

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFF NG
(CRD No. 1234807),

Respondent.

Disciplinary Proceeding
No. 2009019369302

Hearing Officer—Andrew H. Perkins

AMENDED HEARING PANEL
DECISION

June 14, 2012

Respondent is suspended for two years from associating with any member firm in any capacity and fined \$25,000 for failing to notify his employer firm in writing, that he had undisclosed outside brokerage accounts at two other member firms, and for failing to notify those firms that he was associated with a FINRA member firm, in violation of NASD Conduct Rules 3050(c) and 2110, and FINRA Rule 2010. Respondent is also ordered to pay costs.

Appearances

For Complainant: Sandra J. Harris, Los Angeles, CA; and Samuel L. Barkin, New York, NY, FINRA, DEPARTMENT OF ENFORCEMENT.

For Respondent: Jeff Ng, pro se.

AMENDED DECISION¹

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) initiated this disciplinary proceeding against Respondent Jeff Ng (“Ng”), a former General Securities Representative and Financial and Operations Principal with AllianceBernstein Investments, Inc., a FINRA member firm. The Complaint alleges that Ng failed to

¹ This Decision is amended to correct the description of Exhibit CX-38 at page eight of the Decision.

provide written notice of his outside brokerage accounts to AllianceBernstein, and failed to provide written notice of his association with AllianceBernstein to the brokerage firms where he maintained his outside accounts, in violation of NASD Conduct Rules 3050(c) and 2110, and FINRA Conduct Rule 2010.² 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 in August 2007 without AllianceBernstein's approval although the firm's securities were on its restricted list at that time.

Ng filed an Answer on September 21, 2011. Ng admitted that he had not disclosed his outside accounts to AllianceBernstein, and he raised two affirmative defenses to the Complaint. First, Ng asserted that further sanctions were not warranted because he had been unemployed for 18 months after he left AllianceBernstein. Ng argued that a further sanction would be excessive. Second, Ng asserted that FINRA lacked jurisdiction because: (1) he had never intended to use his securities licenses at AllianceBernstein and his job duties at AllianceBernstein did not require that he be registered; and (2) his licenses had expired by the time Enforcement filed the Complaint.

II. PROCEDURAL HISTORY

The Initial Pre-Hearing Conference was held on October 20, 2011. Following the Initial Pre-Hearing Conference, the Hearing Officer issued a pre-hearing schedule and, with the parties' agreement, set the case for hearing in New York City on April 4, 2012.³

² On July 26, 2007, the Securities and Exchange Commission approved a proposed rule change filed by NASD to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority ("FINRA"), in connection with the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the NEW York Stock Exchange ("NYSE"). *See* Securities Exchange Act Rel. No. 56146, 2007 SEC LEXIS 1641 (July 26, 2007) (SR-NASD-2077-053). Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA rules. The first phase of the consolidated rules became effective on December 15, 2008. The substantive rules that apply are those that existed at the time of the conduct at issue.

³ The parties also requested that a mediator be appointed. The mediation was not successful.

The hearing was conducted by a hearing panel composed of the Hearing Officer and two current members of FINRA’s District 10 Committee.

Before the hearing, the parties submitted a Stipulation as to Facts and Documents dated March 12, 2012.⁴ Ng attached an “Additional Statement” to the stipulation to clarify that he did not contest the factual allegations in the Complaint regarding his outside brokerage accounts. At the beginning of the hearing on April 4, 2012, the Hearing Panel confirmed that Ng did not contest liability and that the only issue before the Hearing Panel was a determination of sanctions.⁵

Enforcement called Ng and two other witnesses to testify at the hearing—Jeff Silver (“Silver”), in-house counsel for AllianceBernstein, and Andrew S. LoVerso (“LoVerso”), a Senior Investigator with FINRA’s Central Review Group. In addition, Enforcement submitted 52 exhibits (CX-1 through CX-52). Ng testified on his own behalf and submitted one exhibit (RX-1). All of the exhibits were admitted into evidence.

For the reasons discussed below, the Hearing Panel found that Ng committed the violations alleged in the Complaint.

III. FINDINGS OF FACT

A. Jeff Ng

Ng entered the securities industry in 1982. In November 2001, he joined AllianceBernstein and was registered as a General Securities Representative and a Financial and Operations Principal from February 13, 2003, until August 26, 2009.⁶ Although Ng was a registered broker, his position at AllianceBernstein did not require that he be licensed. During his entire tenure at AllianceBernstein, he worked in the Client Guideline Management group, which was responsible for assuring that investments were

⁴ Stipulation as to Facts and Documents (Mar. 12, 2012) (“Stip.”).

⁵ Tr. 15.

⁶ CX-1, at 1 (CRD Registration Summary).

made in accord with the clients' investment constraints and guidelines.⁷ Ng is currently associated with another FINRA member firm where he holds a similar back office position.⁸

AllianceBernstein terminated Ng's employment on August 21, 2009, after the firm discovered that he had an undisclosed brokerage account at E*Trade in violation of the firm's policies.⁹ AllianceBernstein filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on August 26, 2009, which reflected that Ng was permitted to resign.¹⁰ FINRA opened an investigation that led to this disciplinary proceeding after FINRA received the Form U5.¹¹

B. Failure to Disclose Outside Brokerage Accounts

During the relevant period and 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 the two accounts he opened in the name of Critical Mass.¹² Ng disclosed to AllianceBernstein his four personal accounts, his wife's account, and one child's account. He maintained each of those accounts at E*Trade. Ng stipulated that he did not disclose the two Critical Mass accounts, one at E*Trade and the other at TD Ameritrade. He also admitted during his testimony at the hearing that he did not disclose the other child's account that he maintained at TD Ameritrade.¹³ The Complaint only charged Ng with failure to disclose the two Critical Mass accounts.

⁷ Tr. 24; CX-6.

⁸ Tr. 58.

⁹ CX-10; Tr. 78.

¹⁰ CX-3.

¹¹ Tr. 89.

¹² CX-32, at 1. Ng referred to the Critical Mass partnership accounts as investment club accounts.

¹³ Tr. 104; CX-45.

1. Undisclosed Critical Mass E*Trade Account

In August 1994, Ng opened an account at E*Trade for a partnership known as Critical Mass. Ng is listed on the new account documents as the account holder, and he signed the E*Trade Direct Account Application.¹⁴ His brother also signed the application as the co-account holder. Ng made all of the trading decisions in the account.¹⁵

Ng provided false information about his occupation on the E*Trade Direct Account Application.¹⁶ He listed his occupation as Landscape Architect; he did not disclose to E*Trade that he was employed by a FINRA member firm.¹⁷ He placed a dash in the space provided on the form to answer the following question: “Is Account Holder or Co-Account Holder employed by or affiliated with a securities firm”¹⁸ Ng admitted at the hearing and in the Stipulation that his responses were false.¹⁹

Ng also 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 securities were on AllianceBernstein’s restricted list at the time.²⁰ The transactions in AllianceBernstein Holding, LP securities violated AllianceBernstein’s policies.²¹ Ng did not disclose the E*Trade account or the securities holdings in this account to AllianceBernstein in Annual Holdings Reports and Quarterly Transactions Reports that he submitted to

¹⁴ CX-7; Tr. 28.

¹⁵ Tr. 29.

¹⁶ Tr. 30.

¹⁷ Tr. 31.

¹⁸ CX-7, at 2.

¹⁹ Tr. 30; Stip. ¶ 9.

²⁰ Stip. ¶¶ 12-15.

²¹ *Id.* ¶ 15.

AllianceBernstein.²² In addition, Ng did not disclose to E*Trade that he was associated with AllianceBernstein.²³

2. Undisclosed Critical Mass TD Ameritrade Account

In October 2003, Ng and his wife opened an account in the name of Critical Mass at TD Ameritrade. Ng signed the TD Ameritrade Specialty Account Application.²⁴ In the section of the TD Ameritrade application entitled “Trustee/Authorized Agent/Officer Information,” Ng identified himself as “General Partner.”

Ng made false statements on the TD Ameritrade application as he had on 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.**” (Emphasis in original.) The section of the application entitled “Entity Information” contained a similar statement but substituted “any Trustee/Officer/Authorized Agent” for “you.”²⁵ 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.²⁶ In addition, in the spaces on the TD Ameritrade application for “Occupation” and “Employer Name,” Ng responded “Landscaping” and “Landscaping Inc.,” respectively.²⁷

²² *Id.* ¶ 16; Tr. 32.

²³ Stip. ¶ 17; Tr. 31.

²⁴ CX-14, at 2, 4.

²⁵ CX-14, at 2.

²⁶ *Id.*; Stip. ¶ 22; Tr. 34.

²⁷ CX-14, at 2.

These responses were false; at the time, Ng was associated with AllianceBernstein, and he was not employed as a landscaper.²⁸

Ng further admitted that he engaged in securities transactions in the TD Ameritrade account, including transactions in AllianceBernstein Holding LP, while he was associated with AllianceBernstein.²⁹ On or about August 16, 2007, Ng purchased 65 units of AllianceBernstein Holding LP, which he sold on or about August 21, 2007. At the time of Ng's August 2007 trades, AllianceBernstein Holding LP was on AllianceBernstein's restricted list and his trades violated the firm's policies.³⁰

Ng did not disclose the TD Ameritrade account or his trading in this account to AllianceBernstein, including in Annual Holdings Reports and Quarterly Transactions Reports that he submitted to AllianceBernstein.³¹ In addition, TD Ameritrade was not on AllianceBernstein's list of approved outside brokerage firms.³²

Ng did not disclose his association with AllianceBernstein to TD Ameritrade.³³ In AllianceBernstein's Annual Certificate of Compliance forms that Ng filed in 2007, 2008, and 2009, he represented that he was in compliance with AllianceBernstein's Code of Business Conduct and Ethics, including the requirements regarding the manner in which he maintained and reported his securities holdings and transactions in his personal accounts and conducted his personal securities trading activities.³⁴ These representations were untrue.³⁵

²⁸ Stip. ¶ 23; Tr. 34-35.

²⁹ Stip. ¶ 24.

³⁰ *Id.* ¶ 27; Tr. 44. In contrast, Ng testified that he maintained other disclosed outside brokerage accounts in which he obtained clearance for purchases and sales of AllianceBernstein Holding LP's securities. Tr. 41.

³¹ Stip. ¶ 28; CX-18; CX-19; CX-20; CX-21; CX-22; CX-23; CX-24; CX-25 and CX-26.

³² Tr. 70.

³³ Stip. ¶ 29.

³⁴ *Id.* ¶ 30; CX-10; CX-27.

³⁵ Stip. ¶ 31.

IV. CONCLUSIONS OF LAW

NASD Rule 3050(c) provides that an associated person shall notify his member firm in writing about any accounts he maintains at a brokerage firm and notify the brokerage firm in writing about his association with the employer firm.

The undisputed record establishes that Ng did not make the required disclosures to AllianceBernstein. Ng stipulated that he failed to notify AllianceBernstein in writing that he maintained the Critical Mass securities accounts at E*Trade and TD Ameritrade. And his failure to disclose the accounts was not an 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 intentionally concealed the accounts from AllianceBernstein.

Moreover, Silver, in-house counsel for AllianceBernstein, testified that the firm did not learn of the E*Trade account until E*Trade called about the account.³⁶ E*Trade reported that Ng had assured E*Trade that the account was "non-reportable" under AllianceBernstein's policies.³⁷ Silver then followed up with Ng about the E*Trade account. In a conversation with Ng on August 6, 2009, the substance of which Ng memorialized in an email to Silver on the same day,³⁸ Ng denied that he had any active involvement with the E*Trade account.³⁹ 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.⁴⁰ 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 years, [he] had

³⁶ Tr. 72.

³⁷ Tr. 73.

³⁸ CX-38.

³⁹ Tr. 74-75.

⁴⁰ *Id.* at 75.

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.”⁴¹ 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.⁴²

Although Ng apologized for misleading Silver about the E*Trade account, Ng failed to disclose the TD Ameritrade account at any time.⁴³

The record also establishes that Ng failed to provide written notification to E*Trade and TD Ameritrade about his status as an associated person. Ng admitted his failures to notify these firms about his association with AllianceBernstein. Accordingly, the Hearing Panel finds by a preponderance of the evidence that Ng violated NASD Rules 3050(c) and 2110, and FINRA Rule 2010.⁴⁴

V. SANCTIONS

The FINRA Sanction Guidelines (“Guidelines”) for failure to comply with NASD Conduct Rule 3050 recommend a fine ranging from \$1,000 to \$25,000 and, in egregious cases, a suspension for up to two years or a bar against an individual respondent.⁴⁵ The Guidelines list two applicable principal considerations in determining sanctions for a violation of Rule 3050. First, whether the violative transactions presented real or perceived conflicts of interest for respondent’s employer firm or its customers. Second,

⁴¹ CX-39, at 2.

⁴² *Id.* at 3.

⁴³ Tr. 76.

⁴⁴ *Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012).

⁴⁵ FINRA Sanction Guidelines 16 (2011), available at www.finra.org/oho (then follow “Enforcement” hyperlink to “Sanction Guidelines”).

whether the respondent provided verbal notice of the violative transactions to respondent's employer firm, and whether the firm verbally acquiesced in the transactions.⁴⁶

Rule 3050(c) is intended to prevent associated persons from engaging in improper trading "by providing the employer member with more complete knowledge of its associated persons' trading activities."⁴⁷ The written notification requirement allows member firms to create and enforce internal compliance procedures and "facilitate more direct and early detection of the existence of potential rule violations," such as conflicts of interest with the firm or its customers.⁴⁸ "A firm's ability to effectively monitor and address trading activity that may result in violative conduct is therefore highly dependent on the receipt of accurate and comprehensive information about an associated person's brokerage accounts."⁴⁹

Ng's misconduct was egregious. Ng failed to disclose his outside brokerage accounts and firm associations over the course of more than 15 years as to the E*Trade account and more than five years as to the TD Ameritrade account.⁵⁰ In addition, Ng concealed the outside brokerage accounts and personal trading activities from his employer.⁵¹ When Ng opened the subject outside accounts he deliberately stated that he was employed in the landscaping business. He withheld any information about his employment in the securities business. Moreover, Ng falsely stated on the

⁴⁶ *Id.*

⁴⁷ NASD Notice to Members 91-27, http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=1200

⁴⁸ *Id.*

⁴⁹ *Braff*, 2012 SEC LEXIS 620, at *20.

⁵⁰ *See* Sanction Guidelines at 6 (Principal Consideration 9) (considering whether the misconduct occurred over an extended period of time).

⁵¹ *Id.* at 7 (Principal Consideration 13) (considering whether the respondent's misconduct was the result of an intentional act, recklessness or negligence); *id.* at 6 (Principal Consideration 10) (considering whether the respondent attempted to conceal his misconduct).

AllianceBernstein annual holdings reports for the years 2006, 2007, and 2008 that he did not have any undisclosed outside brokerage accounts. Nonetheless, Ng did not list the two Critical Mass partnership accounts. Ng also signed Annual Certificates of Compliance for the years 2007, 2008, and 2009 while he was associated with AllianceBernstein, stating

I have reviewed my own situation and conduct in light of the Code [of Business Conduct and Ethics]. I confirm that I am in compliance with the Code, including the requirements regarding the manner in which I maintain and report my Securities holdings and transactions in my Personal Accounts ... and conduct my personal securities trading activities.⁵²

The certifications were false. Ng failed to comply with AllianceBernstein's policies and procedures regarding the reporting of all his securities holdings and transactions. In addition, when Silver first confronted Ng about his undisclosed E*Trade account, Ng lied about his involvement with the account.

The Hearing Panel also finds aggravating that Ng's misconduct was intentional. He had nearly 20 years' experience in the securities industry when he joined AllianceBernstein, and he admittedly knew that FINRA required registered representatives to disclose their outside brokerage accounts to their employers. In addition, AllianceBernstein's policies and procedures informed Ng of his reporting requirements under Rule 3050(c), as did E*Trade's and TD Ameritrade's new account applications when they asked applicants to disclose their association with a broker-dealer or securities firm. Indeed, Ng had complied with Rule 3050(c) when he notified AllianceBernstein about his other E*Trade accounts. These factors are strong evidence that Ng's misconduct was not the result of negligent oversight.⁵³ "To the contrary, [Ng's]

⁵² CX-27.

⁵³ See *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *32-33 (NAC May 13, 2011) (finding aggravating respondent's long tenure in the securities industry, the language of the outside brokerage account applications, his previous compliance with Rule 3050(c)), *aff'd sub nom Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012).

misconduct represented a concerted attempt to avoid regulatory supervision and oversight of his personal trading activities. The intentional nature of [Ng's] misconduct is aggravating.”⁵⁴

The Hearing Panel also considered aggravating the fact that Ng traded securities issued by AllianceBernstein Holding LP, which were on AllianceBernstein's restricted list, without his firm's permission.

Ng's trading in his personal accounts created, at a minimum, the potential for conflicts of interest with the firm with which he was an associated person and their customers, and is precisely the kind of activity that the Rule 3050(c) was meant to address. Ng's failure to disclose his brokerage accounts and trading activity undermined AllianceBernstein's ability to detect actual or potential conflicts of interest, or other violative conduct.⁵⁵

Finally, the Hearing Panel considered solely for the purposes of sanctions that Ng maintained an undisclosed outside brokerage account in the name of his wife and daughter at TD Ameritrade while he was associated with AllianceBernstein.⁵⁶ Ng first disclosed this account to FINRA during its investigation.⁵⁷ In addition, the new account application for this account reflects that Ng provided TD Ameritrade false information about his employment. The new account application shows that Ng claimed he was a computer software consultant.⁵⁸ “Although this evidence was not alleged in the

⁵⁴ *Bruff*, 2011 FINRA Discip. LEXIS 15, at *33.

⁵⁵ See Sanction Guidelines at 16, 6 (Principal Considerations 1 and 11) (considering whether the violation presented real or perceived conflicts of interest for the employer firm and/or customers and whether the respondent's misconduct resulted directly or indirectly in injury to investing public, employer firm, and/or other market participants).

⁵⁶ Tr. 104.

⁵⁷ Tr. 104.

⁵⁸ CX-45, at 2.

complaint, it ‘is similar to the misconduct charged in the complaint [and] is admissible to determine sanctions.’”⁵⁹

Ng argued that the Hearing Panel should consider mitigating the economic hardship he suffered from the loss of his position at AllianceBernstein. Ng testified that he lost approximately \$120,000 in deferred compensation and was unemployed for 18 months after he left AllianceBernstein. However, FINRA and the Securities and Exchange Commission have rejected the concept that the harm, economic or otherwise, that befell a respondent as a result of his actions or FINRA’s proceedings should factor into a sanctions determination.⁶⁰ Accordingly, the Hearing Panel gave no consideration to these factors in determining sanctions.

Upon consideration of the entire record, the Hearing Panel concludes that the appropriate sanctions are a \$25,000 fine and a two-year suspension in all capacities. These sanctions are remedial because they will deter Ng and others from failing to disclose information about outside brokerage accounts and firm associations thereby protecting the investing public by facilitating more direct and early detection of potential rule violations, such as a conflict of interest with a firm or its customers.

VI. ORDER

Respondent Jeff Ng is fined \$25,000 and suspended for two years from associating with any FINRA member in any capacity for failing to notify his employer firm, in writing, that he had securities accounts at E*Trade and TD Ameritrade and

⁵⁹ *Bruff*, 2011 FINRA Discip. LEXIS 15, at *33 n.22 (quoting *Dep’t of Enforcement v. McCrudden*, No. 2007008358101, 2010 FINRA Discip. LEXIS 25, at *26 n.20 (NAC Oct 15, 2010)).

⁶⁰ *Dep’t of Enforcement v. Bullock*, 2011 FINRA Discip. LEXIS 14, at *63-64 (May 6, 2011) (citing *Jason A. Craig*, Exchange Act Rel. 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*, No. 2005001919501, 2009 FINRA Discip. LEXIS 15, at *53-54 (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)).

failing to notify E*Trade and TD Ameritrade that he was associated with a FINRA member, in violation of NASD Conduct Rules 3050(c) and 2110, and FINRA Rule 2010.

In addition, Ng is ordered to pay costs in the amount of \$1,618.90, which includes the hearing transcript costs and an administrative fee of \$750. These 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.

If this decision becomes FINRA's final disciplinary action, the suspension shall commence on August 6, 2012, and end at the close of business on August 5, 2014. The fine shall be due and payable if and when Ng reenters the securities industry.⁶¹

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Jeff Ng (*via electronic and first-class mail*)
Sandra J. Harris, Esq. (*via electronic and first-class mail*)
Samuel L. Barkin, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁶¹ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.