

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
Telephone: (973) 504-3600

IN THE MATTER OF:

FCG ADVISORS, LLC. (CRD No. 40633)

Respondent.

CONSENT ORDER

BEFORE CHRISTOPHER W. GEROLD, BUREAU CHIEF

Pursuant to the authority granted to Christopher W. Gerold, Bureau Chief of the New Jersey Bureau of Securities (the "Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -89 (the "Securities Law"), and after investigation, careful review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief hereby finds that there is good cause and it is in the public interest to enter into a Consent Order (the "Consent Order") with FCG Advisors, LLC ("FCG"), and FCG hereby agrees to resolve any and all issues in controversy regarding the specific conduct described herein on the terms set forth in this Consent Order.

WHEREAS, the New Jersey Bureau of Securities (the "Bureau") is the State agency with the responsibility to administer and enforce the Securities Law;

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary, appropriate and in the public interest or for the protection of investors or

consistent with the purposes fairly intended by the provisions of the Securities Law;

WHEREAS, the Bureau has conducted an investigation into certain activities of FCG as set forth in this Consent Order;

WHEREAS, FCG and the Bureau Chief wish to resolve the Bureau's investigation regarding the specific conduct described herein without the expense and delay that formal proceedings would involve;

WHEREAS, FCG consents to the form, content and entry of this Consent Order. Accordingly, FCG waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief's Findings of Fact and Conclusions of Law in this Consent Order; and
- b. To seek judicial review of or otherwise challenge the validity of this Consent Order;

WHEREAS, FCG agrees that solely for the purposes of settling this matter, or any future proceedings by the Bureau regarding the specific conduct described herein, this Consent Order shall have the same effect as if entered after a full hearing held pursuant to N.J.S.A. 52:14B-1 to 52:14B-31; and

WHEREAS, this Consent Order concludes the Bureau's investigation and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties, restitution, or other relief against FCG for any and all issues related to or resulting from the conduct of Michael Allan Bressman (CRD No. 873973) ("Bressman") while he was registered with FCG as it relates to FCG.

The Bureau Chief makes the following Findings of Fact and Conclusions of Law which FCG neither admits nor denies:

FINDINGS OF FACT

1. FCG (CRD No. 40633) has been registered with the Bureau as a broker-dealer since May 1996. FCG maintains a main address of One Main Street #202, Chatham, New Jersey.

Michael Allan Bressman

2. Bressman, residing in Montville, New Jersey, was registered with the Bureau as an agent of several broker-dealers since August 1983 and as an investment adviser representative since June 2015, including:
 - a. Agent registration with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") (CRD No. 7691) from August 24, 1983 to January 28, 2000. Merrill Lynch discharged Bressman after it determined that he exercised unauthorized discretion in customer accounts.
 - b. Agent registration with FCG from March 3, 2000 to May 16, 2018 and investment adviser representative registration with FCG from June 5, 2015 to March 23, 2016. Bressman was also registered as an investment adviser representative of an FCG affiliate, FCG Wealth Management ("FCG Wealth") from April 5, 2016 to September 25, 2018. Bressman was discharged from FCG Wealth and FCG, after allegations were made that accused him of, among other things, misusing FCG's allocation account in connection with his personal trades.
 - c. Bressman certified to FCG that he was in compliance with FCG's Written Supervisory Procedures ("WSPs"), industry rules and regulations, and securities laws on a quarterly basis from at least January 2012 through February 2018 (the "Relevant Period").

Bressman's Fraudulent Trading

3. During the Relevant Period, Bressman engaged in a fraudulent "cherry-picking" scheme, whereby, based upon a stock's intraday performance, he fraudulently diverted profitable trades to himself and family members, while unfairly assigning unprofitable trades to his customers.
4. Bressman acted as an agent for more than 60 individuals and families, a majority of which Bressman had discretionary trading authority (the "Customer Accounts").
5. Bressman also maintained his personal, and a few family members' brokerage accounts at FCG (the "Personal Accounts").
6. Bressman entered aggregated trades for a group of customers using a designated FCG block trading/allocation account, which was a system provided by FCG's clearing firm (the "Allocation Account"). Allocation accounts are typically used to effect simultaneous, large purchases or sales of stock (block orders).
7. Bressman placed orders in the Allocation Account using an online trading platform provided to FCG and its brokers by FCG's clearing firm. The platform did not provide for the orders to identify which accounts were supposed to receive the stock from the Allocation Account before the trade was executed.
8. After a trade was executed, Bressman would use the online trading platform to either sell the stock or allocate the stock from the Allocation Account to one or more other accounts (either the Customer Accounts or Personal Accounts). If Bressman sold the stock directly from the Allocation Account, he would later have to allocate both the purchase transaction and the sale transaction to one or more of these accounts, again using the online trading platform.

9. During the Relevant Period, Bressman placed approximately 5,000 trades from the Allocation Account and misused the Allocation Account to disproportionately allocate profitable trades to his Personal Accounts and to disproportionately allocate unprofitable trades to the Customer Accounts.
10. When Bressman purchased stock using the Allocation Account, he typically delayed making any allocation to another account, or otherwise indicating which account was supposed to receive the resulting stock. This delay in making an allocation enabled Bressman to watch how the stock performed in the hours after the trade before deciding how to allocate it. Bressman made allocations between the Customer Accounts and his Personal Accounts based on the stock's performance.
11. In February 2016, FCG advised Bressman that compliance with FCG's pre-clearance process for all of his personal trades would be required. FCG's pre-clearance process required that Bressman submit a form ("Pre-Clearance Form") prior to execution of a trade on which Bressman would disclose:
 - a. the stock that Bressman planned to trade;
 - b. if Bressman planned to buy or sell the stock;
 - c. the number of shares to be purchased or sold; and
 - d. whether any FCG customers had a current order for the stock.
12. Despite this requirement, Bressman continued to fraudulently allocate trades to Customer Accounts and Personal Accounts based on the stock's performance. In certain circumstances, Bressman submitted the Pre-Clearance Form after the trade was executed but before allocation. In other circumstances, Bressman allocated losing trades to Customer Accounts he stated on the Pre-Clearance Form were for his Personal Accounts.

13. On May 4, 2018, FCG terminated Bressman, stating that he “was discharged after allegations were made that accused him of, among other things, misusing the Firm’s allocation account in connection with his personal trades.”
14. On or about September 12, 2018, the United States Securities And Exchange Commission filed a Complaint in the United States District Court, District of Massachusetts, alleging that Bressman engaged in a fraudulent cherry-picking scheme.
15. On June 11, 2019, Bressman entered into a criminal plea agreement with the United States Attorney for the District of New Jersey. Bressman pled guilty to violations of:
 - a. Securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5; and,
 - b. Investment adviser fraud, in violation of 15 U.S.C. §§ 80b-6 and 80b-17.
16. As part of his plea agreement, Bressman agreed “to make full restitution for all losses resulting from the offense of conviction . . . to the victim investors.”
17. Bressman also waived his right to appeal his sentence, which included his agreement to make restitution.
18. On August 7, 2020, Bressman was sentenced to two years in prison and 18 months of supervised release. Bressman was also ordered to pay restitution of \$793,680 to the victim investors who received unprofitable trades and to forfeit that same amount.

FCG Did Not Detect Bressman’s Fraudulent Scheme

19. During the Relevant Period, FCG’s WSPs provided that:

The designated Principal conducts regular reviews concentrating on such areas as order allocation, “best execution,” bunching of orders, block trades
...

20. D. Francis Gilkes, the Chief Compliance Officer and Operations Manager, (“Gilkes”) acted

as the “designated Principal” during the Relevant Period. Additionally, the WSPs required Gilkes to periodically review the personal accounts and trading of FCG personnel as well as the trading in customer accounts.

21. Further both Gilkes and Chris Glatz, the Trade Desk Supervisor (“Glatz”), were required to periodically review the personal accounts of registered representatives for several types of activities including manipulative trading. These reviews were performed in accordance with FCG’s WSPs.
22. Despite his certification to FCG that he was in compliance with FCG’s WSPs, industry rules and regulations, and securities laws, Bressman executed a fraudulent cherry-picking scheme and used FCG’s Allocation Account to further this fraud for over six years.
23. FCG did not detect Bressman’s fraudulent scheme.
24. Furthermore, on February 16, 2016, Gilkes notified Bressman that Bressman was now required to receive pre-clearance of all of his personal trades via a form to be emailed to Glatz.
25. When Bressman questioned Gilkes as to why pre-clearance of his trades was now required Gilkes explained “... it isn’t a new process. It has been in place for all employees for several years including me. We had been making an exception for you because of the nature of the trades you were placing. Specifically, we thought that because you were allocating to yourself at the same time that you were not disadvantaging the client.”
26. Around this time, Bressman also inquired whether he would be able to acquire a block of shares and then seek pre-clearance, prior to allocation, if any of the shares were for himself. The concern that Bressman raised was that if he had to await pre-clearance prior to acquiring a block of shares, he would be doing his clients a disservice by not getting a

timely execution. In response, Gilkes stated that Bressman may acquire the block before obtaining pre-clearance. The pre-clearance procedure was for Bressman's personal accounts, not his clients' accounts.

27. The form FCG provided to Bressman for pre-clearance approval required Bressman to disclose information regarding his trades including, but not limited to: the stock Bressman planned to trade; whether Bressman planned to buy or sell the security; whether any advisory clients had a current order for the security; whether the security is being considered for purchase or sale for any advisory client; whether any advisory clients currently own the stock; and whether the security should be considered an investment opportunity for clients.
28. Although Bressman acknowledged on many of the pre-clearance forms that the stocks he was trading were being considered for, were owned by and should be an investment opportunity for clients, Bressman continued to cherry-pick trades until he was terminated from FCG.
29. After the details of Bressman's fraud came to light, in April 2018, FCG changed its procedures for entering block trades in the Allocation Account. First, all registered representatives are required to submit a Block Allocation Sheet prior to entering any trade order in the Allocation Account. In other words, representatives must create and submit to FCG management a pre-determined plan for the allocation of the shares prior to acquiring or selling them. The Block Allocation Sheet lists the client account(s), the security name and the intended allocation amount(s). Second, after a trade is executed in the Allocation Account, FCG management compares the Block Allocation Sheet to the actual allocation. Any trades that do not correspond to a previously submitted Block Allocation Sheet are

canceled. Third, if any portion of a block trade entered in the Allocation Account is being allocated to the representative's personal account, the representative is prohibited from entering the order. Instead, such orders are entered by FCG's trading desk after the representative submits a Block Allocation Sheet.

30. This procedure is also set forth in Section 10.11 of FCG's WSPs beginning in or around November 2018, entitled "Aggregation of Securities Trades."

31. FCG did not detect Bressman's fraudulent cherry-picking scheme, in which he allocated favorable trades for himself and his relatives and avoided unfavorable trades by allocating them to the Customer Accounts, which constitutes a failure to reasonably supervise Bressman.

FCG Failed To Implement a Written Supervisory Procedure to Detect Bressman's Fraud

32. During the Relevant Period, FCG did not have policies and procedures in place that were reasonably designed to detect and prevent fraudulent post-execution allocation of trades by Bressman.

FCG Failed to Maintain Records of a Formal Heightened Supervision Plan for Bressman

33. Bressman was under FCG "heightened supervision" from at least 2015 through August 23, 2016. According to the firm's WSPs, heightened supervision will be imposed when FCG determines that a person's activities necessitate "a need for more than the usual level of attention by supervisory personnel."

34. The WSPs further provide that:

Compliance personnel, once having identified the need, will develop Special Supervision for this person designed to diminish the concerns raised

by the "red flags." The CCO will carry out the terms of this Special Supervision, **which will be documented in the personnel records** of the Representative... (emphasis added)

35. While a search did not locate a formal heightened supervision plan setting forth the terms of Bressman's heightened supervision at the time it was implemented, FCG documented the steps taken in connection with his heightened supervision in a letter dated August 23, 2016.

CONCLUSIONS OF LAW

36. The absence of a requirement in FCG's WSPs for registered representatives to submit a pre-determined plan for shares traded in its Allocation Account prior to entering the order during the Relevant Period constitutes a failure to reasonably supervise pursuant to N.J.S.A. 49:3-58(a)(2)(xi).
37. FCG's failure to ensure compliance by FCG and Bressman with order entry recordkeeping requirements by not making and keeping current a pre-order entry memorandum of each customer brokerage order for the purchase or sale of a security, showing the account for which the order was entered, constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).
38. FCG's failure to document the terms of Bressman's heightened supervision constitutes a failure to make and keep accurate books and records pursuant to N.J.S.A. 49:3-59(b).
39. Pursuant to N.J.S.A. 49:3-70.1, each violation described above constitutes a basis for the assessment of a civil monetary penalty against FCG.

CONCLUSION

THEREFORE, it is on this 24th day of March 2021, ORDERED and AGREED

that:

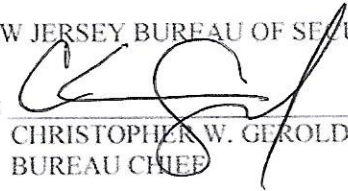
40. FCG shall cease and desist from further violations of the Securities Law.
41. FCG is assessed a civil monetary penalty in the amount of \$50,000 which is due and payable upon execution of this Consent Order.
42. Payment of the funds shall be by attorney trust fund account check, certified check, or other guaranteed funds, to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6th Floor, Newark, New Jersey 07102, or to be mailed to "New Jersey Bureau of Securities," P.O. Box 47029, Newark, New Jersey 07101. The civil monetary penalty shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1. Upon payment, FCG relinquishes all rights to the funds used to pay the civil monetary penalty notwithstanding any other provision in this Consent Order.
43. Without admitting or denying liability to any customers affected by Bressman's fraudulent scheme, and while reserving all rights, defenses and remedies, FCG shall, on a pro rata basis, pay restitution to the victim investors identified on the restitution schedule contained on pages 6 and 7 of the Judgment in a Criminal Case, filed August 21, 2020, U.S. v. Michael Bressman, Case No. 2:18-CR-00675-ES, in the total amount of \$200,000, within 30 days of the execution of this Consent Order. FCG shall provide documentation to the Bureau substantiating that all payments were made within 10 days of making the payments.

ADDITIONAL PROVISIONS

- 44. This Consent Order shall not bind any person not a party hereto, except as provided herein.
- 45. FCG has read this Consent Order, understands it, and agrees to be bound by its terms. FCG understands that it had the right and opportunity to consult with an attorney regarding this Consent Order.
- 46. No employee, official of or person representing the Bureau or the State of New Jersey has made any additional promise or representation to FCG or its counsel regarding this Consent Order.
- 47. In the event that FCG violates this Consent Order, the Bureau Chief may vacate this Consent Order and take further action against FCG under the Securities Law.
- 48. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau, any other government, or any person, including investors, may take in any future or pending action not specifically encompassed herein.

NEW JERSEY BUREAU OF SECURITIES

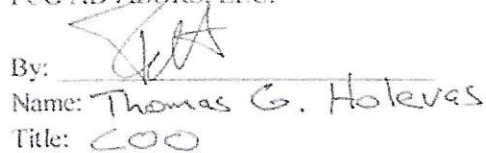
By:


CHRISTOPHER W. GEROLD
BUREAU CHIEF

DATED: March 16, 2021

FCG ADVISORS, L.L.C.

By:


Name: Thomas G. Hotevas
Title: COO