts of interests raised through registered representatives' personal trading activities. *See NASD Notice to Members 91-27*, 1991 NASD LEXIS 44 (May 1991). Specifically, the rule acts to deter insider trading through its notification requirements. *See id.* When adhered to, the notification requirements ensure that employer members receive complete information concerning the trading activities of their registered representatives. *See id.* The accuracy and completeness of this information comes not only from the registered representatives, who provide information about their outside brokerage accounts to their employers, but also from the firms that execute the transactions and maintain the accounts. *See id.* Armed with accurate information, employer members can protect material nonpublic information and create and enforce internal compliance procedures to facilitate the direct and early detection of potential and actual conflicts of interests. *See id.* "A well-designed and properly implemented insider trading policy creates an effective prophylactic against inadvertent insider trading, and provides a mechanism for a company to demonstrate that appropriate steps have been taken to prevent insider trading violations."[17]

At its core, NASD Rule 3050(c) provides member firms with the opportunity to detect trading activity, which could present conflicts of interest with the firm or the firm's customers and invite regulatory scrutiny. Although Enforcement did not charge, and we do not find, that Ng engaged in insider trading or manipulative market activities, his purposeful concealment of his trading activity deprived the three member firms of the rule's intended benefits. Ng's failure to disclose the outside brokerage accounts to AllianceBernstein, his failure to disclose his broker-dealer employment to E*Trade and TD Ameritrade, his misrepresentations about the existence of the brokerage accounts, and his trading in AllianceBernstein Holding LP, a restricted stock, when taken together, created a very genuine potential for a perceived conflicts of interests.

The second guideline specific consideration examines "[w]hether respondent provided verbal notice of the violative transactions to the employer . . . and whether the employer member verbally acquiesced."[18] It is undisputed that Ng did not provide any type of notice to AllianceBernstein of the existence of either Critical Mass Account. In fact, it was not until E*Trade brought the existence of Ng's Critical Mass account to the attention of AllianceBernstein that the Firm became aware of it. When faced with his lie, Ng acknowledged the existence of the E*Trade Critical Mass account, but continued to hide the existence of the TD Ameritrade account, only acknowledging its existence during this disciplinary proceeding. We find these factors to be aggravating under the facts presented.

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[17] Jay Dubow and John Shasanmi, *The Importance of Having and Following a Strong Public Company Insider Trading Policy*, (Jan. 28, 2013), http://www.pepperlaw.com/publications_article.aspx?ArticleKey=2219.

[18] *Guidelines*, at 16.

We also find aggravating that Ng's misconduct was intentional.[19] NASD Rule 3050(c) itself, and AllianceBernstein's policies and procedures, informed Ng of his reporting requirements under the rule. Ng admits to knowingly failing to follow the Firm's trading requirements. Ng's compliance with NASD Rule 3050(c) with respect to his other E*Trade accounts further evinces that his conduct with respect to the Critical Mass accounts was intentional and not the result of mere oversight. His false annual certifications that he had disclosed all outside brokerage accounts and was in compliance with the Firm's Code of Business Conduct and Ethics support the Hearing Panel's determination that he deliberately concealed the accounts from AllianceBernstein. Ng admitted that he engaged in securities transactions in the E*Trade account while he was associated with AllianceBernstein, including transactions in AllianceBernstein Holding LP securities in January 2008, which were on AllianceBernstein's restricted list at the time. Nor did Ng disclose to AllianceBernstein the existence of the Critical Mass account at TD Ameritrade or the fact that he had engaged in trading in this account, including a purchase and sale of AllianceBernstein Holding LP in August 2007. In fact, while AllianceBernstein learned of, and Ng confessed to, the existence the Critical Mass E*Trade account, he never disclosed the Critical Mass TD Ameritrade account. It was not until the initiation of the FINRA disciplinary investigation that this and the other TD Ameritrade accounts held in the name of his son and wife came to light.

Ng also knew the rule had an additional obligation, which required him to provide the Executing Members with written notice of his association with a broker-dealer. NASD Rule 3050(c) put him on notice of this requirement, and the E*Trade and TD Ameritrade account applications each reinforced the requirement when it asked applicants to disclose their associations with a broker-dealer or securities firm. Ng's false statements to AllianceBernstein and to E*Trade and TD Ameritrade,[20] and the length of time over which the misconduct occurred, 15 years,[21] demonstrate that Ng's misconduct was not the result of a momentary lapse in judgment. To the contrary, Ng's misconduct represented a deliberate and concerted attempt to avoid regulatory supervision and oversight of his personal trading activities.

Moreover, Ng was no newcomer to the securities industry and was aware of his disclosure requirements under NASD Rule 3050(c). *See Keyes*, 2006 SEC LEXIS 2631, at *21 (considering representative's securities industry experience in determining sanctions). He had been employed in the securities industry for nearly 20 years when he joined AllianceBernstein, and he knew that FINRA required registered representatives to disclose their outside brokerage accounts to their employer.

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[19] *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13) (considering whether misconduct was the result of an intentional act, recklessness, or negligence).

[20] *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 8) (considering whether respondent engaged in pattern of misconduct).

[21] *See id.* (Principal Considerations in Determining Sanctions, No. 9) (considering whether respondent engaged in misconduct over extended period of time).

Finally, Ng's glib attitude towards his compliance violations as well his inability to acknowledge the importance of FINRA rules and the three firms' reporting obligations is equally troubling. In his appellate brief, Ng refers to his violations as merely "recordkeeping" in nature and dismisses AllianceBernstein's restrictions on trading as "silly rules" and "over the top." The fact that he does not realize the importance of NASD Rule 3050(c) only increases the risk of Ng repeating such violations in the future. The fact that he cannot, or simply refuses to, acknowledge the egregious nature of his repeated failures to disclose, warrants a considerable sanction. *See Robert Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25 (Nov. 9, 2012).

Ng offers several arguments in favor of mitigation, none of which are convincing. We reject Ng's argument that the Hearing Panel erred when it determined that his conduct was "egregious." As discussed in detail above, Ng's conduct was clearly egregious. Ng also argues for mitigation because of the purported economic losses he has already sustained from his violations. He contends that he lost approximately $120,000 in deferred compensation and was unemployed for 18 months after he was forced to resign from AllianceBernstein. Both FINRA and the SEC have rejected the concept that the harm, economic or otherwise, that befell a respondent as a result of his actions should factor into a sanctions determination. *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) (holding that the Commission does not "consider mitigating the economic disadvantages [the respondent] alleges he suffered because they are a result of his misconduct"); *Dep't of Enforcement v. Jordan*, Complaint No. 2005001919501, 2009 FINRA Discip. LEXIS 15, at *53-54 (FINRA NAC Aug. 21, 2009) (rejecting argument that respondent's contention that her "personal and business reputation [have been] besmirched and livelihood threatened" should warrant a reduction in sanctions). We therefore find that no mitigating factors exist and agree with the Hearing Panel that Ng's misconduct was egregious. We determine that a two-year suspension and $25,000 fine are appropriate sanctions.[22]

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[22] Had we not suspended Ng for two years, a period of time that will require him to requalify as a general securities representative, we would have ordered requalification nonetheless based on his repeated flouting of FINRA Rules. *See Guidelines*, at 5 (General Principles Applicable to All Sanction Determinations 7) (where appropriate, Adjudicators should require a respondent to requalify in any or all capacities).

V. Conclusion

Ng violated NASD Rules 3050(c) and 2110 and FINRA Rule 2010 when he failed to provide written notice of his outside brokerage accounts to his employers, and failed to provide written notice of his broker-dealer employment to the executing member firms. For these violations, we affirm the Hearing Panel's sanctions. Accordingly, we fine Ng $25,000 and suspend him in all capacities for two years. We affirm the Hearing Panel's order to pay $2,368.90 in costs.[23]

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

[23] Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment. We have considered, and reject without discussion, all other arguments of the parties.