

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

**KAPIL MAHESHWARI
(CRD No. 6358540),**

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2017055608101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Investment bankers owe a duty of loyalty and confidentiality to their clients.

Fundamental to those duties is abstaining from using confidential and proprietary information learned in the course of working on an investment banking transaction to trade for personal gain. In September 2017, former Credit Suisse Securities (USA) LLC (“Credit Suisse” or the “Firm”) investment banker Kapil Maheshwari (“Maheshwari”) violated these basic tenets and used confidential and proprietary information he learned in the course of his employment to trade in Company A. He had worked on a Credit Suisse deal team representing a client (Company B) seeking to acquire Company A. Maheshwari’s trades were within days of his departure from Credit Suisse, when he was still registered with FINRA as an Investment Banking Representative. Maheshwari purchased shares of Company A stock in violation of his employment agreement and in contravention of Credit Suisse policy. Maheshwari’s

misuse of firm confidential and proprietary information and breach of his duties of loyalty and confidentiality constituted a failure to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. Maheshwari was registered as an Investment Banking Representative (Series 79) with Credit Suisse from July 2014 until September 2017, when the firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating his registration following his resignation. Credit Suisse filed an initial Form U5 reporting Maheshwari's voluntary termination on September 22, 2017. The Firm then submitted Form U5 amendments on October 12, 2017 and on November 7, 2017, in which the firm disclosed an internal review that concluded that "[c]ertain of employee's personal trading effected after he was no longer associated with the Firm was determined to be inconsistent with Firm policies regarding employee personal account trading and information barriers, and/or violative of industry standards of conduct." Maheshwari has not been associated with another FINRA member firm since his termination from Credit Suisse.
3. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint (1) was filed within two years after the filing of an amendment to Form U5, namely November 7, 2017 and (2) charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

MAHESHWARI'S ROLE AT CREDIT SUISSE

4. Maheshwari was an Associate in the Credit Suisse Investment Banking Capital Markets Division from July 2014 until August 17, 2017. Maheshwari remained an associated person of the firm as that term is defined in FINRA's By-Laws until September 22, 2017, when the firm filed a Form U5 terminating his registration.
5. As an investment banking Associate, Maheshwari's role at Credit Suisse was to assist in preparing pitch book materials for merger and acquisitions and debt financing transactions. Among other things, Maheshwari created industry overviews, lists of strategic options and financial analyses in connection with various investment banking transactions.
6. In July 2014, when Maheshwari began working for Credit Suisse, he signed an Agreement Concerning Bank Confidential and Proprietary Information ("Confidentiality Agreement") not to use confidential information for any purpose.
7. Maheshwari specifically agreed that "[i]n the event that I leave the employ of Credit Suisse: 1. I will not disclose or use Confidential and Proprietary Information for any purpose." "Confidential and Proprietary Information" was defined in the Confidentiality Agreement as, among other things,

"1. [a]ny non-public, business or personal information about the Bank or its current, former or prospective employees or other personnel, clients, customers, vendors or counterparties or others to whom the Bank owes a duty of confidentiality, including, but not limited to: . . . client files or materials, proposals, financial information; analyses; projections . . . information about . . . transactions"

MAHESHWARI'S ROLE WITH THE PROPOSED ACQUISITION OF COMPANY A

8. Company B was a Credit Suisse investment banking client that was seeking to acquire Company A. Company B is a technology and services company focused on measuring, managing and analyzing energy and water use. Company A is a software company that develops, among other things, smart utility platforms for its utility company customers.
9. Maheshwari worked with the Credit Suisse investment banking team assisting Company B's acquisition of Company A, and in that role, he possessed non-public confidential and proprietary information regarding Company A, including knowledge of the potential Company A-Company B transaction itself.
10. In September 2016, Credit Suisse assigned Maheshwari to assist Company B with developing strategic alternatives, including possible mergers and acquisitions and/or debt or equity transactions. Between September 2016 and February 2017, Maheshwari assisted in the preparation of presentation materials for meetings between Credit Suisse and Company B.
11. On February 2, 2017, Company B engaged Credit Suisse as a second advisor in connection with a potential acquisition transaction.
12. As a member of the deal team that included a managing director and supporting investment bankers and in order to prepare work product in support of the transaction, Maheshwari participated in calls and meetings discussing Credit Suisse strategy and financial analysis. Maheshwari also received and reviewed certain confidential and proprietary emails related to the transaction. For example, on February 1, 2017,

- Maheshwari emailed a transaction analysis to Company B. In another example, on April 11, 2017, Company B sent Credit Suisse a new financial model relating to the transaction, and Maheshwari received the model.
13. By the end of April 2017, Company B focused on acquiring Company A, and Credit Suisse then added Company A to Credit Suisse's Watch List.
 14. Maheshwari knew from his role at the Firm, and his own inquiries that Company A was on the Credit Suisse Watch List.
 15. On July 27, 2017, Credit Suisse moved the transaction to the due diligence phase, and Maheshwari requested and had access to the project data room.
 16. A "data room" is a secure place to store data related to the transaction, and in the Company A transaction an electronic virtual "data room" was established.
 17. On August 15, 2017, Maheshwari prepared a one-page profile as part of a confidential and proprietary overview of the transaction in preparation for a presentation to the Credit Suisse Investment Banking Committee ("IBC").
 18. The IBC is comprised of senior Credit Suisse bankers who, among other things, determine the fairness of a proposed transaction. Presenting a transaction to the IBC is an important event in the transaction lifecycle, indicating it has made significant progress towards completion.
 19. The company overview that Maheshwari drafted and the other IBC materials contained, among other things, confidential and proprietary information including price and earnings estimate information for 2017 and 2018, estimated billings for 2016, estimated EBITA and sales for 2016-18, a discussion of the transaction's

- strategic rationale/considerations as well as a preliminary discounted cash flow analysis.
20. Maheshwari received an email on August 16, 2017 containing the proposed agenda for the Company B Board of Directors meeting scheduled for August 23, 2017.
 21. Maheshwari's employment with Credit Suisse voluntarily ended on August 17, 2017.
 22. On September 11, 2017, Maheshwari purchased 400 shares of Company A for a total of approximately \$5,060 in his personal brokerage account (ending in 5478).
 23. Maheshwari also had trading privileges in his wife's brokerage account and on September 11, 2017, on her behalf, he purchased 400 shares of Company A in her account (ending in 1335) for a total of approximately \$5,060.
 24. At the time of these purchases, Maheshwari was in possession of detailed, non-public, confidential and proprietary information obtained through his job at Credit Suisse about the contemplated acquisition of Company A by Company B.
 25. Seven days after his purchases, on September 18, 2017, Company B announced what a joint press release called a "definitive agreement" to acquire Company A for \$16.25/share, a premium of 25% to Company A's then-current share price.
 26. Accordingly, Maheshwari stood to obtain a profit of approximately \$2,760 if he tendered his and his wife's shares at the premium price.
 27. After the public announcement of the acquisition, on September 18, 2017, the price of Company A stock increased \$3.10 or 19.2%.
 28. Maheshwari attempted to sell his and his wife's Company A holdings in October 2017 at an increased price reflecting the announcement of Company B's acquisition of the

company, but the sale did not proceed because it was blocked by their brokerage firm because Credit Suisse had restricted the sale of Company A stock.

CREDIT SUISSE PROCEDURES AND TRAINING

29. Credit Suisse maintained policies and procedures that prohibited using access to Credit Suisse client information in any way to advantage personal investing.
30. The policies further required its personnel to pursue the best interests of Credit Suisse and its clients and not put the employees' trading interests ahead of those interests.
31. Credit Suisse's policies and procedures relating to employee trading specifically provided, in relevant part:

Credit Suisse's reputation for integrity and fair dealing is one of its most valuable assets. To protect that reputation, employees must engage in personal account trading in a manner that is in compliance with applicable laws and regulations and one in which conflicts of interest related to personal investment activities are avoided. . . .

. . . .

As an employee of Credit Suisse, you must pursue the best interests of Credit Suisse and its clients and not put your own trading interests ahead of these interests. As such, you must adhere to the following principles:

. . . .

You are prohibited from using your access to Credit Suisse proprietary or client information in any way to advantage your personal investing.

32. During his employment with Credit Suisse, Maheshwari was required to and did complete numerous training modules relating to the firm's policies and procedures, including protecting confidential and proprietary information and employee trading.

SOLE CAUSE OF ACTION
MISUSE OF CONFIDENTIAL AND PROPRIETARY INFORMATION AND
BREACH OF DUTIES OF LOYALTY AND CONFIDENTIALITY
(FINRA RULE 2010)

33. The Department of Enforcement realleges and incorporates by reference paragraphs 1-32 above.

34. FINRA Rule 2010 requires registered representatives to, in the conduct of their business, “observe high standards of commercial honor and just and equitable principles of trade.”

35. Credit Suisse’s policies prohibited using access to client information to advantage personal investing. Maheshwari also signed a Confidentiality Agreement not to use confidential and proprietary information for any purpose, specifically agreeing that “[i]n the event that I leave the employ of Credit Suisse: 1. I will not disclose or use Confidential and Proprietary Information for any purpose.” This policy was important to the integrity of the market because it ensures that certain market insiders do not have an informational advantage over other market participants.

36. Maheshwari breached his duties under Credit Suisse policies and contravened his Confidentiality Agreement with the firm by his misuse of confidential and proprietary non-public information. Maheshwari misused confidential and proprietary information he obtained through his role as a Credit Suisse investment banker for Company B by making purchases in Company A in September 2017.

37. As an investment banker for Credit Suisse, Maheshwari also owed the Credit Suisse and its clients a duty of loyalty. Maheshwari’s trading also breached his duty of loyalty to Credit Suisse and Companies A and B.

38. By reason of the conduct described above, Maheshwari acted in bad faith and unethically. Maheshwari's misuse of Credit Suisse confidential and proprietary information and breach of his duties of loyalty and confidentiality constituted a failure to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and,
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT



Michael J. Rogal, Senior Counsel
FINRA Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, MD 20850-3241
Phone: (301) 258-8574
Email: michael.rogal@finra.org

Samir Ranade, Senior Counsel
FINRA Department of Enforcement
200 Liberty Street, Brookfield Place
New York, NY 10281
Phone: (646) 315-7417
Email: samir.ranade@finra.org

Date: February 7, 2019