FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JENNIFER JORDAN (CRD No. 2814586), Respondent.	Disciplinary Proceeding No. 2005001919501 Hearing Officer—Andrew H. Perkins HEARING PANEL DECISION June 18, 2008

Respondent violated NASD Conduct Rules 2711(h) and 2110 by failing to disclose material conflicts of interest in research reports that were publicly distributed. In addition, Respondent violated Conduct Rules 2210(d)(1)(A) and 2110 by failing to disclose her financial interest in the securities of a company in one research report. For the first violation, the Respondent is fined $10,000 and for the second violation the Respondent is fined $2,500. Respondent is also assessed costs.

Appearances

For the Complainant: Daniel D. McClain and Brian D. Craig, FINRA, DEPARTMENT OF ENFORCEMENT, Washington, DC.

For the Respondent: Steven N. Fuller and William Nortman, AKERMAN SENTERFITT LLP, Fort Lauderdale, FL; and Alexander Jordan, NIXON & PEABODY, LLP, Boston, MA.

DECISION

I. INTRODUCTION

The Department of Enforcement ("Enforcement")[1] filed a three-count Complaint against Jennifer Jordan ("Jordan" or the "Respondent"), a former research analyst with Wells Fargo Securities, LLC ("Wells Fargo"). The Complaint alleged that three research reports Jordan authored on Cadence Design Systems, Inc. ("Cadence") did not disclose certain conflicts of interest and that she thereby violated NASD Conduct Rules 2711(h)(1)(A), 2711(h)(1)(C), 2210(d)(1)(A), and 2110.

The First Cause of Action alleges that Jordan failed to disclose in the Cadence Research Report dated February 4, 2005, that she had applied for the position of Corporate Vice President of Investor Relations with Cadence and scheduled employment interviews with members of Cadence's senior management team. The Second Cause of Action alleges that Jordan failed to disclose in the Cadence Research Report dated March 2, 2005, that she had interviewed with senior members of Cadence's management team. And the Third Cause of Action alleges that Jordan failed to disclose in the Cadence Research Report dated April 28, 2005, that she had accepted Cadence's employment offer to become its Vice President of Investor Relations. The Third Cause of Action further alleges that Jordan failed to disclose the financial interest she acquired under the terms of the Cadence employment offer.

II. PROCEDURAL HISTORY

Enforcement filed the Complaint with the Office of Hearing Officers on March 30, 2007, and Jordan filed her Answer on April 26, 2007. Jordan admitted the factual allegations in the Complaint, but denied that she had violated any rule or regulation.

[1] As of July 30, 2007, NASD consolidated with the member firm regulation functions of the NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA shall include, by reference and where appropriate, references to NASD. FINRA's rules, which include NASD Conduct and Procedural Rules, are available at www.finra.org/rules.

Jordan also raised 15 affirmative defenses, challenging the application of NASD Conduct Rules 2711(h)(1)(A), 2711(h)(1)(C), and 2210(d)(1)(A) under the facts of this case.

In August 2007, both parties filed motions for summary disposition pursuant to Procedural Rule 9264. Enforcement sought summary disposition of its claims that Jordan violated NASD Conduct Rules 2711(h)(1)(A), 2711(h)(1)(C), 2210(d)(1)(A), and 2110 by failing to disclose material conflicts of interest in the three Cadence research reports dated February 4, 2005 ("February Report"), March 2, 2005 ("March Report"), and April 28, 2005 ("April Report"); and failing to disclose a financial interest in Cadence in connection with the April 28, 2005 research report. Jordan sought summary disposition and dismissal of all charges of the Complaint. Jordan asserted that the Complaint must be dismissed with prejudice because: (1) the obligation to disclose conflicts of interest in published research reports under Procedural Rule 2711(h)(1)(C) applies to member firms, not individual research analysts; and (2) the undisputed evidence shows that the three research reports on Cadence were not misleading.

On October 16, 2007, the Hearing Panel granted Enforcement's motion for summary disposition on the issue of liability, denied Jordan's motion for summary disposition, and continued the case for a hearing on sanctions.[2]

The hearing to determine sanctions was held in San Francisco, CA, on April 16, 2008. The Hearing Panel was comprised of the Hearing Officer and two members of the District 1 Committee.

[2] The facts are drawn from the evidence submitted by the parties in support of their motions for summary disposition, including Jordan's statements made during her on-the-record interview on November 1, 2005, and the evidence submitted at the hearing. Citations to the exhibits attached to the Complainant's Memorandum of Points and Authorities are referenced as "Enf. Ex. CX-__." Citations to the exhibits submitted with the Respondent's Statement of Undisputed Relevant and Material Facts are referenced as "Jordan Ex. __." Citations to transcripts of on-the-record interviews will reference the exhibit number, the witness's last name, and the relevant transcript page and line numbers (e.g., Jordan Ex. C, Jordan Tr. at 1, lines 1-4). Citations to the hearing transcript are referenced as "Tr."

III. BACKGROUND

Jordan first entered the securities industry in September 1996 as an associate in institutional sales with Black & Company, Inc. ("Black"), a broker-dealer located in Portland, Oregon.[3] She registered as a General Securities Representative through Black in November 1996. At Black, she worked her way up and eventually transferred into the research department. By 2000, when Black merged into Wells Fargo, Jordan held the position of senior research analyst.

From April 2000 until May 6, 2005, Jordan held the positions of Vice President and Senior Equity Research Analyst with Wells Fargo.[4] On May 10, 2005, Wells Fargo filed a Form U5, Uniform Termination Notice for Securities Industry Registration, on Jordan's behalf.[5] Jordan is no longer registered or associated with a FINRA member firm. Jordan's last registration with FINRA terminated on May 10, 2005. Currently, she is employed as Corporate Vice President of Investor Relations at Cadence where she runs its investor relations department.[6]

IV. JURISDICTION

FINRA retains jurisdiction over Jordan pursuant to Article V, Section 4(a)(i) of FINRA's By-Laws because (1) the conduct that serves as the basis of this disciplinary proceeding commenced prior to the termination of her securities registration, and (2) Enforcement filed the Complaint within two years of the date her registration terminated.

V. FINDINGS OF FACT

As a research analyst for Wells Fargo, Jordan covered approximately 14 companies in three different industry sectors, including companies in the electronic

[3] Tr. 56-57; Jordan Ex. C, Jordan Tr. at 13, 15.

[4] Jordan Ex. C, Jordan Tr. at 12, lines 14-22; Jordan Tr. at 15, lines 8-20; Jordan Ex. B at 1. Jordan also registered as a Research Analyst (Series 86 and 87). *See* Tr. 30, 62.

[5] Jordan Ex. B.

[6] Tr. 56.

design automation industry.[7] One of the companies Jordan covered in the electronic design automation industry was Cadence, a firm headquartered in San Jose, California that sells products and services used to manufacture semiconductor chips.[8] With the assistance of her research associate, Yue-Shun Ho ("Ho"), Jordan wrote research reports about Cadence that were disseminated by Wells Fargo to its institutional sales force and to the public through various outlets, including Bloomberg, Reuters, and Thomson First Call Research services.[9]

A. Cadence Identifies Jordan as a Candidate to Head its Investor Relations Department

In November 2004, Cadence began to search for an individual to head its Investor Relations Department. Cadence hired an executive placement agency to assist in the search. Together, they compiled a list of candidates for the position; Jordan was one of the identified candidates.[10] On or about January 13, 2005, a representative of the executive placement agency called Jordan about the opening at Cadence.[11] Jordan returned the call the following day and expressed her interest in the position.[12] Shortly thereafter, she sent her resume to the executive placement agency for Cadence's consideration.[13] The agency forwarded her resume to Cadence.

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[7] Jordan Ex. C, Jordan Tr. at 22, lines 5-16.

[8] Tr. 58; Jordan Ex. X at 1.

[9] Tr. 59; Jordan Ex. C, Jordan Tr. at 25, lines 12-16; Jordan Tr. at 26, lines 10-12; Jordan Ex. D, Ho Tr. at 22, lines 1-3; Ho Tr. at 110, lines 1-3; Jordan Ex. E, Van Dorsten Tr. at 116, lines 10-12.

[10] Jordan Ex. C, Jordan Tr. at 60, lines 23-25.

[11] Tr. 58; Enf. Ex. CX-2 (e-mail from Cindy Combs to Jordan dated Jan. 13, 2005); Ans. ¶ 9; Jordan Ex. C, Jordan Tr. at 60, lines 23-25.

[12] Enf. Ex. CX-3 (e-mail from Cindy Combs to Bill Porter, dated Jan. 14, 2005).

[13] Jordan Ex. I; Jordan Ex. J.

B. Jordan Interviews for the Cadence Position

Between late January and mid-February 2005, Jordan met with representatives from Cadence on three occasions to discuss her possible employment as the head of Cadence's Investor Relations Department. On January 28, 2005, Jordan scheduled meetings with senior management at Cadence for February 11 and 16.[14] On January 31, 2005, four days before Wells Fargo released the February Report, Jordan met with the managing partner of the executive placement agency to discuss her work experience and the opening at Cadence.[15]

On February 3, 2005, Cadence released its fourth-quarter earnings for 2004.[16] The next day, February 4, Wells Fargo issued the February Report authored by Jordan and her assistant. The report reiterated a "buy" rating for Cadence stock and projected an increased price target of $16 to $18 per share.[17] Jordan did not inform her supervisors or the compliance department at Wells Fargo that she had met with the executive placement agency to discuss the Cadence opening or that she had scheduled meetings with Cadence's senior managers to discuss the position.[18] In addition, Jordan did not inform anyone at Wells Fargo prior to writing the February Report that Cadence had identified her as a candidate to head its Investor Relations Department.[19]

On February 11, 2005, Jordan went to Cadence's corporate offices in Santa Clara, California and met for three hours with its President and Chief Executive Officer, its Chief Financial Officer, and its General Counsel to discuss the investor relations position.[20] During the meeting, they discussed the duties of the job, the fact that the

[14] Enf. Ex. CX-5 (e-mail from Jennifer Mackie to Jordan, dated Jan. 28, 2005).

[15] Jordon Ex. C, Jordan Tr. at 61-62; Ans. ¶ 10.

[16] Jordan Ex. C, Jordan Tr. at 68, lines 13-15.

[17] Jordan Ex. L.

[18] Jordan Ex. C, Jordan Tr. at 72, lines 6-14.

[19] *Id.* at 66-67.

[20] *Id.* at 76-77; Ans. ¶ 13.

successful candidate would report directly to Cadence's CFO, as well as various concerns she had about the position.[21]

Five days later, on February 16, 2005, Jordan again went to Cadence's Santa Clara offices for an interview. On this trip, Jordan met with Cadence's Chairman of the Board.[22] On February 28, 2005, Jordan informed the executive placement agency that she was interested in pursuing the job at Cadence.[23]

Following her interviews, Jordan wrote the March Report, which Wells Fargo released on March 2, 2005. Once again, Jordan reiterated her "buy" rating and projected an $18-per-share price target for Cadence's common stock.[24] Jordan did not disclose to Wells Fargo, and the March Report did not reference, that she had met with senior executives at Cadence to discuss her potential employment as head of Cadence's Investor Relations Department or that she had advised the executive search firm assisting Cadence that she was interested in the position.[25] Jordan also did not seek advice from anyone in Wells Fargo's legal or compliance departments about whether she was required to disclose these facts in her research reports on Cadence.[26]

The explanation Jordan gave at the hearing for not considering disclosure of her potential employment opportunity with Cadence did not address the potential conflict of interest. She testified that "it never entered into [her] mind" that Cadence's opening in its Investor Relations Department would influence her judgment about the company's performance.[27] Nor did she consider her knowledge that "[Cadence] had an open position

[21] Jordan Ex. C, Jordan Tr. at 73, lines 17-20.

[22] *Id.* at 76, lines 12-13.

[23] Enf. Ex. CX-7.

[24] Jordan Ex. O.

[25] *Id.*

[26] Jordan Ex. C, Jordan Tr. at 78-80.

[27] Tr. 61.

for investor relations and that [Cadence was] talking to other people in the industry" to be a material fact that must be disclosed.[28] Based upon her experience, she reasoned that no institutional investor would base its evaluation of a stock on the identity of the person running the issuer's investor relations department. Thus, she saw no need to disclose her efforts to secure that position at Cadence.[29] In her view, any possible issue created by the opening at Cadence was an internal one involving Cadence and its employees.[30]

Jordan's reasoning completely missed the mark. The question upon which she should have focused was whether her pursuit of that position—particularly after February 28 when she told Cadence's search firm she was interested in the job—created a conflict of interest that she was required to disclose. Jordan's reasoning did not examine this critical issue.

C. Cadence Offers Jordan the Position of Vice President of Investor Relations

On March 16, 2005, Cadence's Chief Financial Officer offered Jordan the position of Vice President of Investor Relations.[31] Thereafter, Jordan conducted additional due diligence regarding the offer. She spoke to other investor relations professionals and research analysts who had left broker-dealers for similar positions.[32]

On March 26, 2005, Jordan had a third meeting at Cadence. She met with the Chief Executive Officer of Cadence to discuss the investor relations position and the terms of Cadence's employment offer. Among other things, Jordan sought to clarify and evaluate the relationship she would have with Cadence's senior executives and board

[28] Tr. 61.

[29] Tr. 67.

[30] Tr. 66-67.

[31] Jordan Ex. C, Jordan Tr. at 89, lines 15-19; Jordan Tr. at 90, lines 16-22.

[32] Jordan Ex. C, Jordan Tr. at 92, lines 20-25; Jordan Tr. at 93, lines 1-7.

members.[33] Three days later, Jordan received a letter outlining the terms of Cadence's offer. which included an option to purchase 75,000 shares of Cadence common stock and a grant of 15,000 shares of incentive stock[34]

On March 31, 2005, Jordan responded in writing to Cadence's offer.[35] Jordan wrote that she had "no hesitation about the management with whom [she] would be working should [she] accept the offer." However, she requested further clarification of several points before she made a final decision.

On or about April 6, 2005, Jordan spoke with Cadence's Chief Financial Officer and its General Counsel about the job offer and her response.[36] During that conversation, Cadence's Chief Financial Officer and its General Counsel confirmed that would have the title of Corporate Vice President and that she would be part of Cadence's senior management team.[37] Their assurances allayed Jordan's remaining reservations, and she decided to accept the offer.[38]

D. Jordan Accepts the Cadence Offer and Notifies Wells Fargo

On Friday, April 8, 2005, Jordan called her supervisor at Wells Fargo, Douglas Van Dorsten ("Van Dorsten"), and told him that she had decided to accept a job offer from Cadence.[39] Van Dorsten was Wells Fargo's Director of Research. However, Jordan did not provide Van Dorsten with any details about the Cadence offer or the meetings she had had with Cadence, and they did not discuss at that time whether her changed

[33] Jordan Ex. C, Jordan Tr. at 95, lines 5-12, 24-25; Jordan Tr. at 96, lines 7-10; Jordan Tr. at 99, lines 14-19.

[34] Jordan Ex. P; JX-15, at 2-3.

[35] Jordan Ex. Q.

[36] Jordan Ex. C, Jordan Tr. at 102, lines 24-25; Jordan Tr. at 103, lines 1-6.

[37] Respondent's Statement of Undisputed Facts ¶ 20; Jordan Ex. C, Jordan Tr. at 103, lines 14-20.

[38] Respondent's Statement of Undisputed Facts ¶ 20.

[39] Jordan Ex. C, Jordan Tr. at 35, 40-41, 112.

relationship with Cadence created a potential conflict of interest that she must disclose if she continued to cover Cadence.[40]

Jordan asked Van Dorsten if she should tell John Hullar ("Hullar"), the head of Capital Markets for Wells Fargo, that she had accepted the job at Cadence.[41] She also asked him "what was the appropriate course of action" now that she had made her decision to leave Wells Fargo.[42] Van Dorsten told her that he would speak to Hullar and the Compliance Department and then talk with her further on Monday, April 11, 2005, about how to handle the transition.[43]

The following day, April 9, 2005, Jordan accepted Cadence's offer.[44]

E. Jordan Continues Covering Cadence after Accepting the Cadence Offer

Jordan and Van Dorsten did not speak again until later the following week. When they did speak, Van Dorsten told Jordan that he had talked to Hullar about her leaving and they had decided that they wanted her to continue to cover Cadence to facilitate an orderly transition.[45] Van Dorsten was concerned that they were in the middle of earnings season; he did not want to drop coverage at that time.[46] Van Dorsten also reported that he had raised the issue of her transition at a staff meeting attended by the head of the Compliance Department and that he "had not raised any objections."[47] Van Dorsten and Jordan did not discuss whether she needed to make any disclosures in future reports.[48]

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[40] Jordan Ex. C, Jordan Tr. at 40-41; Tr. 33-34, 97-98, 111.

[41] Jordan Ex. C, Jordan Tr. at 112, lines 9-13.

[42] Tr. 68.

[43] Tr. 65; Jordan Ex. C, Jordan Tr. at 112, lines 8-13.

[44] Jordan Ex. R; Jordan Ex. S.

[45] Tr. 68.

[46] Tr. 35.

[47] Tr. 35.

[48] Tr. 40, 97-98.

She assumed Van Dorsten had covered all of the relevant issues in his discussions with Hullar and the compliance department.[49]

Although neither Van Dorsten nor Jordan had specifically asked anyone in the Compliance Department if she needed to disclose her employment relationship with Cadence, they both concluded that no disclosure was necessary. Jordan testified that she relied on Van Dorsten to make the decision, and Van Dorsten testified that he was not concerned that Jordan would perform in a manner that would create a conflict of interest.[50] Moreover, he felt comfortable that he had sufficient knowledge of the business sector to be able to spot any problems in the substance of any of her reports.[51]

On April 15, 2005, Jordan wrote a letter to Hullar telling him that she had accepted the position of Corporate Vice President of Investor Relations with Cadence and that her last day at Wells Fargo would be May 6, 2005.[52] Jordan set her start date with Cadence to coincide with the end of the earnings season.[53]

On April 21, 2005, Cadence sent Jordan an amended offer letter.[54] The amended offer reflected that her title would be Corporate Vice President instead of Senior Vice President. Otherwise, the terms of the amended offer were identical to the original. On April 27, 2005, Jordan signed the amended offer letter and sent it back to Cadence.

On April 28, 2005, the day after Jordan signed the amended offer letter, Wells Fargo issued another research report on Cadence (the "April Report").[55] Jordan participated in the preparation of the report and approved its content before Wells Fargo

[49] Jordan Ex. C, Jordan Tr. at 41, lines 10-13.

[50] Tr. 36.

[51] Tr. 36.

[52] Jordan Ex. T.

[53] Jordan Ex. C, Jordan Tr. at 116, lines 11-22.

[54] Jordan Ex. V; JX-19.

[55] Enf. Ex. CX-13.

released it to the public.[56] The April Report raised revenue and earnings per share estimates from Jordan's March Report. Jordan did not disclose her impending employment with Cadence in the April Report. In addition, on the same day Wells Fargo issued the April Report, Jordan attended a Cadence management meeting.[57]

Jordan started work at Cadence on May 9, 2005.[58]

VI. CONCLUSIONS OF LAW

A. NASD Conduct Rule 2711

NASD Conduct Rule 2711 is intended "to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions" and "to restore investor confidence in a process that is critical to the equities markets."[59] The Rule implemented "structural reforms designed to increase analysts' independence and further manage conflicts of interest, and require increased disclosure of conflicts in research reports and public appearances."[60]

Rule 2711 includes a number of provisions addressing "research reports" and analysts' "public appearances." Among them is Rule 2711(h), entitled "Ownership and Material Conflicts of Interest," which requires members to disclose in research reports, and research analysts to disclose in public appearances, all actual, material conflicts of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication. In addition, members must disclose in research reports, and research analysts must disclose in public appearances, if the research analyst

[56] Ans. ¶ 26.

[57] Tr. 101.

[58] Ans. ¶ 26; Jordan Ex. C, Jordan Tr. at 136, lines 2-4.

[59] NASD Notice to Members 02-39, 2002 NASD LEXIS 47 (July 2002).

[60] Order Approving Proposed Rule Change Regarding Research Analyst Conflicts of Interest, 67 Fed. Reg. 34968, 34969 (May 16, 2002).

(or a member of the research analyst's household) has a financial interest in the securities of the subject company, and the nature of any such financial interest.[61]

B. NASD Conduct Rule 2210(d)(1)(A)

Conduct Rule 2210(d) requires that sales literature, including research reports, be based on principles of fair dealing, be fair and balanced, and provide a sound basis for evaluating the facts in regard to the particular securities discussed. The rule further provides that no member may omit a material fact if the omission would cause the communication to be misleading and prohibits members from making false, exaggerated, unwarranted, or misleading statements in communications with the public.[62] Moreover, IM-2210-1(6)(A) requires a member in making a recommendation in sales material to disclose if the member has any financial interest in the recommended security or any related security. Further, the member is required to disclose the nature of such financial interest, including whether the interest consists of any options or warrants on the recommended security.

The test for materiality under both rules is whether a reasonable investor would consider the information significant with respect to his investment decisions.[63] A misstated or omitted fact is material if a reasonable investor would have viewed the fact as having altered the "total mix" of information available to him.[64]

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[61] *See* NASD Conduct Rule 2711(h)(1).

[62] *See Department of Enforcement v. Donner Corp.*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *67 (Mar. 9, 2006). NASD Rule 115 extends NASD rule requirements to persons associated with a member. *See Department of Enforcement v. Keyes*, No. C022040016, 2005 NASD Discip. LEXIS 9 (Dec. 28, 2005).

[63] *See Donner*, 2006 NASD Discip. LEXIS 4, at *34 (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988)).

[64] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

C. Summary Disposition

On October 16, 2007, the Hearing Panel granted Enforcement's motion for summary disposition as to liability and continued the case for a hearing on sanctions.[65] The Hearing Panel determined that there was no genuine issue with regard to any material fact and that Enforcement was entitled to summary disposition as a matter of law on the issue of liability.[66]

Jordan interposed several legal defenses, which the Hearing Panel rejected. First, Jordan contended that Conduct Rule 2711(h) applied only to FINRA member firms, not associated persons. Second, Jordan contended that she could not be found to have violated Conduct Rule 2210(d) absent a finding that she violated Conduct Rule 2711(h).[67] Jordan argued that liability under Conduct Rule 2210(d) is derivative of a violation of Conduct Rule 2711(h).[68] Finally, Jordan contended that she did not need to disclose any of the facts and circumstances concerning her employment relationship with Cadence, including the terms of her employment offer, because they were not material facts, the omission of which would cause the Cadence research reports she authored to be misleading.[69] The Hearing Panel rejected Jordan's arguments.

Conduct Rule 2711(h) requires research analysts to disclose actual, material conflicts of interest in research reports published by their firms. In *Department of Enforcement v. Asensio Brokerage Serv. Inc.*, No. CAF030067, 2006 NASD Discip. LEXIS 20, at *40 (July 28, 2006) the National Adjudicatory Council ("NAC") held that NASD Conduct Rule 2711(h) applied to the analysts who author research reports on

[65] Order Granting in part and Denying in part Complainant's Mot. for Summ. Disp. and Denying Respondent's Mot. for Summ. Disp. (Oct. 16, 2007).

[66] *See* NASD Procedural Rule 9264(e); *Justin F. Ficken*, Exchange Act Release No. 54,699, 2006 SEC LEXIS 2547, at *14 (Nov. 3, 2006).

[67] Jordan likewise argued that the Hearing Panel must dismiss the charge that she violated Conduct Rule 2110 because it is derivative of a finding that she violated Conduct Rule 2711(h).

[68] Respondent's Mot. for Summ. Disposition and Supporting Mem. of Law at 21-22.

[69] *Id.*

behalf of their firms. The NAC specifically held that NASD Rule 115(a) made rules such as Conduct Rules 2711 and 2210 that are applicable to members also applicable to persons associated with members.[70]

The primary obligation under Conduct Rule 2711(h) to disclose actual, material conflicts *of the research analyst*—which the *research analyst knows*—rests with the research analyst. The unambiguous wording of Rule 2711(h) applies to research analysts' conflicts and knowledge. For instance, Rule 2711(h)(1)(A) specifically refers to disclosure of analysts' and their immediate family members' financial interests in the securities of the company that is the subject of a research report. Without question, to carry out the Rule's intended purposes "to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions" and "to restore investor confidence in a process that is critical to the equities markets,"[71] the Rule must obligate research analysts to disclose actual, material conflicts.

The obvious intent of Rule 2711(h) is to require research analysts to disclose all actual, material conflicts even though the member has the ultimate responsibility to include the information in the published research report. Without disclosure by the analyst, the firm cannot include the information in the published report rendering that provision of Rule 2711(h) meaningless.[72] Moreover, if FINRA had intended to limit disclosure in research reports to conflicts known to the member rather than the analyst, FINRA could have drafted the Rule with that limitation. On the other hand, by focusing

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[70] *Asensio*, 2006 NASD Discip. LEXIS at *40, n.25. NASD Rule 115(a) states, "These Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules."

[71] NASD Notice to Members 02-39, 2002 NASD LEXIS 47 (July 2002).

[72] The Hearing Panel further notes that a member can only act through its employees. *See, e.g., Department of Market Regulation v. Yankee Financial Group, Inc.*, No. CMS030182, 2006 NASD Discip. LEXIS 21, at *59-60 (Aug. 4, 2006), *aff'd sub nom. Richard F. Kresge*, Exchange Act Release No. 55,988, 2007 SEC LEXIS 1407 (June 29, 2007).

on the analyst's knowledge, FINRA clearly intended Rule 2711(h) to apply to research analysts as well as members.

Next, the Hearing Panel determined that the information she failed to disclose concerning her employment at Cadence was material. The Hearing Panel concluded that a reasonable investor would consider the information regarding Jordan's impending employment at Cadence significant with respect to his investment decisions. The relationship between Jordan and Cadence could be viewed as an incentive to report favorably about, or to suppress or tone down negative aspects of, Cadence's business prospects and financial status.[73] Contrary to Jordan's argument, whether the omitted information is material does not depend on a finding that any other facts or statements in the reports were false or misleading.[74]

The Hearing Panel further found that the facts and circumstances surrounding Jordan's contacts with Cadence, taken in their entirety, created an "actual conflict of interest," as that term in used in Rule 2711(h). An "actual conflict of interest" exists where the facts create a reasonable impression of partiality. The term "actual conflict of interest" means a real or genuine conflict, as opposed to a conflict that is hypothetical or theoretical. Jordan's active pursuit and acceptance of employment at Cadence clearly created a reasonable impression of partiality. Accordingly, the Hearing Panel concluded that Jordan violated Conduct Rule 2711(h) by not disclosing those facts in the March and April Reports.[75]

At the sanctions hearing Jordan expanded upon her arguments. She construed the panel's order granting summary disposition to Enforcement on the issue of liability as

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[73] *Cf. Department of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17 (N.A.C. June 25, 2001) (fact that the covered company paid printing and publication costs of a report was held to constitute a material fact that should have been disclosed in the published report).

[74] *See* Respondent's Reply Br. to Complainant's Opp'n to Respondent's Mot. for Summ. Disposition at 8.

[75] The Hearing Panel found that Enforcement did not prove a violation with respect to the February Report, which is the subject of the First Cause of Action.

holding that every discussion about potential employment with a representative of a covered company must be disclosed regardless of the content of the conversation.[76] With this argument, she raised the policy concern that the Hearing Panel's decision will have an undesirable chilling effect on research analysts' ability to seek out new career opportunities if they have to advise their current employers that they are considering a change. However, Jordan's argument intentionally ignores the language of the Hearing Panel's order, the text of Conduct Rule 2711(h), and the specific facts and circumstances of this case.

Whether an actual, material conflict of interest exists, and therefore must be disclosed pursuant to Conduct Rule 2711(h), depends upon the facts and circumstances known to the research analyst. Here, Jordan did far more than her argument suggests. She did not just accept a telephone call from an executive recruiter soliciting interest in possible candidates to fill an open position. To the contrary, Jordan engaged in a series of substantive meetings with the most senior executives at Cadence and negotiated the terms of Cadence's original offer while she continued to hold herself out as an impartial analyst. Then, after a month of meetings and negotiations, she entered into an employment contract, which provided that a material portion of her total compensation would be in the form of stock and options. These factors collectively were significant to a reasonable investor with respect to investment decisions. They created a reasonable impression of partiality, which she was required to disclose pursuant to Conduct Rule 2711(h).

Finally, the Hearing Panel found that Jordan failed to disclose her financial interest in the securities of Cadence. Under her employment contract, Jordan was entitled to receive 15,000 shares of common stock as incentive compensation as well as an option to purchase an additional 75,000 shares over the first four years of her employment.

[76] *See* Tr. 117, 120.

NASD Conduct Rule 2711(h)(1) broadly defines the term "financial interest in the securities" to include "without limitation … any option, right, warrant, future, long or short position[.]" Jordan's interest under the terms of her employment agreement with Cadence meets this definition. For the purposes of Conduct Rules 2711(h) and 2210(d), her interest in the securities of Cadence was sufficiently tangible as to require disclosure. The theoretical possibility that Cadence's board of directors might not grant her the stock and options specified in her employment agreement was too remote to support her argument that she never acquired a financial interest in Cadence stock before she left Wells Fargo. The evidence showed that Jordan and Cadence treated the contingencies as mere formalities. Moreover, from reasonable investor's perspective, her financial interest was sufficient to create a reasonable impression of partiality. Accordingly, the Hearing Panel found that Jordan violated Conduct Rule 2711(h) by failing to disclose her financial interest in the securities of Cadence in the last report issued on April 28, 2005.

D. Conduct Rule 2210(d) and IM-2210-1(6)(A)

Jordan's failure to disclose her financial interest in the securities of Cadence also constitutes a violation of Conduct Rule 2210(d)(1)(A). IM-2210-1(6)(A)(ii) specifically requires members and associated persons to disclose if they have financial interests in recommended securities unless the extent of the financial interests is nominal.[77] The Hearing Panel rejects Jordan's argument that a violation of Rule 2210(d)(1)(A) and IM-210-1(6)(A) requires a showing that the research report is otherwise misleading. Jordan cannot excuse her omission by arguing that the remainder of the report is accurate.

[77] As stated above, Rule 115(a) makes Conduct Rule 2210 applicable to associated persons as well as members. *See also* NASD Notice to Members 99-79, 1999 NASD LEXIS 50, at *21 (Sept. 1999) (IM-2210-1(6)(A) clarified that "a member making a recommendation in sales material must disclose if the member or any officer, director, *or the associated person making the recommendation* has any financial interest in the recommended security or any related security.") (emphasis added).

E. Reliance on Wells Fargo

Jordan argued that she could not be found to have violated either Conduct Rule 2711(h) or 2210(d) because Wells Fargo approved her continued coverage of Cadence after she told her supervisor that she was leaving Wells Fargo to accept a position at Cadence. Jordan argued that she was entitled to rely on Wells Fargo's apparent conclusion that the matter of her future employment with Cadence was not a material conflict.[78]

The Hearing Panel rejected this argument for two reasons. First, Jordan cannot shift her responsibility for compliance with applicable rules and regulations to her supervisors. "As a registered person in the securities industry, [Jordan] had a duty to comply with applicable laws, and that duty cannot be avoided by reliance on an employer."[79] As the author of the Cadence research reports, Jordan had an independent duty to ensure that the information in the report was not misleading and that material information was not omitted.[80] Second, even if she were entitled to rely on the advice of a supervisor under certain circumstances, she could not do so here because she did not fully apprise her supervisor of all relevant facts to enable him to assess the situation. Jordan testified that she told her supervisor that she was going to accept an offer from Cadence and nothing more. She did not disclose the terms of the offer or give any details regarding the meetings and negotiations she had with the senior executives at Cadence. Thus, her assumption that Wells Fargo had determined that there was no actual, material conflict of interest was unfounded. Her supervisor and others at Wells Fargo could not have formulated an informed opinion regarding the conflict of interest issue because Jordan had not given them complete information about her relationship with Cadence.

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[78] *See* Respondent's Reply to Complainant's Opp'n to Respondent's Mot. for Summ. Disposition at 12.

[79] *Donner*, 2006 NASD Discip. LEXIS 4, at *59 (Mar. 9, 2006) (citing *Richard H. Morrow*, 53 S.E.C. 772, 779 n.10 (1998) and *Department of Enforcement v. Faber*, No. CAF1009, 2003 NASD Discip. LEXIS 3, at *31 (N.A.C. May 7, 2003), *aff'd*, 2004 SEC LEXIS 277 (Feb. 10, 2004)).

[80] *Donner*, 2006 NASD Discip. LEXIS 4, at *60.

VII. SANCTIONS

The Hearing Panel considered the FINRA Sanction Guidelines ("Guidelines") principal considerations and the specific considerations for each violation in deciding upon the appropriate sanctions in this case. The Guidelines for negligent violations of the disclosure requirements of Conduct Rule 2711(h) recommend a fine of $5,000 to $100,000 and a suspension for up to 60 business days.[81] For cases involving intentional or reckless misconduct, the Guidelines recommend a fine of $10,000 to $200,000 and a suspension of 60 business days to two years. In egregious cases, the Guidelines recommend a larger fine and a longer suspension or a bar.

The Guidelines for use of misleading public communications recommend a fine of $1,000 to $20,000.[82] In egregious cases, the Guidelines recommend suspending the responsible individual for up to 60 days.

The Hearing Panel first determined that Jordan did not violate her disclosure obligations deliberately. Nor had she engaged in any other misconduct that she tried to cover up by omitting the disclosures.[83] Rather, her violations stem from her failure to identify the circumstances that triggered her disclosure obligations. Jordan admitted that the question of whether she should disclose her employment negotiations and offer never entered her mind, and the evidence showed that neither her father, an attorney who was acting as her personal advisor with respect to her negotiations with Cadence, nor her supervisor at Wells Fargo brought the issue of disclosure to her attention. As to the issue of her financial interest in Cadence under her employment agreement, Jordan testified that she did not consider disclosure because in her view she did not yet own any Cadence securities. She testified that her right to acquire Cadence stock and options was

[81] FINRA Sanction Guidelines 98 (2007) (Research Analysts and Research Reports), http://www.finra.org/RegulatoryEnforcement/FINRAEnforcementMarketRegulation/FINRASanctionGuidelines/index.htm.

[82] Guidelines 84 (Communications with the Public).

[83] *See* Guidelines 7 (Principal Considerations in Determining Sanctions, No. 13).

contingent on a number of factors, including approval of the grants by the Cadence board of directors. Accordingly, she did not believe that she owned a financial interest in Cadence at the time Wells Fargo published the April Report. While Jordan's interpretation of the rules was too narrow, the Hearing Panel found no reason to question her integrity. She erred in assessing her disclosure obligations; there is no evidence that she withheld disclosure for any improper purpose.[84]

Next, the Hearing Panel considered the following mitigating factors. First, Jordan's misconduct did not harm any customers or other members of the investing public.[85] Enforcement did not allege, and there is no evidence, that Jordan's employment opportunity influenced her judgment about Cadence. Indeed, her reports were in line with others issued at the same time. None of the reports contained biased or inaccurate information about Cadence. Second, her misconduct did not have the potential to benefit her monetarily.[86] For example, Jordan did not alter her judgment about Cadence to secure more favorable terms of employment. Third, Jordan cooperated throughout the investigation of this matter. She testified truthfully at her on-the-record interviews; she did not attempt to conceal her actions or otherwise mislead FINRA.[87]

The absence of culpable intent and the aberrant nature of Jordan's misconduct, along with the mitigating factors discussed above, lead the Hearing Panel to conclude that a fine on the low end of the recommended sanctions for these violations is sufficient. Accordingly, the Hearing Panel will fine Jordan $10,000 for violating Conduct Rule 2711(h) and an additional $2,500 for violating Conduct Rule 2210(d)(1)(A).

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[84] In addition, there is no evidence that Cadence attempted to influence Jordan's judgments concerning the company improperly.

[85] *See* Guidelines 6 (Principal Considerations in Determining Sanctions, No. 11).

[86] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

[87] *Id.* at 6-7 (Principal Considerations in Determining Sanctions, Nos. 10 and 12). *See Department of Enforcement v. Trevisan*, 2008 FINRA Discip. LEXIS 12, at *29.

VIII. ORDER

Jennifer Jordan violated Conduct Rules 2711(h) and 2110 by failing to disclose material conflicts of interest in research reports she prepared. For this violation, Jordan is fined $10,000. [88] In addition, the Hearing Panel finds that Jordan violated Conduct Rules 2210(d)(1)(A) and 2110 by failing to disclose her financial interest in Cadence securities in one research report on Cadence. For this violation, Jordan is fined $2,500. Jordan also is ordered to pay costs of $1,958.28, which includes an administrative fee of $750 and the cost of the hearing transcript. These sanctions shall be effective on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

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Andrew H. Perkins, Hearing Officer
For the Hearing Panel

Copies sent to:

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[88] The Hearing Panel considered and rejected without discussion all other arguments of the parties.