

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT CHARLES McNAMARA  
(CRD No. 2265046),

Respondent.

Disciplinary Proceeding  
No. 2016049085401

Hearing Officer–RES

**HEARING PANEL DECISION**

June 13, 2018

**Respondent is fined \$10,000, suspended from associating with any FINRA member in any capacity for three months, and required to requalify as a registered representative, for: (1) failing to disclose to his employer firm six outside brokerage accounts; (2) improperly purchasing shares in an equity IPO; and (3) giving a false answer on a Client Affirmation Form of Eligibility for Initial Public Offerings.**

*Appearances*

For the Complainant: Margery M. Shanoff, Esq., and Jennifer L. Crawford, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For Respondent Robert McNamara: Jeff Kern, Esq., and Christopher Bosch, Esq., Sheppard, Mullin, Richter & Hampton, LLP.

**DECISION**

**I. Introduction**

Respondent Robert McNamara is a registered representative with FINRA member firm, Advisor’s Asset Management, Inc. (“AAM”). The Department of Enforcement filed a three-cause Complaint alleging that McNamara: (1) failed to disclose outside brokerage accounts to AAM, in violation of NASD Rule 3050 and FINRA Rule 2010; (2) improperly purchased shares in an equity initial public offering (“IPO”), in violation of FINRA Rules 5130 and 2010; and (3) gave a false answer on a Client Affirmation Form of Eligibility for Initial Public Offerings (“Client Affirmation Form”) in connection with the IPO purchase, in violation of FINRA Rule 2010. McNamara admitted to the material factual allegations in the Complaint and to having

violated the Rules. Accordingly, the focus of this proceeding is a determination of the appropriate remedial sanctions for the violations.

In the hearing, McNamara sought to provide context for his violations. He argued that he should not be subject to a suspension or fine because his violations were the result of mistakes. After careful consideration, the Hearing Panel determines that the appropriate remedial sanctions are a \$10,000 fine, a three-month suspension from associating with any FINRA member in any capacity, and a requirement to requalify as a registered representative prior to reentering the securities industry.

## **II. Findings of Fact**

### **A. Respondent**

McNamara is registered as a General Securities Representative, an Investment Banking Representative, and a General Securities Principal.<sup>1</sup> McNamara became employed in AAM's branch office as a vice president of business development in May 2009.<sup>2</sup> McNamara is an executive vice president of AAM.<sup>3</sup> He became an access person<sup>4</sup> in April 2011 and Chief Operating Officer in March 2016.<sup>5</sup> The departments that report to him are: Finance and Accounting, Human Resources, and Compliance.<sup>6</sup>

### **B. McNamara Does Not Disclose Outside Brokerage Accounts**

When McNamara became employed by AAM, he completed an Outside Brokerage Account Disclosure Form ("Outside Account Form") in which he disclosed one of his outside brokerage accounts, but not three other accounts ("Pre-Association Accounts").<sup>7</sup> After McNamara became employed by AAM, he opened four outside brokerage accounts ("Post-Association Accounts"), but he is charged with not disclosing three of them to AAM.<sup>8</sup> Below we discuss both sets of accounts.

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<sup>1</sup> Joint Stipulations ("Stip.") ¶ 5; Hearing Transcript ("Tr.") 55, 225-26.

<sup>2</sup> Tr. 142. FINRA has jurisdiction over McNamara as he is currently registered with FINRA and associated with AAM.

<sup>3</sup> Tr. 58-59.

<sup>4</sup> An access person is a supervised person who: has access to nonpublic information about clients' purchases and sales of securities; is involved in making securities recommendations to clients; or has access to securities recommendations. Securities and Exchange Commission, Investment Advisers Act Release No. IA-2256 (Investment Adviser Codes of Ethics) (Aug. 31, 2004).

<sup>5</sup> Tr. 56, 58-59.

<sup>6</sup> Tr. 271-72, 333.

<sup>7</sup> Stip. ¶ 11.

<sup>8</sup> Stip. ¶ 20.

McNamara had a beneficial interest in four Pre-Association Accounts at Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”): (1) a joint cash management account in the name of McNamara and his wife; (2) a traditional IRA account in McNamara’s name; (3) a rollover IRA account in McNamara’s name; and (4) a rollover IRA account in the name of McNamara’s wife.<sup>9</sup> These accounts were self-directed accounts, meaning McNamara or his wife was in charge of making investment decisions.<sup>10</sup> McNamara knew he had a beneficial interest in each of the accounts.<sup>11</sup>

When McNamara joined AAM in May 2009, the firm required him to complete the Outside Account Form disclosing any outside brokerage account.<sup>12</sup> If McNamara had established an account prior to his association with AAM, he was required to notify both AAM and the executing firm in writing within 30 days after becoming associated with AAM.<sup>13</sup> McNamara was responsible for making arrangements to have duplicate confirms and statements submitted to AAM.<sup>14</sup>

On the Outside Account Form, McNamara checked the box stating he had an existing outside brokerage account and identified the joint cash management account he and his wife had at Merrill Lynch.<sup>15</sup> He did not disclose the other three Pre-Association Accounts.<sup>16</sup> When explaining his failure to disclose these accounts, McNamara testified he mistakenly thought disclosure of the joint cash management account would automatically result in disclosure of the other accounts.<sup>17</sup>

Merrill Lynch did not receive from McNamara or AAM a request for duplicate confirms and statements, and McNamara did not follow up on this requirement.<sup>18</sup> AAM’s Compliance Department wrote a letter requesting that Merrill Lynch submit duplicate confirms and statements, but this letter was inadvertently not sent to Merrill Lynch.<sup>19</sup>

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<sup>9</sup> Stip. ¶ 6.

<sup>10</sup> Stip. ¶ 7; Tr. 59-60.

<sup>11</sup> Tr. 65-66.

<sup>12</sup> Stip. ¶ 9; Tr. 67-68; Joint Exhibit (“JX”) 1, at 1.

<sup>13</sup> Stip. ¶ 10; Tr. 69-70; JX-1, at 1.

<sup>14</sup> JX-1, at 1.

<sup>15</sup> Stip. ¶ 11; JX-1, at 1; Tr. 70-71.

<sup>16</sup> Stip. ¶ 11; Tr. 71.

<sup>17</sup> Tr. 72, 159.

<sup>18</sup> JX-15; Tr. 161-62.

<sup>19</sup> RX-1; Tr. 167.

In November 2009, McNamara completed an Annual Disclosure Form.<sup>20</sup> In this form, McNamara agreed to provide the Compliance Department with prompt written notice of all brokerage accounts in which he had an interest and to ensure that copies of all confirmation statements were sent to the Compliance Department.<sup>21</sup> He acknowledged his responsibility to notify the Compliance Department in writing of all brokerage accounts in which he had an interest and held outside of AAM.<sup>22</sup> He made the same representations in his 2010 Annual Disclosure Form.<sup>23</sup>

McNamara failed to disclose to AAM one of the Pre-Association Accounts through April 1, 2012, the approximate date the account was purged.<sup>24</sup> He failed to disclose two of the Pre-Association Accounts through September 2, 2012, the approximate date those accounts were purged.<sup>25</sup>

In April 2010, AAM gave McNamara the opportunity to purchase stock in a private placement of AAM's parent company.<sup>26</sup> However, Merrill Lynch did not permit investments of this nature in its self-directed investment platform.<sup>27</sup> To deal with this situation and enable his purchase of stock in the private placement, McNamara and his wife opened four Post-Association Accounts on Merrill Lynch's full-service brokerage platform.<sup>28</sup> McNamara and his wife executed account opening documents for these accounts.<sup>29</sup> He purchased the AAM stock through one of the accounts, his rollover IRA account.<sup>30</sup> Over the course of several months, he and his wife transferred all of their investment funds from the Pre-Association Accounts to the Post-Association Accounts.<sup>31</sup>

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<sup>20</sup> Stip. ¶ 23; JX-2; Tr. 82.

<sup>21</sup> JX-2, at 4.

<sup>22</sup> Stip. ¶ 26.

<sup>23</sup> Stip. ¶¶ 23-25; JX-3, at 4; Tr. 96-98.

<sup>24</sup> Stip. ¶ 12.

<sup>25</sup> Stip. ¶ 13.

<sup>26</sup> Stip. ¶ 14; Tr. 171.

<sup>27</sup> Stip. ¶ 14; Tr. 172.

<sup>28</sup> Stip. ¶ 16; JX-27, at 1; JX-28, at 1; JX-29, at 1; JX-30, at 1; Tr. 83-84, 148.

<sup>29</sup> Tr. 174. The fact that McNamara executed new account opening documents should have indicated to him that the Post-Association Accounts were new accounts.

<sup>30</sup> Tr. 176. Thus, AAM had constructive knowledge of this account because the firm had to transfer shares of its parent company's stock into the account.

<sup>31</sup> Stip. ¶ 17; Tr. 89-90; JX-16; JX-17; JX-18; JX-19; JX-20; JX-21. As part of this process, McNamara signed his wife's name to a Merrill Lynch document authorizing him to have online access to her brokerage account. JX-30, at 5.

McNamara knew he had a beneficial interest in each of the Post-Association Accounts.<sup>32</sup> He also knew there was a FINRA Rule requiring him to disclose in writing to AAM all outside brokerage accounts in which he had a beneficial interest. However, he did not disclose the Post-Association Accounts to AAM.<sup>33</sup> When explaining his failure to disclose, McNamara testified he mistakenly thought disclosure was not necessary. He explained that the accounts were not new accounts, but instead were only the result of an internal transfer within Merrill Lynch that did no more than change the accounts from self-directed accounts to full-service accounts.<sup>34</sup>

In an April 2011 AAM Certification of Compliance with the Code of Ethics, McNamara represented he had reported all securities positions, transactions, and accounts in which he had a beneficial interest.<sup>35</sup> Although AAM may have had constructive knowledge of one Post-Association Account (McNamara's rollover IRA account) as a result of his AAM stock purchase in April 2010, he did not disclose to AAM the other three Post-Association Accounts until July 29, 2011, approximately 15 months after he and his wife opened them.<sup>36</sup>

### **C. McNamara Purchases Shares in an IPO**

When McNamara joined AAM, he received AAM's Compliance Manual, which contained the firm's prohibition on equity IPOs.<sup>37</sup> The Compliance Manual prohibited employees of the firm from participating in an IPO without written authorization from the Compliance Department.<sup>38</sup>

AAM reminded its employees of the IPO prohibition on several occasions. On September 30, 2009, McNamara received an email from AAM's Chief Compliance Officer to all employees stating no employee could purchase equity IPOs in any account in which he had control or a beneficial interest.<sup>39</sup> McNamara received emails containing the same information on December 15, 2009 and July 23, 2010.<sup>40</sup>

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<sup>32</sup> Stip. ¶ 18; Tr. 84. McNamara was allocated 100 percent of the assets in his wife's account in the event of her death. JX-30, at 3; Tr. 87.

<sup>33</sup> Stip. ¶¶ 20-21; Tr. 95-96, 189.

<sup>34</sup> Tr. 189-90.

<sup>35</sup> Stip. ¶ 28; JX-4.

<sup>36</sup> Stip. ¶ 20. AAM did not impose any consequences for McNamara's failure to disclose outside brokerage accounts. Tr. 300-01.

<sup>37</sup> Tr. 102; JX-25, at 2.

<sup>38</sup> Stip. ¶ 37; JX-26; Tr. 103. In effect, this meant that no employee of AAM was allowed to purchase IPO shares. Tr. 285-86.

<sup>39</sup> Stip. ¶¶ 38, 39; JX-6; Tr. 104.

<sup>40</sup> Stip. ¶¶ 38, 39; JX-7; JX-8; Tr. 105-07.

In November 2010—four months after receiving the July 23, 2010 email reiterating that no employee could purchase IPOs—McNamara decided to participate in an IPO being conducted by LPL Investment Holdings, Inc. (“LPL”).<sup>41</sup> LPL was a brokerage firm and a customer of AAM.<sup>42</sup> Before making the IPO purchase, McNamara did not discuss his decision with anyone at AAM.<sup>43</sup> He obtained information about LPL from the trade press and from preliminary statements on Form S-1 filed with the Securities Exchange Commission.<sup>44</sup> McNamara wanted to participate in the IPO because he had formed an investment hypothesis based on his professional knowledge about LPL.<sup>45</sup> He wanted to get as many LPL shares as he could afford.<sup>46</sup>

McNamara bought 200 shares of the IPO offered by LPL at \$30 per share.<sup>47</sup> He purchased the shares through his rollover IRA account.<sup>48</sup> He knew he was participating in an equity IPO.<sup>49</sup> When he informed AAM’s Chief Compliance Officer that he had purchased shares in an IPO, the Chief Compliance Officer directed him to sell the shares and donate any profit to charity.<sup>50</sup>

#### **D. McNamara Falsely Completes the Client Affirmation Form**

To purchase shares offered by LPL in the IPO, McNamara had to fill out and sign the Client Affirmation Form, stating he was eligible to purchase IPO shares.<sup>51</sup> The Client Affirmation Form stated Merrill Lynch was not permitted to sell IPOs to restricted persons or their family members.<sup>52</sup> The Client Affirmation Form defined “restricted person” to include an NASD member firm or other broker-dealer, or an officer, director, general partner, employee, agent, owner or affiliate of a broker-dealer that is engaged in the investment or securities business.<sup>53</sup>

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<sup>41</sup> Tr. 107.

<sup>42</sup> Tr. 108, 121.

<sup>43</sup> Tr. 261-62.

<sup>44</sup> Tr. 198, 216.

<sup>45</sup> Tr. 108.

<sup>46</sup> Tr. 122-23.

<sup>47</sup> Stip. ¶ 34; JX-13, at 1; Tr. 109.

<sup>48</sup> Tr. 176. This was the account of which AAM had constructive knowledge. Thus, it cannot be credibly argued that McNamara intended to keep his IPO purchase hidden from his employer firm.

<sup>49</sup> Stip. ¶ 35.

<sup>50</sup> Tr. 123.

<sup>51</sup> Stip. ¶ 31; JX-10.

<sup>52</sup> Stip. ¶ 40; JX-10; Tr. 110-11.

<sup>53</sup> Stip. ¶ 40; JX-10; Tr. 111.

The Client Affirmation Form asked: “Is this account beneficially owned 10% or more by one or more Restricted Persons, as defined above?”<sup>54</sup> McNamara read the definition of restricted person, but checked the “no” box, representing that the account he intended to use in purchasing the IPO shares was not beneficially owned 10 percent or more by one or more restricted persons.<sup>55</sup> This representation was false.<sup>56</sup> McNamara testified he mistakenly thought he was not a restricted person because AAM was not a member of the underwriting syndicate for the IPO.<sup>57</sup>

### **III. Conclusions of Law**

#### **A. Undisclosed Brokerage Accounts (First Cause of Action)**

NASD Rule 3050 required that an associated person disclose any outside brokerage account to his employer firm and disclose his association with the employer firm to the firm at which he held the outside brokerage account:

A person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member; provided, however, that if the account was established prior to the association of the person with the employer member, the associated person shall notify both members in writing promptly after becoming so associated.<sup>58</sup>

McNamara violated NASD Rule 3050 and FINRA Rule 2010 in that he did not disclose six outside brokerage accounts.<sup>59</sup>

#### **B. Purchase of IPO Shares (Second Cause of Action)**

FINRA Rule 5130 provides that “[a] member or person associated with a member may not purchase a new issue in any account in which such member or person associated with a member has a beneficial interest.”<sup>60</sup> McNamara violated FINRA Rules 5130 and 2010 in that he purchased IPO shares while he was associated with a FINRA member.<sup>61</sup>

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<sup>54</sup> Stip. ¶ 41; JX-10.

<sup>55</sup> Stip. ¶¶ 42-43; JX-10; JX-12; Tr. 113, 120.

<sup>56</sup> Stip. ¶ 44; Tr. 115.

<sup>57</sup> Tr. 199-200.

<sup>58</sup> NASD Rule 3050(c).

<sup>59</sup> Stip. ¶ 29.

<sup>60</sup> FINRA Rule 5130(a)(2).

<sup>61</sup> Stip. ¶ 49.

### **C. False Response on Client Affirmation Form (Third Cause of Action)**

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” McNamara’s false answer on the Client Affirmation Form violated FINRA Rule 2010.<sup>62</sup>

### **IV. Sanctions**

The purpose of FINRA’s disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.<sup>63</sup>

In determining sanctions, adjudicators must consider the specific Sanction Guidelines for the violations at issue and the Principal Considerations, which are applicable to all sanction formulations. McNamara contends he should not be sanctioned because his violations of NASD and FINRA Rules were the result of mistakes. Below we discuss the Hearing Panel’s sanction determination with respect to each violation.

#### **A. Undisclosed Brokerage Accounts (First Cause of Action)**

The Sanction Guideline for undisclosed outside brokerage accounts recommends that adjudicators impose a fine in the range of \$1,000 to \$37,000.<sup>64</sup> In egregious cases, adjudicators should consider suspending an associated person for up to two years or barring him.<sup>65</sup>

There are three considerations specific to this Sanction Guideline. The first is whether the violative transactions presented real or perceived conflicts of interest for the employer firm or customers.<sup>66</sup> The second is whether the subject transactions involved the improper purchase or sale of IPO shares.<sup>67</sup> The third is whether the respondent provided verbal notice of the violative

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<sup>62</sup> Stip. ¶ 48.

<sup>63</sup> FINRA Sanction Guidelines (“Guidelines”) at 2 (2018) (General Principle No. 1), <http://www.finra.org/industry/sanction-guidelines>. In May 2018, FINRA revised its Guidelines by amending General Principle No. 2 to instruct adjudicators in disciplinary proceedings to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when assessing sanctions. These revisions apply only to complaints filed in FINRA’s disciplinary system beginning June 1, 2018. See Guidelines, at 2-3. The Hearing Panel is not aware of any arbitrations initiated by customers against McNamara that resulted in adverse arbitration awards or settlements. No other revisions were made to the Guidelines. See FINRA Regulatory Notice 18-17 (May 2, 2018), <http://www.finra.org/industry/notices/18-17>.

<sup>64</sup> Guidelines at 16.

<sup>65</sup> Guidelines at 16.

<sup>66</sup> Guidelines at 16.

<sup>67</sup> Guidelines at 16. The phrase “improper purchase or sale of IPO shares” in the text above refers to the Sanction Guideline for Restrictions on the Purchase and Sale of Initial Equity Public Offerings Violations, Guidelines at 23, and FINRA Rule 5130 (“Restrictions on the Purchase and Sale of Initial Equity Public Offerings”).



transactions to the employer member or the executing member, and whether the employer member verbally acquiesced in the transactions.<sup>68</sup>

Here, McNamara's undisclosed outside brokerage accounts did not present real or perceived conflicts of interest for AAM or customers. McNamara used the account of which AAM had constructive notice to purchase the IPO shares issued by LPL. Thus, McNamara did not use one of the undisclosed accounts to purchase the IPO shares, and the second consideration specific to this Sanction Guideline does not come into play. On the other hand, McNamara did not provide AAM with notice of his accounts, nor did AAM verbally acquiesce.

One important Principal Consideration is whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence.<sup>69</sup> In this regard, the Hearing Panel considered both categories of McNamara's undisclosed accounts: (1) the Pre-Association Accounts; and (2) the Post-Association Accounts.

### **1. Pre-Association Accounts**

With respect to the Pre-Association Accounts, the evidence shows that McNamara was confronted with, but did not pay attention to, a number of red flags telling him he was required to disclose to AAM *all* outside brokerage accounts in his name or in which he had a beneficial interest. In deciding whether his failure to disclose the outside brokerage accounts was the result of an intentional act, recklessness, negligence, or a mistake, the Hearing Panel considers the following facts and circumstances:

- The Outside Account Form stated that, if McNamara had an outside brokerage account that was established prior to his association, he was required to notify both AAM and Merrill Lynch in writing within thirty days.<sup>70</sup>
- The Outside Account Form stated McNamara was responsible for making arrangements to have duplicate confirms and statements submitted to AAM.<sup>71</sup>
- McNamara was on notice of the requirements for notification and duplicate confirms and statements because those requirements were on the Outside Account Form, which he completed and signed.<sup>72</sup>

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<sup>68</sup> Guidelines at 16.

<sup>69</sup> Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

<sup>70</sup> Stip. ¶ 10; Tr. 69-70; JX-1, at 1.

<sup>71</sup> JX-1, at 1.

<sup>72</sup> JX-1, at 1.

- In AAM’s 2009 Annual Disclosure Form, McNamara agreed to provide the Compliance Department with prompt written notice of all brokerage accounts in which he had an interest.<sup>73</sup> He agreed to ensure that copies of all confirms were sent to the Compliance Department.<sup>74</sup> In the Annual Disclosure Form, he stated he was aware he had to notify the Compliance Department in writing of all applicable and covered brokerage accounts held outside of AAM.<sup>75</sup>
- There is no evidence McNamara did anything with regard to the disclosure of the outside brokerage accounts besides sign the forms AAM directed him to sign.

McNamara contends he did not disclose the three Pre-Association Accounts to AAM because he mistakenly thought the account he did disclose—the joint cash management account he and his wife had—was a “primary account” and the other three were sub-accounts, which Merrill Lynch would disclose automatically. Yet, the account statements for the joint cash management account do not show it was a primary account.<sup>76</sup> There is also no evidence that the undisclosed accounts were sub-accounts, or that disclosure of the joint cash management account would automatically result in disclosure of the other accounts.<sup>77</sup> Nor is there anything in the record to indicate McNamara did anything to verify or test his mistaken supposition that disclosure of the joint cash management account would automatically result in disclosure of the other accounts.

## 2. Post-Association Accounts

McNamara was confronted with, but did not pay attention to, a number of red flags telling him he was required to disclose to AAM the Post-Association Accounts. In deciding whether McNamara’s failure to disclose these accounts was the result of an intentional act, recklessness, negligence, or a mistake, the Hearing Panel considers the following facts and circumstances:

- When McNamara and his wife opened the accounts, he knew he had a beneficial interest in each of them.<sup>78</sup>

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<sup>73</sup> Stip. ¶¶ 24-25; JX-2, at 4.

<sup>74</sup> Stip. ¶ 24; JX-2, at 4.

<sup>75</sup> Stip. ¶ 26.

<sup>76</sup> Tr. 79.

<sup>77</sup> JX-31; JX-32; JX-33; JX-34; Tr. 78-82.

<sup>78</sup> Stip. ¶ 18; Tr. 84.

- McNamara did not forget about the accounts after he opened them. Instead, he transferred funds from the Pre-Association Accounts to the Post-Association Accounts, a process that took several months.<sup>79</sup> In that time, McNamara did not disclose the Post-Association Accounts to AAM.
- McNamara knew of a FINRA Rule requiring him to disclose in writing to his employer firm all outside brokerage accounts in which he had a beneficial interest.<sup>80</sup>
- In AAM's 2010 Annual Disclosure Form, McNamara agreed to provide the Compliance Department with prompt written notice of all brokerage accounts in which he had an interest.<sup>81</sup> He agreed to ensure that copies of all confirmation statements were sent to the Compliance Department.<sup>82</sup> In the Annual Disclosure Form, he stated he was aware he had to notify the Compliance Department in writing of all applicable and covered brokerage accounts held outside of AAM.<sup>83</sup>
- In an April 2011 AAM Certification of Compliance with the Code of Ethics, McNamara represented he had reported all securities positions, transactions, and accounts in which he had a beneficial interest.<sup>84</sup>
- There is no evidence McNamara did anything with regard to the disclosure of the Post-Association Accounts besides sign the forms AAM directed him to sign.

McNamara contends he mistakenly thought he did not have to disclose the Post-Association Accounts because they were not new accounts, but instead were only the result of an internal transfer within Merrill Lynch that did no more than change the accounts from self-directed accounts to full-service accounts. Yet, McNamara and his wife executed account opening documents for the Post-Association Accounts.<sup>85</sup> Merrill Lynch assigned new account numbers, assigned a financial advisor to the accounts where there had been none before, and allowed McNamara to engage in transactions (like the

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<sup>79</sup> Stip. ¶ 17; Tr. 89-90; JX-16; JX-17; JX-18; JX-19; JX-20; JX-21. With regard to McNamara's wife's accounts, it took from April 2010 to January 2011 to get the assets transferred from her Pre-Association Account to her Post-Association Account. Tr. 89-90, 180-81; JX-17; JX-19, at 1; JX-20, at 1.

<sup>80</sup> Stip. ¶ 21.

<sup>81</sup> Stip. ¶¶ 24-25; JX-3, at 4.

<sup>82</sup> Stip. ¶ 24; JX-3, at 4.

<sup>83</sup> Stip. ¶ 26.

<sup>84</sup> Stip. ¶ 28; JX-4.

<sup>85</sup> Tr. 174.

purchase of securities from the private placement of AAM's parent company) that were not permitted in the self-directed accounts.

There is no evidence McNamara did anything to verify his claimed belief that he did not have to disclose the Post-Association Accounts. The accounts were different, new accounts. A responsible registered person would know they had to be disclosed.

Considering the above facts and circumstances, the Hearing Panel concludes McNamara was reckless in not disclosing six outside brokerage accounts.

Based on the above factors and McNamara's recklessness, for his violations of NASD Rule 3050 and FINRA Rule 2010, he shall be fined \$5,000 and suspended from associating with any FINRA member in any capacity for a period of one month. Because McNamara's failure to disclose his outside brokerage accounts reflected a disturbing lack of understanding and ignorance of NASD Rules, the Hearing Panel also requires him to requalify by examination as a General Securities Representative prior to reentering the securities industry.

#### **B. Purchase of IPO Shares (Second Cause of Action)**

According to the Sanction Guideline for Restrictions on the Purchase and Sale of Initial Equity Public Offerings Violations, if the respondent is a restricted buyer of IPO shares, adjudicators should consider a fine of \$1,000 to \$22,000.<sup>86</sup> Adjudicators should consider suspending the respondent for up to 30 business days.<sup>87</sup> In egregious cases, adjudicators should consider a suspension of up to two years or a bar.<sup>88</sup>

Three considerations specific to this Sanction Guideline are relevant. The first is the nature of the restricted account involved, and whether the account is absolutely or conditionally restricted.<sup>89</sup> The second is whether the respondent has an interest in the restricted account.<sup>90</sup> The third is whether the respondent engaged in the misconduct for the purpose of improperly conferring financial benefit on another person or entity.<sup>91</sup>

The account McNamara used to purchase the IPO shares was absolutely restricted, and he had a 100 percent ownership interest in the account. He did not engage in the misconduct for the purpose of conferring financial benefit on another person, but intended to confer financial benefit on himself.

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<sup>86</sup> Guidelines at 23.

<sup>87</sup> Guidelines at 23.

<sup>88</sup> Guidelines at 23.

<sup>89</sup> Guidelines at 23.

<sup>90</sup> Guidelines at 23.

<sup>91</sup> Guidelines at 23.

In deciding whether McNamara's purchase of the IPO shares was the result of an intentional act, recklessness, negligence, or a mistake, the Hearing Panel determines that McNamara was reckless. McNamara was confronted with, but did not pay attention to, a number of red flags telling him he was a restricted person who was prohibited from purchasing shares in an equity IPO. The Hearing Panel considers the following facts and circumstances:

- When he was hired, McNamara received AAM's Compliance Manual, which contained the firm's prohibition on equity IPOs.<sup>92</sup> The Compliance Manual prohibited employees of the firm from participating in an IPO without written authorization from the Compliance Department.<sup>93</sup>
- McNamara received three emails from AAM's Chief Compliance Officer stating no employee could purchase equity IPOs in any account in which he had control or a beneficial interest.<sup>94</sup>
- The Merrill Lynch Client Affirmation Form stated Merrill Lynch was not permitted to sell IPO shares to restricted persons or their family members.<sup>95</sup> The Client Affirmation Form directed McNamara to read the definitions in the Client Affirmation Form, answer the questions and, if eligible, affirm his eligibility by signing the Client Affirmation Form.<sup>96</sup> The Client Affirmation Form defined "restricted person" to include an NASD member firm or other broker-dealer, or an officer, director, general partner, employee, agent, owner or affiliate of a broker-dealer that is engaged in the investment or securities business.<sup>97</sup> McNamara read the definition of restricted person in the Client Affirmation Form.<sup>98</sup>

McNamara's purchase of the IPO shares was the result of considerable thought and deliberation. He formed an investment hypothesis based on his professional knowledge about LPL.<sup>99</sup> Yet in thinking about and forming this hypothesis, he did not inquire whether he was allowed to purchase shares in the IPO.

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<sup>92</sup> Tr. 102; JX-25, at 2.

<sup>93</sup> Stip. ¶ 37; JX-26; Tr. 103.

<sup>94</sup> Stip. ¶¶ 38, 39; JX-6; JX-7; JX-8. These emails carry some weight in considering whether McNamara purchased the IPO shares despite prior warning from a supervisor. Guidelines at 8 (Principal Consideration No. 14: Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from a supervisor that the conduct violated FINRA rules).

<sup>95</sup> Stip. ¶ 40; JX-10.

<sup>96</sup> JX-10.

<sup>97</sup> Stip. ¶ 40; JX-10.

<sup>98</sup> Stip. ¶ 43.

<sup>99</sup> Tr. 108.

Based on the above factors and McNamara's recklessness, for his violation of FINRA Rules 5130 and 2010, he shall be fined \$2,500 and suspended from associating with any FINRA member in any capacity for one month. The suspension shall run consecutively to the suspension for the first cause of action, the undisclosed outside brokerage accounts. Because McNamara's improper purchase of IPO shares reflected a disturbing lack of understanding and ignorance of FINRA Rules, the Hearing Panel also requires him to requalify by examination as a General Securities Representative prior to reentering the securities industry. Satisfaction of the requalification requirement for the first cause of action will satisfy the requalification requirement for this cause of action.

### **C. False Response on Client Affirmation Form (Third Cause of Action)**

No sanction guideline applies to an associated person's false answer on a brokerage firm's Client Affirmation Form. Accordingly, for the third cause of action, the Hearing Panel relies on the Principal Considerations and, in particular, the fact that McNamara acted recklessly in giving a false answer on the Client Affirmation Form. The Client Affirmation Form was an important document for the purpose of enabling Merrill Lynch to comply with FINRA Rule 5130, which prohibits the purchase and sale of IPO shares between FINRA members and associated persons. The definition of "restricted person" appeared in the Client Affirmation Form,<sup>100</sup> and a responsible associated person would read the definition and know he was not allowed to purchase IPO shares. McNamara's explanation for his false answer—that he thought restricted persons were employees of the members of the underwriting syndicate for the IPO—has no support in the language of the definition in the Client Affirmation Form. McNamara did not ask anyone at AAM or Merrill Lynch to help him clarify the meaning of "restricted person." Only an associated person acting recklessly would answer the Client Affirmation Form the way McNamara did.<sup>101</sup>

Based on the above factors and McNamara's recklessness, for his violation of FINRA Rule 2010, he shall be fined \$2,500 and suspended from associating with any FINRA member in any capacity for one month. The suspension shall run consecutively to the suspensions for the first and second causes of action.

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<sup>100</sup> The IPO purchase prohibition of FINRA Rule 5130 applies to FINRA members and persons associated with FINRA members. FINRA Rule 5130(a)(2). "Restricted person" appears to be a defined term used in the Client Affirmation Form. For the purpose of applying FINRA Rule 5130 and its corresponding Sanction Guideline, the Hearing Panel does not consider a material difference to exist between an associated person as used in the Rule and a "restricted person" as used in the Client Affirmation Form.

<sup>101</sup> The fact that McNamara made his false answer on the Client Affirmation Form at the same time he violated FINRA Rule 5130 prohibiting IPO purchases, and the fact that these violations followed his violation of NASD Rule 3050 prohibiting undisclosed outside brokerage accounts, carry some weight in considering whether McNamara engaged in numerous acts or a pattern of misconduct. Guidelines at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct).

#### **D. Conclusion**

In sum, by violating NASD and FINRA Rules, McNamara showed a cavalier attitude toward compliance. He acted recklessly. Considering his sanctions in the aggregate, he is fined \$10,000 and suspended for three months. These sanctions are necessary to fulfill the remedial purpose of the NASD and FINRA Rules and the Sanction Guidelines. Because McNamara's undisclosed outside brokerage accounts and purchase of IPO shares reflected a disturbing lack of understanding and ignorance of NASD and FINRA Rules, the Hearing Panel also requires him to requalify by examination as a General Securities Representative prior to reentering the securities industry.

#### **V. Order**

Respondent Robert McNamara did not disclose to his employer firm six outside brokerage accounts in which he had a beneficial interest, in violation of NASD Rule 3050 and FINRA Rule 2010. For this violation, he is fined \$5,000, suspended from associating with any FINRA member in any capacity for one month, and required to requalify by examination as a General Securities Representative prior to reentering the securities industry.

McNamara improperly purchased shares in an equity IPO, in violation of FINRA Rules 5130 and 2010. For this violation, he is fined \$2,500, suspended from associating with any FINRA member in any capacity for one month, and required to requalify by examination as a General Securities Representative prior to reentering the securities industry.

McNamara gave a false answer on the Client Affirmation Form, in violation of FINRA Rule 2010. For this violation, he is fined \$2,500 and suspended from associating with any FINRA member in any capacity for one month.

Each suspension above for each cause of action shall run consecutively.

McNamara is also ordered to pay the costs of the hearing in the amount of \$3,804.29, consisting of an administrative fee of \$750 and the cost of the transcript. If this Decision becomes FINRA's final disciplinary action, McNamara's three-month suspension in all capacities shall become effective at the opening of business on August 6, 2018. The \$10,000 fine

and costs shall be due on a date set by FINRA, but not less than thirty days after this Decision becomes FINRA's final action.<sup>102</sup>

For The Hearing Panel



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Richard E. Simpson  
Hearing Officer

Copies to:

Robert Charles McNamara (via overnight courier and first-class mail)

Jeff Kern, Esq. (via email and first-class mail)

Christopher Bosch, Esq. (via email)

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Jennifer L. Crawford, Esq. (via email)

Jeffrey D. Pariser, Esq. (via email)

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<sup>102</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.