

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KAPIL MAHESHWARI
(CRD No. 6358540),

Respondent.

Disciplinary Proceeding
No. 2017055608101

Hearing Officer–DW

HEARING PANEL DECISION

December 19, 2019

Respondent Kapil Maheshwari misused confidential information obtained from his former employer about a future corporate acquisition for trading purposes, in violation of FINRA Rule 2010. For his misconduct, Maheshwari is barred from association with any FINRA member in any capacity and ordered to pay disgorgement of \$2,760 plus interest and costs.

Appearances

For the Complainant: Michael J. Rogal, Esq., Samir Ranade, Esq., and Elissa Meth Kestin, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Robert G. Heim, Esq., Tarter, Krinsky & Drogin, LLP

DECISION

I. Introduction

Respondent Kapil Maheshwari worked as an investment banker in the New York office of Credit Suisse Securities (USA), LLC (“Credit Suisse”), a FINRA member firm. Maheshwari’s team provided investment banking services for Company A, a publicly held technology firm in Silicon Valley. For purposes of this decision we call it Globex. In the course of his work, Maheshwari learned that Globex wanted to buy another publicly held technology firm, Company B. In this decision, we refer to Company B as Acme. In August 2016, Maheshwari left Credit Suisse for other employment. Two weeks later, he purchased a small quantity of stock in Acme. One week after that, Globex publicly announced its agreement to purchase Acme. Acme’s stock price spiked dramatically on the announcement.

In the sole cause of the Complaint, the Department of Enforcement charges that Maheshwari breached his ethical obligations to his former employer by misusing confidential

information obtained from his former employer when purchasing Acme stock. Enforcement contends that Maheshwari breached duties of loyalty and confidentiality to Credit Suisse, and in so doing failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010. Maheshwari denies that he acted unethically. He contends that he breached no duty to Credit Suisse and that he made his purchase independently of anything he learned through his work at the firm. A hearing on the claims and defenses was held in New York, New York.

II. Findings of Fact

A. Maheshwari's Background

After completing his MBA degree at New York University,¹ Maheshwari first entered the securities industry when he joined Credit Suisse as an investment banking associate in July 2014.² While at Credit Suisse, Maheshwari held a Series 79 registration with FINRA as an investment banking representative.³ Because this matter was brought within two years of his departure from Credit Suisse, Maheshwari is subject to FINRA's jurisdiction with regard to the conduct at issue in this matter.⁴

B. Maheshwari's Work at Credit Suisse

As an associate in the capital markets division of Credit Suisse, Maheshwari's work involved financial analysis for mergers, acquisitions, and other transactions. Under the supervision of more senior members of his team, Maheshwari created pitch book materials, PowerPoint presentations, and financial analysis for clients.⁵

Maheshwari's work focused on the diversified industrial aerospace and defense sector.⁶ At the start of his employment, Credit Suisse made it clear to Maheshwari that he would receive confidential information as part of his job. Indeed, at the beginning of his employment Maheshwari acknowledged in writing that he would receive confidential or proprietary information.⁷ Maheshwari signed an employment agreement saying that he "may from time to time acquire or otherwise be exposed to confidential and/or proprietary information of [Credit Suisse]."⁸ This information included "any non-public, business or personal information about

¹ Hearing Transcript ("Tr.") (Maheshwari) 59-60.

² Answer ("Ans.") ¶ 4; Stipulation ("Stip.") ¶ 1.

³ Tr. (Maheshwari) 59-60; Joint Exhibit ("JX")-77, at 5.

⁴ Ans. ¶ 3. The Complaint was filed on February 7, 2019. On September 22, 2017, Credit Suisse filed an initial Form U5 reporting Maheshwari's voluntary termination from the firm as of September 4, 2017. CX-30, at 1.

⁵ Tr. (Maheshwari) 71-72.

⁶ Tr. (Maheshwari) 72.

⁷ Tr. (Maheshwari) 61-62; JX-84, at 7-8.

⁸ Tr. (Maheshwari) 63-64; JX-84, at 7.

[Credit Suisse] or its . . . clients, customers . . . or others to whom [Credit Suisse] owes a duty of confidentiality.”⁹

In addition to various written materials and documents, covered information included “any material, nonpublic price-sensitive, corporate or market information relating to [Credit Suisse], its clients or customers or others, that is acquired in connection with [Maheshwari’s] employment.”¹⁰ Maheshwari agreed that “[d]uring and after the term of [his] employment,” he would “refrain from disclosing or using in any way confidential and proprietary information for any purpose except as expressly authorized by [Credit Suisse].”¹¹

At the time he signed his employment agreement, Maheshwari also signed an agreement specifically about Credit Suisse’s confidential and proprietary information. This agreement similarly covered “non-public, business or personal information about the Bank or its . . . clients, customers . . . or others to whom the Bank owes a duty of confidentiality,” as well as bank or client-related “material, nonpublic price sensitive, corporate or market information . . . acquired in connection with [Maheshwari’s] employment.”¹² Maheshwari agreed to use confidential and proprietary information only in connection with his work and not “for personal gain or the gain of any third party.”¹³ Maheshwari agreed in writing that he would not use Credit Suisse’s confidential and proprietary information even after he left the employ of the firm.¹⁴

In addition, firm policy prohibited investment banking personnel from trading in the securities of any company they covered or that was within their industry group.¹⁵ The prohibition also extended to any company involved in a transaction that the employee had worked on in the preceding six months.¹⁶

These agreements and policies were reinforced during Maheshwari’s time at Credit Suisse through annual compliance trainings, when Maheshwari was reminded that “[he] must not . . . [u]se confidential information to trade for your own or related accounts”¹⁷ The trainings identified “[a] proposed merger, acquisition or divestiture” as examples of potentially material,

⁹ JX-84, at 7.

¹⁰ JX-84, at 8. The agreement provides that “[f]or these purposes, ‘material’ means information that if made public would likely have a significant impact on the issuer’s security or information that a reasonable investor would consider important in deciding whether to purchase, hold, or sell the security”

¹¹ Tr. (Maheshwari) 62-63; JX-84, at 8.

¹² Tr. (Maheshwari) 63-64; JX-84, at 3.

¹³ Tr. (Maheshwari) 66; JX-84, at 3.

¹⁴ Tr. (Maheshwari) 70; JX-84, at 2.

¹⁵ Tr. (Maheshwari) 93-94; CX-34, at 12.

¹⁶ Tr. (Maheshwari) 94; CX-34, at 12.

¹⁷ Tr. (Maheshwari) 82-90; CX-36, at 5; CX-37, at 6; CX-38, at 10-12, 18-19.

non-public information.¹⁸ Maheshwari completed his annual compliance trainings in July 2014, July 2015, September 2016, and again in August 2017.¹⁹

C. The Globex Engagement

In September 2016, Maheshwari was assigned to a Credit Suisse team tasked with helping Globex develop strategic alternatives.²⁰ As part of the engagement, Credit Suisse offered Globex guidance on whether it should pursue a merger, acquisition, or some other corporate transaction.²¹ Maheshwari was responsible for preparing presentation materials for the company, including the financial analysis that would drive Credit Suisse's recommendations.²² This analysis incorporated Globex financial forecasts and other confidential, non-public financial information that Globex provided to Credit Suisse.²³

Maheshwari participated in a meeting with Globex's Chief Executive Officer ("CEO") and senior management in October 2016.²⁴ At the meeting the Credit Suisse team made a PowerPoint presentation to the company's executives incorporating Maheshwari's analysis.²⁵ Credit Suisse detailed strategic options for the company, including the potential acquisition of a number of different companies.²⁶ Management reacted positively to the presentation and invited the Credit Suisse team to give a presentation to the company's board of directors.²⁷ Even at this preliminary stage of the engagement, Credit Suisse policy precluded the team members from trading in Globex stock because of their exposure to non-public information about the company.²⁸

Maheshwari was tasked with preparing materials for the Globex board meeting scheduled for December 2016.²⁹ Although Maheshwari did not attend that meeting, other members of the team presented the materials he prepared, and they were well received by the board.³⁰ Following the meeting, Globex asked Maheshwari and other team members to analyze Acme, a publicly

¹⁸ Tr. (Maheshwari) 82-90; CX-36, at 9; CX-38, at 19.

¹⁹ CX-35.

²⁰ Tr. (Maheshwari) 97; Stip. ¶ 3.

²¹ Tr. (Maheshwari) 97.

²² Tr. (Knauss) 388.

²³ Tr. (Knauss) 389-97; CX-9.

²⁴ Tr. (Maheshwari) 114-15; CX-9; JX-1.

²⁵ Tr. (Maheshwari) 115-18; CX-13.

²⁶ Tr. (Maheshwari) 122-24; CX-13; CX-14.

²⁷ Tr. (Maheshwari) 122-23; CX-14.

²⁸ Tr. (Knauss) 388-89); Tr. (Brown) 706.

²⁹ Tr. (Maheshwari) 128-30; CX-22.

³⁰ Tr. (Maheshwari) 131-32; CX-27.

held technology firm, as an acquisition target.³¹ The target company's identity was highly confidential information for Credit Suisse.³² Maheshwari was tasked with generating a financial valuation for Acme in order to assess the feasibility of a potential acquisition.³³

In about January 2017, Maheshwari and others on the Credit Suisse team sent Globex's management their financial analysis and assessment of the potential benefits of an Acme acquisition.³⁴ A few days later, Globex's management expressed to the Credit Suisse team its view that the acquisition would present substantial "synergies" for the company that would justify paying a substantial premium over the then-market price of Acme.³⁵ Management told Credit Suisse that Globex wanted to approach Acme as soon as possible to discuss a potential acquisition.³⁶

Around this time, both Credit Suisse and Globex began referring to the target company, Acme, only by the code word "Snowbird."³⁷ The use of code words was standard practice at Credit Suisse because of concern over disclosing non-public confidential information by using the actual name of a potential target company.³⁸ As Globex pursued the acquisition, Credit Suisse worked as the second advisor with another investment bank as the lead.³⁹ As the second advisor, the Credit Suisse team continued to receive all information relevant to the deal.⁴⁰

In February 2017, the Credit Suisse team strategized with Globex and the other investment bank on the best way to approach Acme.⁴¹ In March 2017, Maheshwari and others prepared an acquisition matrix outlining various acquisition scenarios along with potential Credit Suisse fees, for discussions with Globex's CEO.⁴² All scenarios contemplated that Globex would pay at least a 30% premium above the then-market price of Acme.⁴³

³¹ Tr. (Maheshwari) 132-34; JX-3.

³² Tr. (Maheshwari) 135; Tr. (Knauss) 446-47; Tr. (Brown) 706-07; JX-3.

³³ Tr. (Knauss) 447-49.

³⁴ Tr. (Maheshwari) 138-39; JX-10.

³⁵ Tr. (Knauss) 470-71; JX-10, at 1; JX-13, at 1.

³⁶ Tr. (Knauss) 471; JX-13, at 1.

³⁷ Tr. (Maheshwari) 136; JX-11, at 1.

³⁸ Tr. (Maheshwari) 137.

³⁹ Tr. (Knauss) 480-81.

⁴⁰ Tr. (Knauss) 481.

⁴¹ Tr. (Knauss) 483-84; JX-20.

⁴² Tr. (Knauss) 486-88; JX-31.

⁴³ JX-31, at 6.

On April 11, 2017, shortly before reaching out to Acme, Globex asked the Credit Suisse team to review its most recent financial analysis of the acquisition.⁴⁴ The analysis contemplated that Globex would ultimately pay an acquisition cost of about \$17 per share—substantially above Acme’s then-trading price of approximately \$10 per share.⁴⁵ A meeting between senior management of the two companies went well, and Acme requested a formal written offer from Globex.⁴⁶ The lead investment bank communicated this information to the Credit Suisse team shortly after the meeting.⁴⁷ On April 24, 2017, Globex’s board approved writing a proposal indicating its interest in purchasing Acme.⁴⁸ On April 25, 2017, Globex’s CEO delivered a written indication of interest to Acme to acquire all outstanding shares of the company at a “price of \$15–\$16 per share.”⁴⁹ The CEOs of both companies spoke that day, and the Acme CEO committed to presenting the offer to that company’s board.⁵⁰ Later that day, each member of the Credit Suisse team, including Maheshwari, received a copy of the letter of interest by email.⁵¹

In May 2017, Acme sent internal financial information to Globex in an effort to generate a higher offer price. This confidential internal information was shared with Maheshwari and the Credit Suisse team.⁵² Later in May, Globex sent another written indication of interest to Acme based on its preliminary due diligence with an offering price of \$15 per share.⁵³ The letter pointed out that the price reflected a 51% premium over the company’s most recent share price.⁵⁴

The investment banks and Globex performed additional due diligence on Acme over the following weeks.⁵⁵ In late June, the Credit Suisse team leader told Maheshwari and others that the Globex board would soon meet again about the acquisition and that they remained “very interested and want[ed] to get it done.”⁵⁶

In July 2017, Maheshwari learned from another Credit Suisse team member, who had just heard from the Acme Chief Financial Officer, that the company was about to announce revenues

⁴⁴ Tr. (Knauss) 489; JX-41.

⁴⁵ Tr. (Knauss) 489-90; JX-41.

⁴⁶ Tr. (Knauss) 493-95; JX-50.

⁴⁷ JX-50.

⁴⁸ Tr. (Maheshwari) 183-84; JX-52.

⁴⁹ Tr. (Knauss) 496-97; JX-53.

⁵⁰ Tr. (Knauss) 497-99; JX-54.

⁵¹ JX-53.

⁵² Tr. (Knauss) 505-07; JX-57.

⁵³ Tr. (Knauss) 507-09; JX-61.

⁵⁴ JX-61, at 4.

⁵⁵ Tr. (Knauss) 510.

⁵⁶ Tr. (Knauss) 510-12; JX-65.

and earnings significantly above market expectations.⁵⁷ In light of the expected increase in the company's value when the news became public, the Credit Suisse team updated its valuation models for the company and recommended that Globex raise its offer by 50 to 75 cents.⁵⁸ By late July, the deal entered the final due diligence phase.⁵⁹

D. Maheshwari Leaves Credit Suisse

In August 2017, Maheshwari prepared to leave the firm.⁶⁰ On August 15, Maheshwari provided others replacing him on the Credit Suisse team a summary of the "Snowbird" transaction.⁶¹ His summary included an acquisition matrix that revealed a potential acquisition price between \$15 and \$18 per share.⁶² Given the advanced stage of the transaction, Maheshwari well understood he was not permitted to trade in Acme stock at that point.⁶³ The next day, August 16, Maheshwari received an email containing the agenda for a Globex board meeting scheduled for August 23.⁶⁴ The sole purpose of the meeting was to approve the acquisition of Acme.⁶⁵ Maheshwari left Credit Suisse on August 17, 2017.⁶⁶

E. Maheshwari Buys Acme Stock

Shortly after his departure from the firm, Maheshwari traded in Acme stock. On September 11, 2017, he purchased 400 shares in his personal account at \$12.65 per share.⁶⁷ He purchased an additional 400 shares in his wife's account on the same day and at the same price.⁶⁸ On September 18, 2017, Globex announced the acquisition of Acme for \$16.25 per share, a 25 percent premium over its then-current trading price.⁶⁹ In October 2017, Maheshwari attempted to sell all of the Acme stock in both accounts.⁷⁰ His broker declined to process the trades and alerted Credit Suisse.⁷¹ When later questioned by Credit Suisse about his trading, Maheshwari

⁵⁷ Tr. (Knauss) 512-13; JX-66.

⁵⁸ Tr. (Knauss) 512-13; JX-66.

⁵⁹ Tr. (Maheshwari) 216-17; JX-68.

⁶⁰ Tr. (Maheshwari) 216-17.

⁶¹ Tr. (Maheshwari) 222-26; JX-72.

⁶² Tr. (Maheshwari) 224-25; JX-72, Electronic PowerPoint, at 16.

⁶³ Tr. (Maheshwari) 226-27.

⁶⁴ Tr. (Maheshwari) 227-28; CX-28.

⁶⁵ Tr. (Maheshwari) 228-29; CX-28.

⁶⁶ Tr. (Maheshwari) 269.

⁶⁷ Tr. (Maheshwari) 230-31; JX-80, at 7.

⁶⁸ Tr. (Maheshwari) 231-32; JX-81, at 7.

⁶⁹ Tr. (Maheshwari) 245-46; JX-85.

⁷⁰ Tr. (Maheshwari) 247-48.

⁷¹ Tr. (Maheshwari) 248; Tr. (Knauss) 656-57. Credit Suisse subsequently initiated an investigation that led to a FINRA referral, which then resulted in the present action. Tr. (Knauss) 636-37; Tr. (Dawkins) 287-88. When alerted

falsely told his former employer that he “never had any information related to whether [Acme] was engaging in acquisition talks.”⁷² Ultimately, the Acme acquisition was finalized and Maheshwari received cash for his shares at the \$16.25 acquisition price, netting him and his wife a total profit of \$2,760.⁷³

F. Maheshwari’s Defense

Maheshwari contended that he did not trade on the basis of confidential information he obtained through his work at Credit Suisse.⁷⁴ He defended his trading by pointing to several circumstances bearing on his conduct.

First, he asserted that he was not actively involved in the Globex engagement while working for Credit Suisse. He said that he did little or no work on the engagement after April 2017.⁷⁵ He was in a foreign country on leave when Globex first sent a letter of interest to Acme in April 2017, and never saw the document upon his return.⁷⁶ His efforts were devoted exclusively to other projects.⁷⁷ And because Credit Suisse was not the lead investment bank on the engagement, most of the work “never came to Credit Suisse.”⁷⁸ Maheshwari saw “no diligence work being done. There is no nothing.”⁷⁹

Second, he asserted that from the time the Globex engagement started until the time he left Credit Suisse, there was no good reason to believe that the deal would be consummated. During the earlier stages of the engagement, Acme was not among the firms proposed as a merger target, and the Credit Suisse team did not regard it as a “good fit” for Globex.⁸⁰ And even after Globex targeted Acme in early 2017, the deal remained uncertain in several respects. Financing was uncertain.⁸¹ Due diligence was not complete.⁸² There was no agreement as to

that Credit Suisse was investigating his conduct, Maheshwari wrote the firm asking the nature of the inquiry and seeking confirmation that the firm “is no longer monitoring any of [his] brokerage accounts and that the firm has not engaged in such monitoring” since Maheshwari left the company. Respondent’s Exhibit (“RX”)-42, at 1.

⁷² RX-42, at 4.

⁷³ Tr. (Maheshwari) 247-49.

⁷⁴ Tr. (Maheshwari) 236-41.

⁷⁵ Tr. (Maheshwari) 905-07.

⁷⁶ Tr. (Maheshwari) 935-36; JX-53.

⁷⁷ Tr. (Maheshwari) 907.

⁷⁸ Tr. (Maheshwari) 907-08.

⁷⁹ Tr. (Maheshwari) 916-17).

⁸⁰ Tr. (Maheshwari) 864-66, 884-87; RX-47; JX-110; JX-111; JX-112.

⁸¹ Tr. (Maheshwari) 876-77, 895-900; JX-37; JX-119; JX-120; JX-121; JX-122. While Maheshwari was still at Credit Suisse, a major bank ultimately did agree to provide any necessary financing. Tr. (Knauss) 496-97; JX-53, at 4.

⁸² Tr. (Maheshwari) 963-67.

price.⁸³ And after Maheshwari left Credit Suisse, a number of bidders entered into discussions with Acme, so Globex could have been outbid in the deal.⁸⁴

Finally, Maheshwari claimed that he did not use any of his knowledge from his work at Credit Suisse in trading Acme stock.⁸⁵ He claimed that in making his investment, he “was not thinking from a [mergers and acquisitions] perspective.”⁸⁶ Instead, he used only knowledge that he obtained through independent research he conducted after his Credit Suisse employment ended.⁸⁷ He reviewed Acme’s public filings, including annual and quarterly reports for the prior three years.⁸⁸ From these filings he gleaned various revenue and earnings trends, market data, and product information related to the company.⁸⁹ He read press releases and articles about Acme that discussed significant events and developments at the company.⁹⁰ He studied the company on financial blogs.⁹¹ He reviewed analyst reports regarding the company.⁹² Maheshwari pointed out that he purchased stock in a number of technology companies for his portfolio, and claimed that his interest in Acme was consistent with other purchases.⁹³

G. Maheshwari Traded on the Basis of Confidential Information

The preponderance of the evidence established that despite his contrary claims, Maheshwari misused confidential information he obtained through his employment with Credit Suisse for trading purposes. Through his work, Maheshwari knew that Acme was a merger target; that Globex was willing to pay a substantial premium from the market price of the stock; that Globex had synergistic benefits from the acquisition that would strongly motivate it to consummate the deal; and that Acme was receptive to the offer.

While Maheshwari points to the fact that he was on leave when Globex sent its first letter of interest to Acme, he had long since returned from his leave when Globex sent its *second* letter of interest—offering a substantial premium over Acme’s then-market price—in late May. It may be true that Maheshwari was busy with other things and not extensively involved in the transaction because Credit Suisse was not the lead investment banker on the deal. But whether he

⁸³ Tr. (Brown) 803; Tr. (Maheshwari) 967.

⁸⁴ Tr. (Brown) 788-92; Tr. (Knauss) 618-32; JX-107.

⁸⁵ *E.g.*, Tr. (Maheshwari) 871-73, 1103-04.

⁸⁶ Tr. (Maheshwari) 978-79

⁸⁷ Tr. (Maheshwari) 1005-06.

⁸⁸ Tr. (Maheshwari) 1006-33; RX-1–RX-19.

⁸⁹ Tr. (Maheshwari) 1012-13.

⁹⁰ Tr. (Maheshwari) 1040-46; RX-20–RX-25.

⁹¹ Tr. (Maheshwari) 1046-47; RX-26.

⁹² Tr. (Maheshwari) 1047-54; RX-27–RX-29.

⁹³ Tr. (Maheshwari) 1065-76; RX-30–RX-38.

was busy with the deal or not, Maheshwari knew—as a result of his work—that Acme was an acquisition target of a bank client.

And while any merger transaction is uncertain until the deal is done, this transaction progressed in a manner that by the time Maheshwari left his firm, it seemed likely that the transaction would happen.⁹⁴ Financing was in place. Due diligence revealed no issues that Maheshwari was aware of. The presence of other potential bidders *increased* the likelihood of an above-market price acquisition. Indeed, we find no contemporaneous evidence of any substantial complications or problems associated with the transaction that, as of August 2017, might call into question whether the deal would come to fruition.

Given the import of Maheshwari’s work-related knowledge of Acme’s pending acquisition, we find his claim that he traded on the basis of other financial information disingenuous. Maheshwari claimed that after leaving Credit Suisse, he decided to trade based on his review of Acme’s annual and quarterly reports, among other things.⁹⁵ But other than the most recent quarterly reports, Maheshwari had *already reviewed* these same filings through his work on the Credit Suisse engagement.⁹⁶ Maheshwari pointed in particular to Acme’s second quarter financial report, which showed a “blowout” quarter that he believed made the company “a good long term holding.”⁹⁷ But in fact, Maheshwari first obtained this financial information *before it became public* through his work on the Credit Suisse team.⁹⁸ Maheshwari claimed to find significant certain analyst reports and public information with “price targets” of \$13 to \$14 per share for the company, a premium above the then-market price.⁹⁹ But we do not believe that online estimates and predictions of future prices approaching \$14 per share were more significant to Maheshwari than his first-hand knowledge that Globex was presently offering \$15 per share for the company and was willing to pay even more to consummate a deal.

The evidence demonstrates that Maheshwari used confidential information obtained through his work on the Credit Suisse team to purchase stock in Acme. Other members of his team understood that such trading was improper.¹⁰⁰ And despite his denials, we find that Maheshwari understood it was improper to trade in Acme as well. Asked whether it would be improper to trade in an acquisition target that was part of an investment banking deal, Maheshwari testified, “From an ethical perspective, yes, I should not be trading. From a technical perspective, I am not sure if people can trade.”¹⁰¹ While agreeing that trading in Acme

⁹⁴ Tr. (Knauss) 516-17; Tr. (Brown) 757-58.

⁹⁵ *See supra* note 90.

⁹⁶ Tr. (Maheshwari) 1033-35.

⁹⁷ Tr. (Maheshwari) 1030-32, 1139.

⁹⁸ Tr. (Maheshwari) 1139.

⁹⁹ Tr. (Maheshwari) 1049-51, 1071.

¹⁰⁰ Tr. (Knauss) 488-89; Tr. (Brown) 759-60.

¹⁰¹ Tr. (Maheshwari) 163-64.

while at Credit Suisse was unethical, Maheshwari also claimed, “[I]t depends, if the company is not on a watch list, then in that case, if somebody has reached out to the control room and the control room approves it, I am assuming it is okay.”¹⁰² Despite acknowledging that trading in the stock of an acquisition target was an ethical breach, Maheshwari ultimately took the position that he was nevertheless willing to engage in the conduct if Credit Suisse did not stop his trading.

And by trading on confidential information belonging to Credit Suisse and its client,¹⁰³ Maheshwari caused reputational harm to his former employer. Credit Suisse felt compelled to disclose Maheshwari’s trading to Globex, and explain to the client that Credit Suisse was monitoring whether any adverse consequences flowed from the conduct.¹⁰⁴ Credit Suisse believed that it “had to get in front of it from a reputational standpoint,” though it “was not a great [phone] call to make.”¹⁰⁵

III. Conclusions of Law

The sole cause of the Complaint charges Maheshwari with misuse of confidential information for trading purposes in breach of his duty of loyalty and confidentiality to his former employer, in violation of FINRA Rule 2010. FINRA Rule 2010 requires that the business-related conduct of FINRA members and their associated persons comport with “high standards of commercial honor and just and equitable principles of trade.”¹⁰⁶ It mandates that securities industry participants not only conform to legal and regulatory requirements, but also conduct themselves in the course of their business with integrity, fairness, and honesty.¹⁰⁷

The Rule’s intentionally broad scope is calculated to remediate “methods of doing business which, while technically outside the area of definite illegality, are nevertheless unfair both to customer and to decent competitor, and are seriously damaging to the mechanism of the free and open market.”¹⁰⁸

¹⁰² Tr. (Maheshwari) 266-67.

¹⁰³ In its retention agreement with Globex, Credit Suisse agreed that “[a]ll non-public information concerning the Company, the Target, and the Transaction that is furnished to Credit Suisse by the company, the Target or any of their respective representatives in connection with this engagement will be used solely in the course of performing Credit Suisse’s services hereunder.” RX-51, at 3.

¹⁰⁴ Tr. (Knauss) 537.

¹⁰⁵ Tr. (Knauss) 537.

¹⁰⁶ *Dep’t of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *15 n.14 (NAC Oct. 10, 2007), *aff’d*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008).

¹⁰⁷ *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, *21 n.20 (Feb. 13, 2015) (“[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [The Rule] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation.”).

¹⁰⁸ *Thomas W. Heath III*, 586 F.3d 122, 132 (2d Cir. 2009).

Because industry participation carries an expectation of regulatory compliance, any conduct that runs afoul of FINRA or SEC rules necessarily violates Rule 2010.¹⁰⁹ Even lawful practices breach Rule 2010 where surrounding facts and circumstances reveal that an associated person acted in “bad faith” or “unethically.”¹¹⁰ Although proof of scienter is not required, the concept of “bad faith” in this context requires a showing of “dishonesty of belief or purpose.”¹¹¹

Further, “unethical conduct is defined as conduct that is not in conformity with moral norms or standards of professional conduct.”¹¹² In this context, a respondent’s “violation of his Firm’s policies and procedures is not automatically a violation of the ethical conduct Rule.”¹¹³ Rather, consideration of whether a respondent comported with ethical norms should focus on “fundamental principles of agency law”¹¹⁴ and “whether the conduct implicates a generally recognized duty to clients or the firm.”¹¹⁵

For the reasons explained below, we find that Maheshwari’s misuse of confidential information was both unethical and in bad faith, and therefore in violation of Rule 2010.

A. Maheshwari Acted Unethically

By using confidential client information for trading purposes in breach of his promise to his former employer, Maheshwari engaged in unethical conduct. The SEC has “repeatedly held that the breach of a security professional’s duty to a client is sufficient to sustain a [Rule 2010] violation.”¹¹⁶ These obligations are “grounded in fiduciary principles requiring industry professionals to prioritize the interests of clients above their own interests.”¹¹⁷ Among other responsibilities, a securities professional is expected to maintain client confidences—a “breach of confidentiality violate[s] one of the most basic duties of a securities professional, a duty that is grounded in fiduciary principles and reflected in the Code of Conduct.”¹¹⁸

¹⁰⁹ *Dep’t of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4, 2018), *aff’d*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

¹¹⁰ *Calvin David Fox*, 56 S.E.C. 1371, 1376 (2003).

¹¹¹ *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013).

¹¹² *Id.* (quotation omitted).

¹¹³ *Dep’t of Mkt. Regulation v. Dotson*, No. 20090208031-02, 2015 FINRA Discip. LEXIS 47, at *83 (OHO Aug. 7, 2015).

¹¹⁴ *Louis Feldman*, 52 S.E.C. 19, 22 (1994) (Just & Equitable rule violated by conduct inconsistent with “fundamental principles of agency law”).

¹¹⁵ *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54, at *19 (Jan. 6, 2012).

¹¹⁶ *Thomas W. Heath III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *17 (Jan. 9, 2009), *aff’d*, 586 F.3d 122.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

Maheshwari promised Credit Suisse that he would not use confidential information for personal gain or trading purposes, even after he left the firm. He broke that promise. For his part, Maheshwari does not meaningfully dispute that using confidential client information for trading purposes constitutes an ethical breach.¹¹⁹ He maintains only that he did not use the information in his trading. For the reasons explained above, we find that he did.

Maheshwari emphasizes the tentative nature of the merger transaction to bolster his claim that he did not use the confidential information. Relying on authorities in the insider trading context, Maheshwari argues that any “preliminary and non-specific” information he may have possessed regarding a potential merger was immaterial, and therefore not the basis of his trading.¹²⁰

It is true that not all merger negotiations are material, and “[w]hether merger discussions in any particular case are material . . . depends on the facts.”¹²¹ Still, the most salient considerations are “the indicated probability that the event [would] occur” and “the anticipated magnitude of the event in light of the totality of the company activity.”¹²² Here, we conclude that the merger was highly probable and was significant to the company.¹²³ The information Maheshwari possessed was highly material. Indeed, the materiality of the information bolsters our conclusion that Maheshwari used it in his trading. His use of the material, confidential client information belonging to his former employer for personal profit was in plain violation of his ethical obligations, and in violation of FINRA Rule 2010.

B. Maheshwari Acted in Bad Faith

Although proof of scienter is not required to find a violation of FINRA Rule 2010, a registered person violates the Rule by undertaking business-related conduct in bad faith.¹²⁴ Again, the concept of “bad faith” in this context requires a showing of “dishonesty of belief or purpose.”¹²⁵ We find that in addition to acting unethically, Maheshwari acted in bad faith.

¹¹⁹ We reject any suggestion by Maheshwari that his ethical obligation not to trade on confidential information might somehow be excused depending on whether Credit Suisse put a particular security on a “watch list” or otherwise prevented him from trading. *See Leonard John Ialeggio*, 52 S.E.C. 1085, 1088 (1996) (“[R]egistered persons are expected to adhere to a standard higher than what they can get away with.”) (internal quotation marks omitted).

¹²⁰ Maheshwari’s Pre-Hearing Brief, at 17-22.

¹²¹ *Basic v. Levinson*, 485 U.S. 224, 239 (1988).

¹²² *Id.* at 238.

¹²³ *Sidney Eng*, Exchange Act Release No. 40297, 1998 SEC LEXIS 1633, at *19 (Aug. 3, 1998) (merger was probable where “the highest ranking executives of the two companies had met directly to discuss amicably the substance of the merger,” and also constituted “an event of substantial magnitude” to the target company).

¹²⁴ *Dep’t of Enforcement v. Springsteen-Abbott*, No. 2011025675501, 2017 FINRA Discip. LEXIS 23, at *52-53 (NAC July 20, 2017), *appeal docketed*, SEC Admin. Proc. No. 3-17560r (Aug. 14, 2017).

¹²⁵ *Brokaw*, 2013 SEC LEXIS 3583, at *33.

Maheshwari knew and understood his obligation not to trade on confidential information he received from Credit Suisse. The agreements he signed at the start of his employment made clear that this obligation extended even after the term of his employment with the firm. Yet, almost immediately after leaving the firm, he violated his commitment and secretly profited from information that did not belong to him. And he did so knowing that “from an ethical perspective,” he “should not be trading.”¹²⁶ He conducted his trading in relatively small quantities, in the apparent belief that his trading would not be noticed. When the trading *was* noticed, he lied to Credit Suisse about it, falsely telling the firm that he “never had any information related to whether [Acme] was engaging in acquisition talks.”¹²⁷

Bad faith “is not simply bad judgment or negligence,” but rather “the conscious doing of a wrong because of dishonest purpose or moral obliquity.”¹²⁸ We find that Maheshwari acted with such a dishonest purpose in his trading, in order to obtain a personal financial benefit to which he knew he was not entitled. In so doing, he violated FINRA Rule 2010.

IV. Sanctions

We now consider appropriate sanctions for Maheshwari’s violation. We do so bearing in mind that the purpose of FINRA’s disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, decrease the likelihood of recurrence of misconduct by the disciplined respondent, and deter others from engaging in similar misconduct.¹²⁹

FINRA’s Sanction Guidelines (“Guidelines”) contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

There is no Guideline specific to misuse of confidential information in violation of FINRA Rule 2010. Enforcement urges us to consider instead the Guideline generally applicable to fraud. Enforcement maintains that the fraud Guideline “is analogous to misuse of confidential information because both involve the use of some type of deception or breach of trust to gain an unlawful or improper advantage.”¹³⁰ This Guideline directs us to “[s]trongly consider barring an

¹²⁶ Tr. (Maheshwari) 163-64.

¹²⁷ RX-42, at 4.

¹²⁸ *Simpson v. Bear, Stearns & Co.*, No. C07950030, 1997 NASD Discip. LEXIS 13, at *27 n.9 (BCC Jan. 29, 1997).

¹²⁹ FINRA Sanction Guidelines at 2 (2019) (General Principle No. 1), <http://www.finra.org/industry/sanction-guidelines>.

¹³⁰ Enforcement’s Pre-Hearing Brief, at 26.

individual” for intentional or reckless conduct, unless mitigating factors predominate.¹³¹ This Guideline also recommends a fine of \$10,000 to \$155,000.¹³²

There is substantial overlap between fraud and the conduct at issue here.¹³³ We find equally analogous the Guideline relevant to conversion. By taking valuable information belonging to his former employer and its client for his own trading purposes, Maheshwari essentially converted that intangible property to his own use. The National Adjudicatory Council recently held that conversion reaches even intangible property, and requires no showing that the rightful owner was deprived of the property converted.¹³⁴ The Guideline applicable to conversion urges us to “[b]ar the respondent, regardless of the amount converted.”¹³⁵ No fine is recommended because a bar is standard.¹³⁶

As there are no principal considerations specific to either the fraud or conversion Guidelines, we focus on the relevant Principal Considerations and General Principles Applicable to All Sanction Determinations.

We find a number of aggravating factors. We find that Maheshwari’s conduct was intentional, or at least reckless.¹³⁷ The misconduct allowed Maheshwari to personally profit from his violation.¹³⁸ Through his actions Maheshwari took advantage of other market participants by improperly using valuable trading information, and injured those from whom he purchased his stock.¹³⁹ He also caused reputational injury to his former employer.¹⁴⁰ Maheshwari never took responsibility for his misconduct.¹⁴¹ And he attempted to conceal his activity from his former employer, falsely telling Credit Suisse that he never had information that Acme was in acquisition talks.¹⁴²

We find particularly aggravating Maheshwari’s concealment of his misconduct from this Hearing Panel. We recognize that as a general proposition Enforcement bears the burden of

¹³¹ Guidelines at 89.

¹³² *Id.*

¹³³ Although Enforcement did not charge Maheshwari with fraudulent insider trading in this case, his challenged trading is by and large indistinguishable from that misconduct.

¹³⁴ *Dep’t of Enforcement v. Doni*, No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *23-29 (NAC Dec. 21, 2017).

¹³⁵ Guidelines at 36.

¹³⁶ *Id.*

¹³⁷ Guidelines at 8 (Principal Consideration 13).

¹³⁸ Guidelines at 8 (Principal Consideration 16).

¹³⁹ Guidelines at 7 (Principal Consideration 11).

¹⁴⁰ *Id.*

¹⁴¹ Guidelines at 7 (Principal Consideration 2).

¹⁴² Guidelines at 7 (Principal Consideration 10).

proof in this forum, and a respondent has a right to put Enforcement to that proof without being unfairly disadvantaged in the sanctions context should we find liability. But here, Enforcement's evidence amply demonstrated that Maheshwari agreed with Credit Suisse to not trade in the companies he worked on, even after he left the company. The evidence made equally clear that as a direct result of his work, Maheshwari possessed significantly material information about Acme. And the evidence showed that almost immediately after leaving the firm, he traded on this information in plain violation of his obligations.

Rather than taking any measure of ownership of his conduct, Maheshwari concocted a cover story to explain it away. And the story was as elaborate as it was bogus. In the few days between the end of his work at Credit Suisse and the trading at issue, he supposedly reviewed annual and quarterly financial filings spanning several years. He looked at blog posts. He studied press releases and news reports. He purported to study financial analysts' price targets and predictions. Maheshwari claimed to take into account every conceivable piece of financial information about Acme—except, of course, the information he learned while employed by Credit Suisse that Acme would soon be acquired at a substantial premium above any value that could have been gleaned from his “research.” We find Maheshwari's “lack of candor during these proceedings to be disturbing.”¹⁴³ His dishonesty here “reflects strongly on his fitness to serve in the securities industry.”¹⁴⁴

Maheshwari contends that there are mitigating factors. He points to the absence of any prior discipline, but the lack of a prior disciplinary history is not mitigating for purposes of assessing sanctions.¹⁴⁵

He claims he “never received any prior warning from FINRA, another regulator or his supervisor regarding his personal trading or his desire to trade in [Acme].”¹⁴⁶ But the absence of prior warnings about a possible violation of FINRA Rules is not a mitigating factor, either.¹⁴⁷

He additionally maintains that he “fully cooperated with FINRA's inquiry in a timely manner” by participating in an interview, producing documents, and appearing at an on-the-record interview.¹⁴⁸ But FINRA members and associated persons do not provide substantial

¹⁴³ *Dep't of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *47 (NAC July 28, 2011).

¹⁴⁴ *Id.*

¹⁴⁵ *Dep't of Enforcement v. C.L. King & Assoc., Inc.*, No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at *135 (NAC Oct. 2, 2019).

¹⁴⁶ Maheshwari's Pre-Hearing Brief, at 25.

¹⁴⁷ *Dep't of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *52 (NAC Mar. 5, 2019).

¹⁴⁸ Maheshwari's Pre-Hearing Brief, at 25.

assistance to FINRA simply by fulfilling their obligations to provide information in an investigation. Such “cooperation” is not mitigating.¹⁴⁹

Finally, Maheshwari points to additional factors focusing on the aberrant and isolated nature of the conduct here, which he maintains involved only a limited number of “extremely small” transactions.¹⁵⁰ We agree that the magnitude of the transactions is small, and the conduct appears to be isolated in nature. We therefore give mitigative weight to these factors.¹⁵¹

Although we take the isolated nature of Maheshwari’s misconduct into account, we must also recognize that his misuse of valuable information from his former employer for his own personal profit raises substantial concerns regarding Maheshwari’s fitness for an industry where “customers and firms must be able to trust securities professionals” with valuable assets.¹⁵² In light of these concerns, we give little mitigative weight to the aberrant nature of the conduct because even “a single instance of theft provides ample justification to bar an individual from the securities industry.”¹⁵³ The SEC has long regarded misuse of confidential inside information as an act of “clear defiance and betrayal of basic responsibilities of honesty and fairness to the investing public.”¹⁵⁴

After weighing the evidence and considering all applicable factors, taking into particular account the deceptive nature of Maheshwari’s conduct and his later willingness to advance a deceptive narrative to justify his own self-interested misconduct, we conclude that Maheshwari poses a significant ongoing risk to the investing public and any FINRA member firm that may place trust in him in the future. For these reasons, and in order to effectuate the remedial purposes of the Sanction Guidelines, protect the public interest, improve overall business standards in the securities industry, and deter others from engaging in similar misconduct, we find the only appropriate sanction is a bar from association with any FINRA member firm in any capacity. In light of the bar, we do not impose a fine.

To remediate his misconduct, we also order Maheshwari to disgorge his ill-gotten gains.¹⁵⁵ He is ordered to disgorge \$2,760, the full profit resulting from his misconduct. Maheshwari is also ordered to pay interest at the rate set forth in Section 6621(a) of the Internal

¹⁴⁹ *Dep’t of Enforcement v. McNamara*, No. 2016049085401, 2019 FINRA Discip. LEXIS 29, at *35 (NAC July 30, 2019).

¹⁵⁰ Maheshwari’s Pre-Hearing Brief, at 24-26; Guidelines at 7-8 (Principal Considerations 8, 9, 15, 17).

¹⁵¹ *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *20 (Sept. 3, 2015) (adjudicators should credit as mitigating “misconduct that was neither numerous nor made over an extended period of time.”).

¹⁵² *Id.* at *9.

¹⁵³ *Id.* at *20.

¹⁵⁴ *Sidney Eng*, 1998 SEC LEXIS 1633, at *26.

¹⁵⁵ Guidelines at 5 (General Principal 6).

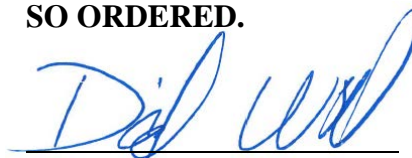
Revenue Code, 26 U.S.C. § 6621(a)(2),¹⁵⁶ from September 11, 2017, the date of his illicit purchases, until the date that disgorgement is paid in full.

V. Order

We find that Respondent Kapil Maheshwari violated FINRA Rule 2010, by misusing confidential information for trading purposes in breach of his duty of loyalty and confidentiality to his former employer, as alleged in the Complaint.¹⁵⁷ For his violation, we bar Maheshwari from association with any FINRA member in any capacity.

Respondent is ordered to pay disgorgement in the sum of \$2,760, plus interest on the unpaid balance from September 11, 2017, until paid in full. Interest shall accrue at the rate set in 26 U.S.C. Section 6621(a)(2). Respondent is also ordered to pay costs in the amount of \$9,663, which includes a \$750 administrative fee and \$8,883 for the cost of the transcript. If this decision becomes FINRA's final disciplinary action, the bar will take effect immediately. The disgorgement and costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.

SO ORDERED.



David Williams
Hearing Officer
For the Hearing Panel

Copies to:

Kapil Maheshwari (via overnight courier, and first-class mail)
Robert G. Heim, Esq. (via email and first-class mail)
Michael J. Rogal, Esq. (via email and first-class mail)
Samir Ranade, Esq. (via email)
Elissa Meth Kestin, Esq. (via email)
Lara C. Thyagarajan, Esq. (via email)

¹⁵⁶ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

¹⁵⁷ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.