BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of	
Department of Enforcement,	DECISION
Complainant,	Complaint No. 2005001919501
vs.	
Jennifer Jordan Portland, Oregon,	Dated: August 21, 2009
Respondent.	

Respondent failed to disclose in research reports actual, material conflicts of interest and financial interests, which also rendered such reports misleading. Held, findings affirmed, sanctions increased.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Daniel D. McClain, Esq., Brian D. Craig, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Steven N. Fuller, Esq., William Nortman, Esq., Akerman Senterfitt LLP; Alexander Jordan, Esq., Nixon Peabody LLP

Decision

Pursuant to NASD Rule 9311(a), Jennifer Jordan ("Jordan") and the Department of Enforcement ("Enforcement") appeal from a Hearing Panel order and decision.[1] In its October 16, 2007 Order Granting in Part and Denying in Part Complainant's Motion for Summary

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[1] 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 new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). Because the complaint in this case was filed before December 15, 2008, the procedural rules that apply are those that existed on December 14, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue.

Disposition and Denying Respondent's Motion for Summary Disposition, the Hearing Panel found that Jordan, formerly a research analyst with Wells Fargo Securities, LLC ("Wells Fargo" or "the Firm"), failed to make required disclosures in research reports of her material conflicts of interest and her financial interests in the subject company, in violation of NASD Rules 2711(h)(1)(A), 2711(h)(1)(C), and 2110. The Hearing Panel further found that Jordan's failure to disclose in one research report her financial interest rendered that report misleading, in violation of NASD Rules 2210(d)(1)(A) and 2110. In its June 18, 2008 decision, the Hearing Panel fined Jordan $10,000 for her violations of NASD Rules 2711 and 2110, and $2,500 for her violations of NASD Rules 2210 and 2110. As explained below, we affirm the Hearing Panel's findings of violation on broader grounds, increase the fine to $20,000, and impose a two-year suspension in all capacities.

I. Background

Jordan entered the securities industry in 1996. Jordan was registered with Wells Fargo as a general securities representative (from April 2000 until May 2005), and as a research analyst (from January 2005 until May 2005). Jordan worked for Wells Fargo in Portland, Oregon. Jordan's title was vice president and senior equity research analyst. Jordan is not currently registered with any member firms. She is currently employed as corporate vice president of investor relations for Cadence Design Systems, Inc. ("Cadence Design").

II. Facts

A. Jordan's Coverage of Cadence Design in Research Reports

As a Wells Fargo research analyst, Jordan authored research reports that presented evaluations, ratings, and stock price predictions concerning various issuers. Jordan covered approximately 14 companies in three industry sectors, including the electronic design automation sector. One of the firms that Jordan covered was Cadence Design. Jordan wrote research reports about Cadence Design with the help of her associate, Yue-Shun Ho ("Ho"). In general, Ho would prepare the body of the report, and Jordan would oversee Ho's work, add content, and prepare the report's "bullets" and "major thesis." According to Jordan, these research reports would be reviewed by "editors" who were registered as general securities principals, the compliance department, and "supervisory analysts" prior to issuance. Those supervisory analysts included Doug Van Dorsten ("Van Dorsten"), who was the director of research and Jordan's immediate supervisor. This case concerns Jordan's failures to disclose certain conflicts of interest and financial interests in three Wells Fargo research reports concerning Cadence Design.

B. Jordan Fails to Disclose Her Conflicts of Interest in the February 2005 Research Report

In 2004, Cadence Design commenced a search for a person to head its investor relations department. Working with executive recruiter Devine Capital Partners, LLC ("Devine Capital"), Cadence Design compiled a list of prospective candidates that included Jordan. On or about January 13, 2005, a Devine Capital representative contacted Jordan and informed her of both the

position and of Cadence Design's interest in her as a prospective candidate. On January 14, 2005, Jordan expressed her interest in further discussions, but noted that relocating from Portland to San Jose, California, where Cadence Design was located, could pose an obstacle. On January 19, 2005, Jordan sent a copy of her resume to Devine Capital, which in turn forwarded it to Cadence Design.

On January 28, 2005, Devine Capital made arrangements for Jordan to attend interviews on February 11 and 16, 2005, with Cadence Design's president and chief executive officer, Mike Fister ("Fister"); its chief financial officer, Bill Porter ("Porter"); its general counsel, Smith McKeithen ("McKeithen"); and its chairman, Ray Bingham ("Bingham"). On January 31, 2005, Jordan met with the owner of Devine Capital to obtain information about the position and to discuss Jordan's experience. Jordan learned that she was one of several individuals whom Cadence Design was approaching. Jordan did not inform anyone at Wells Fargo of her interactions with Devine Capital or Cadence Design.

On February 3, 2005, Cadence Design released its fourth quarter earnings report and presented it during a conference call. Jordan and Ho participated in that call, and made a follow-up call with both Porter and Cadence Design's director of investor relations. On the following day, Wells Fargo issued a research report concerning Cadence Design ("the February 2005 Report") that identified Jordan and Ho as the research analysts. The February 2005 Report reiterated Wells Fargo's preexisting "buy" rating for Cadence Design stock,[2] raised the price target from $16 to $18 per share,[3] and raised first-quarter revenue and earnings estimates. The February 2005 Report also stated that an organizational restructuring at Cadence Design was "in close alignment with CEO Mike Fister's attempt to build better customer relationships and present a stronger value proposition to the company's various products." The February 2005 Report did not disclose anything about Cadence Design's recruitment of Jordan.

C. Jordan Fails to Disclose Conflicts of Interest in the March 2005 Research Report

On February 11, 2005, Jordan visited Cadence Design's offices for several hours to conduct the previously scheduled interviews with Fister, Porter, and McKeithen. Jordan returned on February 16, 2005, to meet with Bingham. Subsequent to these interviews, Devine Capital, which had paid for Jordan's travel expenses, informed Jordan that Cadence Design "liked [her]." In return, Jordan informed Devine Capital on February 28, 2005, that she was interested in the investor relations position.

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2 The research reports defined a "buy" rating as follows: "Immediate purchase is recommended; the stock is expected to outperform the general market over the next 12-18 months."

3 Jordan stated that the price target was raised because Cadence Design had reported fourth-quarter earnings that slightly exceeded previous expectations.

On March 1, 2005, Cadence Design held its annual investor and analyst conference. On March 2, 2005, Wells Fargo issued another research report concerning Cadence Design ("the March 2005 Report"), which identified Jordan and Ho as the research analysts. The March 2005 Report reiterated Wells Fargo's "buy" rating and its $18 price target. The report also noted that several Cadence Design customers who made presentations at the annual conference indicated that "the addition of Mike Fister to Cadence [Design] has helped to build credibility with customers." The March 2005 Report did not disclose that Jordan had interviewed with Cadence Design senior management, including Fister, for the investor relations position.

D. Jordan Fails to Disclose Conflicts of Interest and Financial Interests in the April 2005 Research Report

On March 16, 2005, Porter called Jordan, offered her the position of vice president of investor relations, and provided a general description of the compensation package. On March 29, 2005, Porter sent Jordan a written offer. The letter explained that Jordan would report directly to Porter. The letter also set forth the compensation package: (1) a $250,000 base salary; (2) eligibility for an "incentive bonus" targeted at 30% of the base salary; (3) a $50,000 hiring bonus (spread out over two years); (4) a relocation package that included $15,000 for "incidentals" and a $1,000,000 loan that was interest-free for five years; (5) 15,000 shares of Cadence Design stock (referred to in the offer as "Incentive Stock"); and (6) options to purchase 75,000 shares of Cadence Design stock. The letter informed Jordan that the grants of stock and options were "subject to approval by the Board of Directors' Compensation Committee," that they would be granted "shortly after you join," that the stock would begin to vest on the one-year anniversary of Jordan's start date, and that the options would begin to vest one year after the grant date.

On March 31, 2005, Jordan responded to the offer in writing. Jordan expressed that she was "honored" at the offer, posed several questions, and made several counter requests. Among other things, Jordan expressed her desire to be an "active, knowledgeable and credible member of the management team, not just its trumpet." On or about April 6, 2005, Jordan spoke with Porter and McKeithan, who responded to Jordan's questions and assured her that she would have "access to executive management."

On Friday, April 8, 2005, Jordan informed her supervisor at Wells Fargo, Van Dorsten, that she had decided to accept Cadence Design's job offer, although she shared nothing with him about the compensation package. This was the first time Jordan disclosed to anyone at Wells Fargo anything about her pursuit of the investor relations position. Jordan asked "what . . . the appropriate course of action [was]" and whether she should inform John Hullar ("Hullar"), Wells Fargo's president and CEO. Van Dorsten responded that he would talk to both Hullar and the compliance department about Jordan's acceptance of the position. On April 9, 2005, Jordan informed Cadence Design that she would accept its offer of employment.

A few days later, Van Dorsten told Jordan that he had spoken with Hullar and the compliance department. Van Dorsten reported to Jordan that everyone thought she should "stay [with Wells Fargo] through earnings season" to "make an orderly transition and to really get Ho up to speed." Van Dorsten told Jordan that she "would not have to remove [her] name from the

report," and that Wells Fargo would "not have to drop coverage" of Cadence Design because Ho's name "also appeared on the report." Jordan asked if her continuing participation "would be okay from a compliance standpoint." Van Dorsten replied that he had "brought it up" at a Wells Fargo staff meeting and that the head of compliance "had not raised any objections" and "didn't have a problem." Jordan and Van Dorsten did not expressly discuss, however, whether she had any disclosure obligations. Instead, Jordan "assume[d]" that Van Dorsten had "covered these things" with the compliance department and "believed that we were heading down a path of compliance."

On April 15, 2005, Jordan informed Hullar in writing that she had accepted the offer from Cadence Design and that her last day would be May 6, 2005. Jordan coordinated her last day to coincide with the end of the earnings season. On April 27, 2005, Jordan signed an amended offer letter from Cadence Design, which was changed to reflect that Jordan's title would be corporate vice president. On the same day, Cadence Design released its first quarter earnings and held a conference call. Jordan attended the conference call in her capacity as a research analyst with Wells Fargo.

On April 28, 2005, Wells Fargo issued another research report on Cadence Design (the "April 2005 Report") that again identified Jordan and Ho as the research analysts. The April 2005 Report reiterated the "buy" rating and the price target of $18, and it slightly raised revenues and earnings estimates. The report did not disclose that Jordan had accepted a position at Cadence Design, or the promised grant of stock and options. On the same day, Jordan attended a meeting for Cadence Design management, in her capacity as the incoming corporate vice president of investor relations. Jordan officially commenced work at Cadence Design on May 9, 2005. Cadence Design issued to Jordan the promised stock and options four days later.

III. Procedural History

On March 30, 2007, Enforcement filed a three-cause complaint against Jordan. Each cause alleged that Jordan failed to make required disclosures of actual, material conflicts of interest in research reports concerning Cadence Design, and that those omissions rendered the reports misleading. Specifically, cause one alleged that Jordan failed to disclose in the February 2005 Report that she was pursuing potential employment at Cadence Design, in violation of NASD Rules 2711(h)(1)(C), 2210(d)(1)(A), and 2110. Cause two alleged that Jordan failed to disclose in the March 2005 Report that she had applied and interviewed for the job, in violation of the same rules. Cause three alleged that Jordan failed to disclose in the April 2005 Report that she had accepted an employment offer from Cadence Design and that she had a financial interest in its securities, in violation of NASD Rules 2711(h)(1)(A), 2711(h)(1)(C), 2210(d)(1)(A), and 2110. In her answer, Jordan denied that she violated NASD rules, and asserted several affirmative defenses.

Both parties moved for summary disposition. On October 16, 2007, the Hearing Panel granted in part Enforcement's motion for summary disposition on the issue of liability,[4] denied Jordan's motion for summary disposition, and continued the case for a hearing on the sanctions. On June 18, 2008, the Hearing Panel issued a final decision. The Hearing Panel reiterated its findings of liability, but clarified that "Enforcement did not prove a violation with respect to the February [2005] Report." For failing to make required disclosures in research reports in violation of NASD Rules 2711 and 2110, the Hearing Panel fined Jordan $10,000. For authoring a research report that was misleading in violation of NASD Rules 2210(d)(1)(A) and 2110, it further fined Jordan $2,500. The Hearing Panel also imposed $1,958.28 in costs. Jordan appealed from the decision, and Enforcement appealed the sanctions.

IV. Discussion

A. NASD Rule 2711

We turn first to the allegations concerning NASD Rule 2711. As explained below, we affirm in part and modify in part the Hearing Panel's findings that Jordan violated NASD Rules 2711 and 2110. Specifically, we find that Jordan failed to disclose actual, material conflicts of interest in *all three* research reports at issue, in violation of NASD Rules 2711(h)(1)(C) and 2110, and failed to disclose a financial interest in Cadence Design securities in the April 2005 Report, in violation of NASD Rules 2711(h)(1)(A) and 2110.

1. NASD Rule 2711(h)(1)(C): Actual, Material Conflicts of Interest

NASD Rule 2711 governs research analysts and research reports. The purpose of the rule is "to restore investor confidence in a process that is critical to the equities markets." *NASD Notice to Members 02-39* (July 2002). The rule "implement[s] 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." *Order Approving Proposed Rule Changes*, 67 Fed. Reg. 34968, 34969 (May 16, 2002). One such disclosure requirement is NASD Rule 2711(h)(1)(C), which is at issue here. That rule provides, in pertinent part, that a member must disclose in research reports "any . . . actual, material conflict of interest of the research analyst . . . of which the research analyst knows or has reason to know at the time of publication of the research report."[5]

An analyst has a "conflict of interest" when circumstances give the analyst incentives that compete with his or her regulatory responsibility to issue objective and reliable research reports.

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4 The Hearing Panel's findings that Jordan omitted material facts that rendered the research reports misleading, in violation of NASD Rule 2210(d)(1)(A), addressed only Jordan's failure to disclose in the April 2005 Report a financial interest.

5 It is undisputed that Jordan was a "research analyst" and that the three reports at issue were "research reports" within the meaning of NASD Rule 2711.

See NASD Notice to Members 02-39 (stating that Rule 2711 "is intended to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions"). An "actual" conflict of interest is one that exists in fact when the research report is issued. *Webster's II Dictionary* 12 (1995) (defining "actual" to mean "existing in fact or reality," "existing or acting at the present moment"). A conflict of interest is "material" if there is a substantial likelihood that a reasonable investor would have considered the conflict important to his or her investment decision, and disclosure of the conflict would have significantly altered the total mix of information available to the investor. *See Donner Corp. Int'l*, Exchange Act Rel. No. 55313, 2007 SEC LEXIS 334, at *29 (Feb. 20, 2007).

Applying these standards, the record demonstrates that Jordan failed to disclose actual, material conflicts of interest in the February, March, and April 2005 research reports. At the time each report was issued, Jordan was pursuing possible employment with the very subject of those reports. Those ongoing discussions gave Jordan incentives to skew her research reports to improve or avoid damaging her chances of obtaining an offer from Cadence Design and, later, to avoid jeopardizing the offer she had in hand. While there is no evidence that such incentives actually caused Jordan to alter her reports, those incentives were nevertheless in direct conflict with her responsibility as a research analyst to provide honest assessments about the company.[6] *NASD Notice to Members 02-39*. While the materiality of Jordan's undisclosed conflicts increased over time, at all times reasonable readers of the reports would have considered the conflicts to be important to their investment decision, and disclosure of the conflicts would have significantly changed the total mix of information available.[7]

Specifically, when the February 2005 Report was issued, Jordan's employment discussions with Cadence Design already involved a high level of seriousness, and her candidacy was clearly viable. Jordan was always among only a narrow field of prospects for the position.

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[6] The nature of the relationships between issuers and research analysts adds to why Jordan's pursuit of employment with Cadence Design gave rise to a conflict of interest. Around the time when NASD Rule 2711 was adopted, it was known that issuing companies had a history of taking retaliatory acts against research analysts who authored unfavorable research reports. *See Public Company Accounting Reform and Investor Protection Act of 2002*, S. Rep. 107-205, 107th Cong., 2d Sess. (June 26, 2002) (describing "the intimidation of analysts by issuers, who "retaliate in both subtle, and not so subtle, ways against analysts they perceive as 'negative' or not 'understanding' their company" and who create "a climate of fear and intimidation that fosters neither independence nor objectivity").

[7] Jordan argues that a finding of materiality must be grounded in evidence that customers "actually believed" that the omissions altered the total mix of information. This argument lacks merit. "[T]he reaction of individual investors is not determinative of materiality, since the standard is objective, not subjective." *RichMark Capital Corp.*, Exchange Act Rel. No. 48758, 2003 SEC LEXIS 2680, at *15 (Nov. 7, 2003), *aff'd*, 86 Fed. Appx. 744 (5th Cir. 2004).

Jordan, who considered many aspects of the position to be attractive,[8] responded to Cadence Design's overture both by expressing her interest in discussing the position and by providing her resume. The parties then scheduled Jordan to interview with senior Cadence Design management, including the chief executive officer. Thus, when the February 2005 Report was issued, Cadence Design and Jordan had expressed a mutual interest in discussing the investor relations position, and had taken concrete steps in furtherance of those discussions.

When the March 2005 Report was issued, Jordan's employment discussions with Cadence Design had reached an even more serious phase, posing an even larger threat to her objectivity. As planned, Jordan traveled at Devine Capital's expense to Cadence Design's corporate headquarters to conduct several rounds of interviews with senior Cadence Design officials. Subsequently, Jordan learned that Cadence Design "liked" her, and she in turn informed the executive recruiter that she was interested in the position.

When the April 2005 Report was issued, Jordan's employment negotiations presented a severe conflict of interest. At that point, Jordan knew what she had to lose by writing an unfavorable research report. Jordan had accepted Cadence Design's offer to join the company in a senior management position, which came with a substantial compensation package. Moreover, the responsibilities of Jordan's new position conflicted substantively with her existing responsibilities as a Wells Fargo research analyst. By her own admission, Jordan's new position would involve "helping to direct [Cadence Design's] corporate message" and "enhancing [its] reputation and market value." In marked contrast, her role as a research analyst required her to be an objective commentator on the company.

Jordan argues that her omissions were not material because they did not "alter[ ] the mix of information about Cadence [Design]." In fact, the omissions altered *all* of the information that the reports conveyed about Cadence Design. Had Jordan disclosed the status of her employment negotiations, it would have affected each report's overall credibility and reliability. This is especially so considering that, consistent with Jordan's undisclosed incentives to skew the reports in a favorable direction, each report was favorable. *See Dep't of Enforcement v. Reynolds*, Complaint No. CAF990018, 2001 NASD Discip. LEXIS 17, at *48 (NASD NAC June 25, 2001) (holding that incentives to "report favorably about and to suppress or tone down negative aspects of [the issuer's] business prospects and financial status" are material information); *cf. SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963) (noting that a conflict of interest based on "economic self-interest" that may motivate "consciously or unconsciously" to recommend a security is material information); *RichMark Capital Corp.*, 2003 SEC LEXIS 2680, at *13-14 (holding that respondents' disclosure of a strong financial motivation to promote a stock "would have enabled investors to weigh the extent to which [a] recommendation might have been based on the personal economic benefit of its

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[8] Jordan was "honored" to be considered for the position, deemed Cadence Design's management team to be "interesting" and "very experienced," and saw the opportunity as a chance for "personal growth." She also proudly commented that Cadence Design is "the number one semiconductor company in the industry" whose CEO had "spent 17 years at Intel."

principals"); *Excel Fin.*, 53 S.E.C. 303, 311 (1997) (holding that failure to disclose a conflict of interest in a transaction is material information). One particularly stark example of the materiality of Jordan's undisclosed conflicts involved the fact that she had interviewed with Fister. It is obvious that a reader of the Wells Fargo research reports would have found it important that Jordan was singing the praises of a chief executive officer who was directly involved in deciding whether to hire her.

Contrary to Jordan's arguments, it is no excuse that there is no evidence that the research reports were otherwise misleading. That Jordan's research reports may not have been influenced by her conflicts does not mean that investors would not have wanted to evaluate such conflicts for themselves. *Cf. Dep't of Enforcement v. DaCruz*, Complaint No. C3A040001, 2007 NASD Discip. LEXIS 1, at *27 (NASD NAC Jan. 3, 2007) (finding respondents' claim that they were not recommending stock because of their self interest to be irrelevant to whether the self interest was material information); *O'Brien Partners, Inc.*, Inv. Adv. Act Rel. No. 1772, 1998 SEC LEXIS 2318, at *30 n.19 (Oct. 27, 1998) (settlement order) (requiring disclosure of potential conflicts of interest "even if [investment adviser] had concluded that the payments did not influence the manner in which it advised its clients").

Accordingly, by failing to disclose in the February, March, and April 2005 Reports her pursuit of employment with, and acceptance of an employment offer from, Cadence Design, Jordan failed to disclose an actual, material conflict of interest.

2. NASD Rule 2711(h)(1)(A): Financial Interests

The other disclosure rule at issue in this proceeding is NASD Rule 2711(h)(1)(A). That rule provides, in pertinent part, that a member must disclose in research reports "if the research analyst . . . has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position)." We affirm the Hearing Panel's finding that Jordan failed to disclose in the April 2005 Report a "financial interest" in Cadence Design securities, in violation of NASD Rules 2711(h)(1)(A) and 2110.

NASD Rule 2711(h)(1)(A) requires disclosure of a broad range of interests in the subject company's stock, including derivative interests like options, futures, rights, and warrants. The rule specifies that the express list of financial interests is not exhaustive, but is instead "without limitation."[9] This broad language covers the interest Jordan held in Cadence Design stock as of

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[9] The reason why Rule 2711 requires disclosure of financial interests is self evident. "[O]mitting to disclose a broker's financial or economic incentive in connection with a stock recommendation" "deprives the customer of the knowledge that his registered representative might be recommending a security based upon the registered representative's own financial interest rather than the investment value of the recommended security." *SEC v. Hasho*, 784 F. Supp. 1059, 1110 (S.D.N.Y. 1992), *citing Chasins v. Smith, Barney & Co.*, 438 F.2d 1167, 1172 (2d Cir. 1970).

the April 2005 Report. Jordan had accepted Cadence Design's offer, which committed Cadence Design to grant Jordan 15,000 shares of Cadence Design stock and an option to purchase 75,000 shares of Cadence Design stock.

This holding is further supported by the context of NASD Rule 2711(h)(1)(A). When subsection (h)(1)(A) is read in conjunction with subsection (h)(1)(C), it shows that a financial interest that is not expressly listed in NASD Rule 2711(h)(1)(A) counts as a "financial interest" if it amounts to an actual, material conflict of interest. *See* NASD Rule 2711(h)(1)(C) (requiring disclosure of "*any other* actual, material conflict of interest"). Although Jordan attempts to draw distinctions between her financial interests in Cadence Design stock and the financial interests that are expressly listed in NASD Rule 2711(h)(1)—that her financial interests would not vest immediately, and that they were contingent on both her joining Cadence Design and on its compensation committee's approval of the grants—such distinctions would not have quelled reasonable investors' concerns about the objectivity of the research report. In this regard, the initial vesting period was relatively short, and the size of the promised grant was substantial, considering that Cadence Design stock was trading at $14.28 around the time of the grant. Moreover, there is no evidence that the contingencies were likely to prevent the grant. Indeed, both contingencies were met: Jordan joined Cadence Design, and four days later Cadence Design granted to Jordan the promised stock and options. Case law further supports our finding that a contingent financial interest like Jordan's can amount to a material conflict of interest.[10]

In further defense of her failure to disclose her financial interests, Jordan cites NASD Rule 2711(h)(2)(A)—which requires a member to disclose in research reports if a research

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[10] *See Basic Inc. v. Levinson*, 485 U.S. 224, 238 (1988) (holding that the materiality of "contingent or speculative information" depends on a "balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event."); *cf. DaCruz*, 2007 NASD Discip. LEXIS 1, at *25-27 (holding that when recommending stock, respondents were required to disclose the "probable receipt of a substantial sales incentive," that was contingent on reaching certain sales targets because it was a material financial interest "even if no sales incentive was ultimately earned"); *Javed Anver Latef*, Exchange Act Rel. No. 47542, 2003 SEC LEXIS 650, at *30-31 (Mar. 20, 2003) (holding that a fund's grant of options to purchase fund, where the grant was contingent on the grantee paying certain of the grantor's expenses, the grantor "intended to honor the agreement," and the grantee had preserved his right to exercise the options, amounted to a material conflict of interest that should have been disclosed to fund investors), *petition for review denied*, 94 Fed. Appx. 969 (3d Cir. 2004); *Excel Fin.*, 53 S.E.C. at 306, 311 (1997) (holding that contingent offering selling agent's failure to disclose that it stood to receive a 19% equity interest in a company that would be assuming certain payment obligations to investors and benefiting from the closing of the contingent offering amounted to a failure to disclose a material conflict of interest); *see also In re Performance Nutrition, Inc.*, 239 B.R. 93, 110 (N.D. Tex. 1999) (holding that officer who negotiated sale of his debtor company was required to disclose to his company that he had a financial interest in the potential buyer that stemmed from the promise of employment with the buyer that would be compensated with salary and stock).

analyst has received any "compensation" from the subject company "in the past 12 months"—and claims that FINRA "could have required disclosure of potential future compensation, but it did not." This argument is misguided. This proceeding does not involve allegations that Jordan failed to disclose "compensation" in violation of NASD Rule 2711(h)(2)(B). It involves allegations that she failed to disclose a "financial interest" in violation of NASD Rule 2711(h)(1)(A).

For all of the above reasons, we find that Jordan failed to disclose a "financial interest" in the April 2005 Report.

3. Jordan's Rule 2711(h)(1) Arguments

Jordan advances several other arguments in general defense of the allegations that she violated NASD Rule 2711. All are unpersuasive.

a. Analyst's Obligations to Make Disclosures in Research Reports

Jordan argues that NASD Rule 2711(h) imposes obligations to make disclosures in research reports *only* on member firms, and not on research analysts. We find, however, that both members *and* research analysts are obligated to make disclosures in research reports.

NASD Rule 2711(h) expressly requires a "member" to disclose conflicts of interest in research reports. NASD Rule 0120(i) defines "member" as "any individual, partnership, corporation or other legal entity admitted to membership in the Association." Here, it is undisputed that Wells Fargo is the "member." Pursuant to NASD Rule 0115, "[p]ersons *associated with a member* shall have the same duties and obligations as a member under these Rules." (Emphasis added.) By operation of NASD Rule 0115, therefore, Jordan is liable for the violative Wells Fargo research reports because she was an associated person of Wells Fargo who was "directly involved in the conduct that led to a firm's violation." *Dep't of Enforcement v. Strong*, Complaint No. C04050005, 2007 NASD Discip. LEXIS 10, at *19 n.12 (NASD NAC Feb. 23, 2007), *aff'd*, Exchange Act Rel. No. 57426, 2008 SEC LEXIS 467 (Mar. 4, 2008). This holding is consistent with prior cases involving NASD Rule 2711(h).[11]

Challenging this reasoning, Jordan argues that NASD Rule 2711(h)(1) establishes an "exception" to NASD Rule 0115 that prevents a member's obligation to make disclosures in research reports from applying to research analysts. Jordan's argument primarily relies on the

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[11] *See Strong*, 2007 NASD Discip. LEXIS at *19 & n.12 (holding that, pursuant to NASD Rule 0115, compliance officer was personally responsible for firm's violation of NASD Rule 2711(h)); *Dep't of Enforcement v. Asensio Brokerage Services, Inc.*, Complaint No. CAF030067, 2006 NASD Discip. LEXIS 20, at *40 (NASD NAC July 28, 2006) (holding that, pursuant to NASD Rule 0115, an "author of the [research] reports" was personally liable for failing to make disclosures required by NASD Rules 2711(h), and that Rule 2711 applies "to all members and persons associated with a member").

fact that NASD Rule 2711(h)(1) opens with the language, "[a] member must disclose in research reports and a research analyst must disclose in public appearances," which she interprets as imposing mutually exclusive disclosure obligations on "members" and "research analysts." Jordan contends that her interpretation is further supported by the facts that, pursuant to NASD Rule 0121, the terms in NASD rules can have different definitions depending on the context or on whether such terms are separately defined, and that NASD Rule 2711 has its own set of definitions, including one for "research analyst."[12]

Jordan's logic is flawed. As explained above, NASD Rule 0115 makes a member's obligations under Rule 2711 applicable to Jordan based not on how "research analyst" is defined, but on how "member" and "persons associated with a member" are defined.[13] Although NASD Rule 2711(a)(5) expressly defines several terms for purposes of the rule, it does not expressly redefine either of those terms, and neither the text nor context of Rule 2711(h) requires redefinitions that would exclude "research analysts." To the contrary, the rule's definition of "research analyst" expressly confirms that research analysts like Jordan are a *subset* of "associated persons," not a group distinct from associated persons. NASD Rule 2711(a)(5).

Moreover, nothing in the text of either Rule 2711 or Rule 0115 even remotely suggests that FINRA sought to establish an "exception" to NASD Rule 0115. The term "member" is ubiquitous in the rulebook, and NASD Rule 0115 is invoked in nearly every disciplinary case involving associated persons. For these reasons, had FINRA sought to take the unusual step of preventing a member's duties under an NASD Rule from applying to all or some associated persons, it would have communicated so in a clear way, such as expressly stating in the rule text, or in filings during the rule development process, the circumstances in which Rule 0115 would not apply. FINRA did no such thing. *Cf.* NASD Rules 2711(k), 2780(c), 2810(b)(2)(D), and FINRA Rules 2360(b) (rules that specifically state how certain rules or provisions "do[ ] not apply" or "shall not apply," or how they "shall apply only" to certain situations).

Indeed, interpreting NASD Rules 2711 and 0115 to impose obligations on research analysts to make disclosures in research reports is the *only* way to achieve the specific purposes of Rule 2711, advance FINRA's mission of protecting investors and maintaining market integrity, and achieve just practices. *See* NASD Rule 0113 ("The Rules shall be interpreted in such manner as will aid in effectuating the purposes and business of the Association, and so as to require that all practices in connection with the investment banking and securities business shall be just, reasonable and not unfairly discriminatory."). NASD Rule 2711(h)(1)(C) requires

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[12] In a related argument, Jordan argues that NASD Rule 0115 does not "negate" the separation of duties she sees in NASD Rule 2711 because NASD Rule 0115 was adopted first. This puts the cart before the horse. As the following discussion explains, Jordan's premise that NASD Rule 2711 articulates a "separation of duties" is incorrect.

[13] *See* NASD Rule 0120 (defining "member" for purposes of NASD Rules); NASD Rule 0121 (making certain definitions in NASD By-Laws applicable); NASD By-Laws, Art. I(dd) (defining "person associated with a member").

disclosure of conflicts of interest "of which the research analyst knows or has reason to know at the time of publication of the research report." By expressly tying the disclosure obligation to conflicts of which the *analyst* has knowledge, the clear intent was to assign a primary disclosure obligation on the analyst. As the Hearing Panel put it, "[w]ithout disclosure by the analyst, the firm cannot include the information in the published report rendering [Rule 2711(h)(1)(C)] meaningless."

Jordan presses, however, that her proposed interpretation of NASD Rule 2711(h) is *not* meaningless, and that our interpretation would turn the regulatory scheme governing research analysts "on its head." She argues that the member firm—not the analyst—publishes the research reports, employs the "supervisory and management officials trained in disclosure," and should have the "final say" on what conflicts are disclosed in a research report. These arguments, depending on all the facts and circumstances, might excuse a research analyst's failure to comply with NASD Rule 2711(h)(1) in the narrow situation where such analyst has taken affirmative steps to make required disclosures in such a manner that forces the analyst's member firm to opt out of making such disclosures. But such arguments are not reasons for reading analysts' duties concerning research reports right out of the rule. To be a workable tool of investor protection, NASD Rule 2711 must impose some direct obligations on analysts to make disclosures in research reports. We reject Jordan's argument to the contrary.[14]

b. Relevance of Other Disclosure Requirements in Rule 2711

Jordan next contends that the "comprehensive disclosure requirements of Rule 2711(h) evidence the NASD's reasoned judgment that the promise of future employment and contingent compensation need not be disclosed under the catch-all rules." In support, Jordan cites *Geiger v. The Solomon-Page Group, Ltd.*, 933 F. Supp. 1180, 1195-88 (S.D.N.Y. 1996), and *Fisher v. Ross*, No. 93 Civ. 0275 (JGK), 1996 U.S. Dist. LEXIS 15091 (S.D.N.Y. Oct. 11, 1996). Those cases, however, are distinguishable.

Geiger and *Fisher* involved allegations that the defendants should have disclosed certain material facts in prospectuses. In both cases, the courts found that the facts at issue were not, in fact, material. *Geiger*, 933 F. Supp. at 1186-87; *Fisher*, 1996 U.S. Dist. LEXIS 15091, at *30-33. In further support, the courts noted that detailed regulatory disclosure requirements that governed the prospectuses did not expressly require disclosure of the facts at issue. For example,

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[14] In a derivative argument, Jordan contends that she lacked "fair notice" that NASD Rule 2711 obligates research analysts to make disclosures in research reports and that such an interpretation constitutes an unenforceable "rule change." These arguments lack merit. That NASD Rules 2711 and 0115 apply to the facts of this case is reasonably and fairly implied from the text of such rules, and does not establish a new standard of conduct. The rules provided more than a reasonable opportunity for Jordan to know that her conduct was prohibited. *See General Bond & Share Co.*, 39 F.3d at 1451, 1460 n.4 (10th Cir. 1994); *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at *13 (Apr. 1, 2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

in *Geiger*, which concerned whether certain relationships between selling shareholders and underwriters constituted material information, the court held that "[t]he absence of a regulation requiring disclosure [of such relationships], in the face of the detailed requirements of what information about selling shareholders must be disclosed, is some evidence" that such relationships are not "material" because it reflects "the SEC's expert view that such disclosure is not required." *Geiger*, 933 F. Supp. at 1187-88; *see also Fisher*, 1996 U.S. Dist. LEXIS 15091, at *30.

Unlike the omitted, immaterial facts at issue in *Geiger* and *Fisher*, Jordan's relationship with Cadence and her financial interests were material, for the reasons we explained extensively above. Moreover, NASD Rule 2711 makes no pretense of aiming to expressly articulate all of the relationships with issuers and financial interests that are material. Rather, it does just the opposite. NASD Rule 2711(h)(1)(C) requires disclosure of "any other" actual, material conflict of interest. NASD Rule 2711(h)(1)(A) expressly states that the list of financial interests covered by the rule is "without limitation." Likewise, NASD Rule 2711(h)(9) provides that "[*i*]*n addition to* the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws." (Emphasis added.) In turn, the guidelines in IM-2210-1, which aim to ensure that member communications with the public are not misleading, "do not represent an exclusive list of considerations."

* * *

Accordingly, we find that Jordan's failure to disclose her employment negotiations in the February, March, and April 2005 Reports violated NASD Rules 2711(h)(1)(C) and 2110, and that her failure to disclose her financial interest in Cadence Design stock in the April 2005 Report violated NASD Rules 2711(h)(1)(A) and 2110.[15]

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

The complaint further alleged that all of Jordan's omissions discussed above also rendered the research reports misleading, in violation of NASD Rules 2210(d)(1)(A) and 2110. The Hearing Panel found that Jordan's failure to disclose in the April 2005 Report her financial interests in Cadence Design stock was a violation of NASD Rule 2210(d)(1)(A), but it did not address the other allegations. Unlike the Hearing Panel, we find that each one of Jordan's omissions caused the research reports to run afoul of NASD Rules 2210(d)(1)(A) and 2110.

NASD Rule 2210(d)(1)(A) provides that a member's communications with the public, which include research reports, "shall be based on principles of fair dealing and good faith." The

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15 It is a "long-standing and judicially-recognized policy that a violation of another Commission or NASD rule or regulation . . . constitutes a violation of . . . [NASD] Rule 2110." *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999).

rule further provides that "[n]o member may omit any material fact or qualification [from a member communication with the public] if the omission, in the light of the context of the material presented, would cause the communication to be misleading."[16] We have already found that Jordan omitted conflicts and financial interests from her research reports, and that those omissions were material. We further find that her omissions caused the research reports to be misleading.

The three research reports at issue did not represent that there were no conflicts of interest that could affect the objectivity of the reports. Rather, Wells Fargo disclosed that: (1) it and/or its affiliates beneficially owned 1% or more of Cadence Design; (2) that "Wells Fargo Securities, its directors and employees and their families may have a position" in Cadence Design securities, "and may make purchases or sales while this report is in circulation"; and (3) that "Wells Fargo . . . does and seeks to do business with companies covered in its research reports" and that, "[a]s a result, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report."

These disclosures, however, did not cover Jordan's conflicts. Jordan was not simply an "employee" of Wells Fargo. She was the lead research analyst who was primarily responsible for the content of the report and who certified that it "accurately reflect[ed] [her] personal views." Nor was Jordan a person who "may" have a position in the securities of Cadence Design or "may" have a conflict of interest. She *had* an actual conflict of interest and, as of the April 2005 Report, a financial interest. Thus, by disclosing some conflicts but omitting Jordan's actual conflicts, the report created the misleading impression that the threats to the objectivity of the report were far less significant than they actually were. *See* IM-2210-1(6)(A)(ii) (providing that to comply with Rule 2210 a member must disclose when "the member and/or its officers or partners have a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest . . . unless the extent of the financial interest is nominal"); *cf. Dep't of Enforcement v. Donner Corp. Int'l*, Complaint No. CAF020048, 2006 NASD Discip. LEXIS 4, at *26 (NASD NAC Mar. 9, 2006) (finding respondent's failure to disclose in research reports "important information that would have shed light on the firm's objectivity" to be misleading and a violation of NASD Rule 2210(d)(1)(A)), *aff'd in relevant part*, Exchange Act Rel. No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007); *Zion Capital Mgmt.*, Exchange Act Rel. No. 48904, 2003 SEC LEXIS 2939, at *17-18 (Dec. 11, 2003) (holding that an investment adviser's disclosure of potential conflicts of interest, but not actual conflicts of interest, amounted to fraudulent omissions); *RichMark Capital Corp.*, 2003 SEC LEXIS 2680, at *9-14 (holding that respondent fraudulently omitted to disclose that it had a personal financial incentive to recommend a stock, flowing from an investment banking agreement with the issuer that gave respondent stock and options interests in the issuer).

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[16] An associated person can be held personally liable for a violation of NASD Rule 2210. NASD Rule 0115; *see Reynolds*, 2001 NASD Discip. LEXIS 17, at *40 (holding associated person personally liable for research report that violated NASD Rule 2210, where he "allowed his name to be held out as the author" and "endorsed the contents of the report").

Accordingly, we find that Jordan's failure to disclose her employment negotiations with Cadence Design and her financial interest in its stock caused the research reports to be misleading, in violation of NASD Rules 2210(d)(1)(A) and 2110.

V. Sanctions

For failing to disclose her employment negotiations in research reports, the Hearing Panel fined Jordan $10,000. For failing to disclose her financial interests in Cadence Design securities, the Hearing Panel fined her another $2,500. As explained below, we fundamentally disagree with both the Hearing Panel's view of the severity of Jordan's misconduct and its choice of sanctions. Significantly stronger sanctions are needed to remedy Jordan's violations and protect the public.[17]

NASD Rule 2711 serves "important policy objectives related to investor protection." *Strong*, 2008 SEC LEXIS 467, at *46. The disclosure requirements "seek to ensure that [research] reports contain a minimal level of information relevant to an investor's assessment of the report's assertions." *Id.* For failing to comply with disclosure requirements for research reports, the FINRA Sanction Guidelines ("Guidelines") recommend two tiers of sanctions, depending on the respondent's state of mind. For negligent misconduct, the Guidelines recommend a fine between $5,000 and $100,000, and a suspension of the responsible individual in any or all capacities for up to 60 business days. For intentional or reckless misconduct, the Guidelines recommend a fine between $10,000 and $200,000, a suspension of the responsible individual in any or all capacities for a period of 60 business days to two years, and, in egregious cases, a larger fine and a larger suspension or a bar.[18]

The recommended sanctions ranges for issuing misleading communications in violation of NASD Rule 2210 also vary depending on the respondent's state of mind. For failing to comply with the rule standards or for "inadvertent" use of misleading communications, the Guidelines recommend a fine between $1,000 and $20,000, and a suspension of the responsible person in any or all capacities for up to 60 days. For "intentional or reckless use of misleading communications," the Guidelines recommend a fine between $10,000 and $100,000, and a suspension of the responsible person in any or all capacities for up to two years. In cases involving numerous acts of intentional or reckless misconduct over an extended period of time,

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[17] Unlike the Hearing Panel, we aggregate Jordan's violations of NASD Rules 2711, 2210, and 2110 for purposes of imposing sanctions. All of Jordan's violations flowed from a similar problem: Jordan's failures to disclose material conflicts of interest and financial interests in research reports. *FINRA Sanction Guidelines* 4 (2007) (General Principles Applicable to All Sanction Determinations, No. 4), http://www.finra.org/web/groups/enforcement/documents/enforcemet/p011038.pdf [hereinafter *Guidelines*].

[18] *Guidelines*, at 98.

the Guidelines recommend suspending the responsible person for up to two years or imposing a bar.[19]

A. State of Mind

These Guidelines demonstrate that Jordan's state of mind is a factor in determining appropriate sanctions. Both parties challenge the Hearing Panel's finding that Jordan acted with only negligence. Enforcement contends that Jordan acted recklessly; Jordan argues that she did not even act negligently. As explained below, we find that Jordan's entire course of violative conduct was reckless.

As of the publication of each research report at issue, Jordan's material conflicts were so obvious, her failure to disclose them was an extreme departure from the standards to which research analysts must adhere. It is troubling enough that Jordan knew that the company with which she was pursuing employment was the very subject of her research reports. But numerous other circumstances made her material conflicts of interest all the more apparent. Jordan knew from the start that there was a real possibility she would receive an offer, considering that Cadence Design had *recruited* her and arranged for her to interview with *top executives* of the company. In addition, Jordan signed off on research reports that contained comments about one of the very executives with whom she was interviewing. Furthermore, the nature of the investor relations position that she was actively pursuing involved *duties* that were in direct, substantive conflict with her current responsibilities as a research analyst.

The threats to Jordan's objectivity only grew stronger as her employment discussions progressed from the interviewing stage to the offer-and-acceptance stage, and as the stakes grew more tangible. But her incentives to avoid issuing any research report that would ruffle feathers at Cadence Design were present—and obvious—from the moment she welcomed Cadence Design's interest by providing a copy of her resume. Likewise, the promised stock and options gave Jordan the obvious incentive to avoid taking actions in her capacity as a research analyst that would adversely affect that financial interest, especially considering how sizeable and imminent it was.

Other circumstances bolster our finding of recklessness. Jordan knew that her reports identified her as the analyst, were widely distributed, and were likely relied on.[20] She knew that she had taken no steps to disclose her conflicts and financial interests in the reports, and also that it would have been simple to do so. She knew that she had neither disclosed anything about her financial interest to anyone at Wells Fargo, nor verified whether her minimal disclosures to Van Dorsten would somehow lead to a disclosure of her conflicts in the April 2005 Report. And—as Enforcement argued—Jordan "cut her teeth" as a research analyst when the high-profile scandals

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[19] *Guidelines*, at 84-85.

[20] Wells Fargo generated more trading volume in the companies that Jordan covered than in the companies that any other Wells Fargo analyst covered.

involving research analysts led to the adoption of NASD Rule 2711.[21] For all of the above reasons, Jordan's omission of her conflicts of interest and her financial interest could only have been made with reckless indifference to her duty to disclose.

Jordan's testimony concerning what she was thinking at the time of her violations neither precludes, nor negates, our finding of recklessness. Jordan testified that the fact that Cadence Design was recruiting to fill an investor relations position "never entered into my mind" as something she should disclose. She also testified that she "honestly didn't feel" that she had a financial interest in Cadence Design because she had not yet started her new job and "did not own any [Cadence] securities." The Hearing Panel found such testimony to be credible, and substantial evidence does not exist to warrant rejecting those credibility determinations. But Jordan's asserted belief that she acted in good faith, without more, does not preclude our finding of recklessness. *Cf. Alvin Gebhart*, Exchange Act Rel. No. 58951, 2008 SEC LEXIS 3142, at *35 (Nov. 14, 2008) ("[A] respondent's belief that he acted in good faith must be tested by reference to objective criteria; i.e., the applicable standard of conduct is determined in accordance with the degree to which the respondent had acted extremely unreasonably."), *appeal pending*, No. 08-74943 (9th Cir.); *SEC v. Infinity Group Co.*, 212 F.3d 180, 192 (3d Cir. 2000) ("[G]ood faith, without more, does not necessarily preclude a finding of recklessness."). Given that her material conflicts of interest were so obvious, and that the process through which Jordan could have made required disclosures was so simple, her conduct was *far* afield from the compliance standards governing research analysts. The only way that Jordan's disclosure obligations would have "never entered [her] mind" was if she ignored fully assessing them.

In fact, Jordan's testimony at the sanctions hearing shows just that. In defense of her failure to disclose her conflicts of interest, Jordan testified, "the fact that there [was] an open position as [vice president of] investor relations never entered into my mind as the thing that would make me decide about the company's performance." Likewise, Jordan testified, "I'd never come across a situation where . . . an[ ] institutional investor would make a decision about a stock and its potential performance based on an open [investor relations] position or who was running the investor relations department." Jordan continued, "I . . . knew in my heart that [my employment discussions with Cadence Design] w[ere not] going to bias my opinion." Such testimony tellingly shows that Jordan ignored grappling with the *real* question that Rule 2711 posed: i.e., whether it was substantially likely that reasonable readers of Jordan's research

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[21] The facts discussed in the text amply demonstrate Jordan's recklessness. Nonetheless, as it pertains to the April 2005 Report, our finding of recklessness is further bolstered by another red flag that Jordan confronted but ignored. When Jordan informed Van Dorsten that she planned to accept the position with Cadence Design, he instructed her not to inform the Wells Fargo sales force because it would "disrupt" them "during earnings season." We find that Van Dorsten's comment reflected his concern that disclosure of Jordan's conflict would be material enough to dampen Wells Fargo's sales of Cadence Design stock that the April 2005 Report was likely to generate. Combined with all the other facts and circumstances, Van Dorsten's instruction served extra notice that Jordan's plans to join Cadence Design was obviously material information.

reports concerning Cadence Design would have considered it important that *she*—as the lead analyst—was pursuing employment with Cadence Design, and that *she* had accepted an offer to become its vice president of investor relations. The fact that Jordan never specifically asked Van Dorsten or the compliance department if she had any disclosure obligations only reinforces our finding that Jordan must have avoided fully contemplating her regulatory responsibilities. Such an extreme departure from the standards of care that apply to research analysts amounts to recklessness.

B. Other Principal Considerations

In addition to the state of mind issues, the Guidelines direct that we consider the various Principal Considerations in Determining Sanctions. Several of those principal considerations are aggravating. Jordan's research reports were circulated widely to institutional customers and the public through third party data providers such as Bloomberg, Reuters, and Thomson First Call.[22] Jordan issued three violative research reports over three months, and therefore engaged in violative acts over an extended period.[23] Furthermore, as explained above, the misconduct resulted in publication of research reports that omitted material information or contained misleading information.[24] We give each of these aggravating factors significant weight. Particularly given that Jordon's failures to disclose affected each report's overall credibility and reliability, these aggravating factors magnify the severity of Jordan's misconduct.

The Hearing Panel found it mitigating that Jordan "cooperated throughout the investigation of this matter." We do not. The relevant principal consideration asks whether the respondent provided "substantial assistance" to FINRA.[25] Jordan was required to cooperate with FINRA, and nothing suggests that Jordan's assistance was "substantial." *Phillippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006) (holding that respondent's compliance with his obligation to cooperate with an NASD investigation was not mitigating, considering that he had "registered with NASD, [and] . . . agreed to abide by its rules, which are unequivocal with respect to the obligation to cooperate with NASD"). We also disagree with the Hearing Panel's finding that it is mitigating that Jordan's misconduct did not harm any customers. There is no evidence concerning whether Jordan's conduct resulted in any customer harm.[26]

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[22] *Guidelines*, at 84 (Principal Considerations in Determining Sanctions, No. 1).

[23] *Id.*, at 6 (Principal Considerations in Determining Sanctions, No. 8, 9).

[24] *Id.*, at 97 (Principal Considerations in Determining Sanctions, No. 2).

[25] *Id.*, at 7 (Principal Considerations in Determining Sanctions, No. 12).

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

Jordan argues that several factors warrant eliminating the sanctions. First, she argues that she was entitled to rely on her supervisors and the firm's legal and compliance departments.[27] We disagree. Prior to the February and March 2005 Reports, Jordan did not disclose her conflicts to any Wells Fargo personnel. Prior to the April 2005 Report, Jordan did not contact Wells Fargo's legal and compliance departments. Moreover, Jordan's discussions with Van Dorsten only scratched the surface of the subject of compliance. Jordan did not expressly seek guidance on her disclosure obligations, she disclosed nothing about her financial interests, and Van Dorsten never instructed Jordan that she was not required to make any disclosures. Indeed, both Jordan and Van Dorsten agreed that the subject of disclosures never came up in their conversations. Nothing about Jordan's interactions with Van Dorsten is mitigating.

Next, Jordan argues that she "had neither access to [n]or the ability to influence [Wells Fargo's] decision making process on the issue of disclosure." This argument ignores, however, that Jordan was "responsible for [her] actions and cannot shift that responsibility to the firm or [her] supervisors." *Rafael Pinchas*, 54 S.E.C. 331, 338 (1999). It also ignores the record. Wells Fargo specifically advised research analysts that they had duties to notify the compliance and editing departments of conflicts. Likewise, Jordan testified that the Wells Fargo research report system required analysts to certify whether they had any material conflicts or financial interests, and afforded research analysts the ability to make any required disclosures. Thus, Jordan could have made the required disclosures in her draft report and forced Wells Fargo to opt out of making them, or she could have contacted Wells Fargo's editors to ensure that disclosures were being made. Instead, Jordan abdicated her responsibilities and blindly assumed that Wells Fargo would somehow make whatever disclosures were required.

Finally, Jordan argues that the sanctions should be eliminated because she has had her "personal and business reputation besmirched and livelihood threatened by attention seeking reporters and zealous regulators." Apart from her own testimony, the record contains no evidence that any such hardships occurred. In any event, such considerations would not warrant a reduction in the sanctions. *Cf. Fundclear, Inc.*, 51 S.E.C. 1316, 1322 (1994) (rejecting respondent's argument that the sanctions should be lowered because they "threaten[ed] [respondent's] livelihood and adversely affect[ed] [his] reputation," where reputational harm was "not undeserved, given [respondent's] compliance failures"); *see also Strong*, 2008 SEC LEXIS 467, at *41-42 (declining to treat NASD's issuance of a press release as a sanction).[28]

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[27] *Cf. id.*, at 6 (Principal Considerations in Determining Sanctions, No. 7) (guideline concerning reliance on competent advice of counsel).

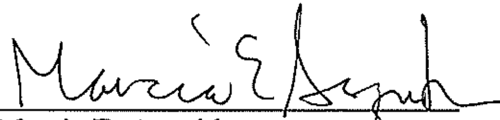
[28] Jordan argues that it is mitigating that her violations did not result directly in the potential for monetary or other gain. *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 17). Even assuming *arguendo* that Jordan's violations did not result in the potential for monetary or other gain within the meaning of the Guidelines, we find that such factor is far outweighed by the other aggravating factors that are present.

The Hearing Panel's sanctions were at the low end of the range of the recommended Guidelines for negligent conduct. Considering the mix of aggravating factors, including our finding that Jordan's entire course of conduct was reckless, the Hearing Panel's sanctions are entirely insufficient to remedy Jordan's violations, protect investors, and impart specifically to Jordan the seriousness of her violations. And to the extent that sanctions may serve general deterrence purposes, the Hearing Panel's sanctions would send the dangerous message that the rule provisions that FINRA adopted in the wake of the research scandals of just a few years ago are ones that FINRA no longer takes seriously. Rule 2711 was intended "to restore investor confidence in a process that is critical to the equities markets." *NASD Notice to Members 02-39* (July 2002). Imposing only a small fine on Jordan would seriously undermine that important purpose. For these reasons, we increase the fine to $20,000, and we suspend Jordan from associating with any member firm in all capacities for two years.

VI. Conclusion

We find that Jordan failed to make required disclosures in research reports, and made misleading omissions in member communications with the public, in violation of NASD Rules 2711(h), 2210, and 2110. For these violations, we fine Jordan $20,000, and we suspend her for two years in all capacities. We affirm the requirement that Jordan pay $1,958.28 in hearing costs, and also order that she pay $1,479.45 in appeal costs.[29]

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith,
Senior Vice President and Corporate Secretary

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[29] We also have considered and reject without discussion all other arguments advanced by respondent.

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 imposed in this decision, after seven days' notice in writing, will summarily be revoked for non-payment.