

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERIC ANDREW JACOBS
(CRD No. 5907784),

Respondent.

Disciplinary Proceeding
No. 2012034284301

Hearing Officer—RLP

DEFAULT DECISION

November 25, 2014

Respondent is suspended from association with any FINRA member firm in any capacity for 60 days and fined \$10,000 for disclosing confidential information in violation of FINRA Rule 2010.

Appearances

Megan P. Davis, Esq., New York, New York, for the Department of Enforcement.

No appearance by or for Respondent Eric Andrew Jacobs.

DECISION

I. Introduction

In 2012, Respondent Eric Andrew Jacobs was employed by and registered with FINRA through FINRA member Citigroup Global Markets Inc. On October 16, 2012, Citigroup Global Markets filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) with FINRA reporting that Jacobs had been terminated on September 27, 2012, “for distributing written materials, by email, during a securities offering in violation of firm policies”¹

Thereafter, FINRA began an investigation into Jacobs’ conduct and, as a result, the Department

¹ Complaint ¶ 3; Declaration of Megan P. Davis in Support of Motion for Entry of Default Decision and Imposition of Sanctions (“Davis Decl.”) ¶¶ 5-6; Complainant’s Exhibit (“CX”) 1, at 1; CX-2, at 1. Given that Jacobs is in default, the factual determinations in this decision are based on allegations in the attached complaint, which are deemed admitted, as well as on Davis’ declaration and its exhibits.

of Enforcement (“Enforcement”) filed a complaint on May 9, 2014, alleging that, without his firm’s approval, Jacobs disseminated confidential information to individuals outside of Citigroup Global Markets, in violation of FINRA Rule 2010.

Jacobs did not answer the complaint. Consequently, on September 22, 2014, Enforcement filed a motion for entry of a default decision, together with the declaration of Megan Davis and 36 exhibits. Enforcement supplemented its motion on November 4, 2014. Jacobs did not respond.

II. Jurisdiction

Jacobs entered the securities industry in March 2011 when he became associated with Citigroup Global Markets, and thereafter he registered with FINRA as a General Securities Representative and a Research Analyst through the firm. After Citigroup Global Markets discharged Jacobs, FINRA terminated his registration on October 16, 2012. Since that date, Jacobs has not been registered through or associated with any FINRA member.² He remains subject to FINRA’s jurisdiction, however, because the complaint: (1) was filed within two years after the effective date of termination of his registration; and (2) charges him with misconduct committed while he was associated with a FINRA member.³

III. Respondent’s Default

On May 9, 2014, Enforcement mailed the complaint and notice of complaint to Jacobs at his then current residential address as reflected in the Central Registration Depository (“CRD Address”). Enforcement also mailed a copy of the notice and complaint to an address Jacobs had supplied during on-the-record (“OTR”) testimony (“Alternate Address”). Enforcement

² Compl. ¶¶ 3; Davis Decl. ¶¶ 5-6; CX-1, at 1.

³ See Article V, Sec. 4(a), FINRA By-Laws, <http://www.finra.org/Industry/Regulation/FINRARules/> (then follow “FINRA Manual” hyperlink to “Corporate Organization: By-Laws”).

additionally sent a copy of notice and complaint to Jacobs at a personal email address that he had used to communicate with FINRA staff (“Email Address”).⁴ Although the notice alerted Jacobs that he was required to file an answer on or before June 6, 2014, Jacobs failed to serve or file an answer or other response by that date.

Accordingly, on June 10, 2014, Enforcement mailed a second notice of complaint and complaint to both Jacobs’ CRD Address and his Alternate Address. On the same date, Enforcement also sent a copy of the second notice and complaint to Jacobs’ Email Address. The second notice stated that Jacobs was required to answer the complaint on or before June 27, 2014. Jacobs failed to do so.⁵

Thereafter, on July 17, 2014, a mailing that had been sent to Jacobs at his Alternate Address was returned to Enforcement with a label that reflected another address for Jacobs (“New Address”). One week later, Enforcement served Jacobs with a third notice of complaint and complaint at his CRD Address, Alternate Address, and New Address. Enforcement also sent a copy of the third notice and complaint to Jacobs at his Email Address.⁶ Although Jacobs signed for the copy of the third notice and complaint that was sent to him at the New Address by first-class certified mail, return-receipt requested, Jacobs failed to serve or file an answer or other response to the complaint by the August 21, 2014 due date.⁷

⁴ Davis Decl. ¶¶ 11-12, 14, 20; CX-7 – CX-11. The mailings were sent to Jacobs by first-class mail and first-class certified mail, return receipt requested. Those sent by certified mail were returned to Enforcement marked “Return to Sender - Unclaimed - Unable to Forward - Return to Sender.” Davis Decl. ¶¶ 16, 17; CX-12; CX-13.

⁵ Davis Decl. ¶¶ 21, 26; CX-14 – CX-17. Again, mailings sent to Jacobs by certified mail, return receipt requested were returned to Enforcement marked “Return to Sender - Unclaimed - Unable to Forward - Return to Sender.” Davis Decl. ¶¶ 22-23; CX-18; CX-19.

⁶ Davis Decl. ¶¶ 28-30; CX-20 – CX-25.

⁷ Davis Decl. ¶ 31; CX-26. The other certified mailings were returned to Enforcement. Davis Decl. ¶¶ 32-33; CX-27 – CX-29.

On August 22, 2014, Enforcement served Jacobs with a fourth notice of complaint and complaint addressed to Jacobs' CRD Address, Alternate Address, and New Address. Enforcement also sent a copy to Jacobs at his Email Address. To date, Jacobs has not filed an answer or otherwise responded to the complaint.⁸

Jacobs received actual and constructive notice of this proceeding and, therefore, the Hearing Officer finds that he has defaulted by failing to answer the complaint.⁹

IV. Findings of Fact and Conclusions of Law

In the spring of 2012, Jacobs was employed as an Equity Research Associate at Citigroup Global Markets. Jacobs' responsibilities included, among other things, the preparation of draft research documents concerning companies covered by his research group.¹⁰

At around this time, Facebook was planning an initial public offering ("IPO"), Citigroup, Inc., an affiliate of Citigroup Global Markets, was engaged as one of the underwriters, and Citigroup Global Markets intended to initiate coverage of the company after the IPO. Accordingly, around March or April 2012, MSM, the senior analyst in Jacobs' research group, tasked Jacobs with preparing a draft of a document about Facebook referred to as a "One-Pager." A One-Pager was a quick "snapshot" of Citigroup Global Markets' thoughts on a company formulated when the firm was preparing to cover that company. In 2012, the ordinary practice in Jacobs' research group was that after One-Pagers were reviewed and revised, they were used by

⁸ Davis Decl. ¶¶ 36, 37, 40; CX-31 – CX-34. The certified mailings to the CRD Address and the Alternate Address were returned to Enforcement. Davis Decl. ¶¶ 38, 39; CX-35; CX-36.

⁹ See FINRA Rules 9134(a)(2), (b)(1), and (b)(3); *Dep't of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (FINRA NAC July 26, 2012) (respondent had constructive notice of complaint mailed to his CRD address); see also NASD Notice to Members 99-77, <http://www.finra.org/Industry/Regulation/Notices/1999/P004087>.

¹⁰ Compl. ¶¶ 4-6.

MSM as a resource for talking points on conference calls with Citigroup Global Markets' institutional sales team and with the firm's clients.¹¹

Around mid-April 2012, Jacobs began to work on the draft of the Facebook One-Pager. He reviewed data and information about Facebook from a variety of sources, such as Facebook's Registration Statement on Form S-1 and a number of fee-based or subscription news and analytical sources. He then selected and organized that data and information into a summary narrative and a series of numbered items reflecting his opinion and analysis of the positive aspects and downside risks of investing in Facebook.¹²

On May 2, 2012, Jacobs sent an email, with the subject line "Thoughts on FB one pager," from his Citigroup Global Markets email address to his friends JC and KMC, who were journalists at a technology blog. Jacobs wrote:

I'm ramping up coverage on FB and thought you guys might like to see how the street is thinking about it (and our estimates). Any feedback on the investment positives and risks would be super helpful. I want to make sure I'm thinking about this the right way.

This, of course, is confidential.¹³

Jacobs attached to his email a copy of the Facebook One-Pager. In response to the email, JC sent an email to Jacobs asking, "There's no way I can publish this doc from an anonymous source, right?" Jacobs replied, "My boss would eat me alive."¹⁴

The Facebook One-Pager was not a public document at the time that Jacobs sent it to JC and KMC. It contained Citigroup Global Markets' confidential, non-public information and analysis about Facebook. Jacobs did not request, and he did not have, approval from Citigroup

¹¹ Compl. ¶¶ 7, 9-11.

¹² Compl. ¶¶ 12, 13; CX-3, at 2-3.

¹³ Compl. ¶¶ 15-16; CX-3, at 1.

¹⁴ CX-3, at 2-3; CX-4; CX-5.

Global Markets to disseminate the Facebook One-Pager outside the firm or to send his May 2 email to JC or KMC. Indeed, Citigroup Global Markets had at least four different policies that prohibited the disclosure of confidential information. These policies had been distributed to Jacobs before he sent the email, putting him on notice that the information should not have been disclosed. During on-the-record testimony, Jacobs admitted that he violated these policies because he wanted to avail himself of his friends' expertise in order to write a report that would impress his boss.¹⁵

The Hearing Officer concludes that Jacobs failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010. In determining whether a securities professional's conduct violates Rule 2010, adjudicators frequently "focus[] on whether the conduct implicates a generally recognized duty owed to clients or the firm."¹⁶ One such generally recognized duty is the fiduciary duty of loyalty and confidence an employee owes an employer.¹⁷ Thus, under the common law, an agent has a duty to act loyally for his principal's benefit in all matters connected to the agency and that includes a duty not to use or communicate his principal's confidential information for his own purposes.¹⁸ Jacobs breached that duty. He sent Citigroup Global Markets' confidential, proprietary information to his journalist friends, seeking their help to produce a One-Pager that would impress his boss. He acted out of self-interest and not in the interests of Citigroup Global Markets. Indeed, by sharing the One-Pager with persons interested in more broadly disseminating the information and in the midst of a securities offering underwritten by CGMI's

¹⁵ Compl. ¶¶ 18-20; CX-6, at 113, 204.

¹⁶ *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54, at *19 (Jan. 6, 2012).

¹⁷ *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *27 (June 14, 2013); *Louis Feldman*, 52 S.E.C. 19, 22 (1994) (citing *Michael T. McAuliffe*, 48 S.E.C. 86, 87 & n.3 (1985)).

¹⁸ Restatement (Third) of Agency, §§ 8.01, 8.05 (2006).

affiliate, he created a significant risk of harm to Citigroup Global Markets by, for example, exposing it to possible regulatory scrutiny.

V. Sanctions

There is no specific sanction guideline for the type of violation involved here. Looking to the principal considerations considered in imposing sanctions with respect to all violations, it is significant that Jacobs sent the information to his friends knowing that it was confidential, labelling it as confidential, and recognizing that his “boss would eat [him] alive” if his friends were to publish the document, even from an anonymous source. He acted intentionally and despite being on notice that Citigroup Global Markets prohibited the dissemination of the type of non-public information he disclosed to his friends.¹⁹ And he engaged in the misconduct in an attempt to benefit himself, hoping to improve his work product and impress his boss.²⁰

In the Hearing Officer’s view, a 60-day all capacities suspension and a fine of \$10,000 appropriately remedy this violation. These significant sanctions are sufficient to emphasize the importance of keeping employer information confidential without being punitive.

VI. Order

Respondent Eric Andrew Jacobs is suspended from association with any FINRA member firm in all capacities for 60 days and fined \$10,000 for disclosing confidential information in violation of FINRA Rule 2010. If this decision becomes FINRA’s final disciplinary action, Jacobs’ suspension shall commence at the opening of business on January 5, 2015, and

¹⁹ *FINRA Sanction Guidelines*, at 7 (2013) (Principal Consideration 13).

²⁰ *FINRA Sanction Guidelines*, at 7 (Principal Consideration 17).

conclude at the close of business on March 5, 2015. The fine shall be payable upon Jacobs' return to the securities industry.

Rada Lynn Potts

Rada Lynn Potts
Hearing Officer

Copies to:

Eric Andrew Jacobs (*via email and first-class mail*)
Megan P. Davis, Esq. (*via email and first-class mail*)
Andrew T. Beirne, Esq. (*via email*)
Lara C. Thyagarajan, Esq. (*via email*)
Gina M. Petrocelli, Esq. (*via email*)
Jeffrey D. Pariser, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

ERIC ANDREW JACOBS (CRD No. 5907784),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2012034284301

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On May 2, 2012, while registered with FINRA through member firm Citigroup Global Markets, Inc. ("CGMI" or the "Firm"), Respondent Eric Andrew Jacobs, a research analyst at the Firm, disseminated confidential information concerning Facebook, Inc. ("Facebook") by e-mail to two individuals outside of CGMI. Jacobs disseminated that confidential information, which was draft research about Facebook that had not been published by CGMI, approximately two weeks before Facebook's initial public offering ("IPO"). Citigroup, Inc., an affiliate of CGMI, was a member of the underwriting syndicate for Facebook's IPO. Jacobs did not have approval from the Firm to disseminate that confidential information on or about May 2, 2012.
2. By disseminating confidential information, without approval to do so, Jacobs failed to observe high standards of commercial honor and just and equitable principles of trade in violation FINRA Rule 2010.

RESPONDENT AND JURISDICTION

3. From on or about April 1, 2011 through on or about October 16, 2012, Jacobs was registered with FINRA through an association with CGMI as a General Securities Representative. From on or about September 28, 2011 through on or about October 16, 2012, Jacobs was additionally registered with FINRA as a Research Analyst through his association with the Firm. 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 (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with CGMI, namely, October 16, 2012; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

BACKGROUND

Jacobs's Responsibilities at CGMI

4. Jacobs was an Equity Research Associate at CGMI. His research group was based in San Francisco, California, and it included two other research analysts and a senior analyst, MSM.

5. Among other things, Jacobs's research group at CGMI monitored market events and published research concerning approximately 30 publicly listed companies.

6. As an Equity Research Associate, Jacobs's responsibilities included, among other things, the preparation of draft research concerning companies covered by his research group.

The Facebook IPO and CGMI's Coverage of Facebook

7. Facebook planned an IPO in 2012. That IPO ultimately took place on May 18, 2012, when Facebook began trading under the ticker symbol "FB."

8. On March 5, 2012, Facebook engaged Citigroup, Inc., an affiliate of CGMI, as one of the underwriters participating in Facebook's IPO.

9. CGMI intended to initiate coverage of Facebook after that company's IPO. On or about June 27, 2012, CGMI did so, issuing its first research report about Facebook.

CGMI's Draft Facebook One-Pager

10. In or about March or April 2012, MSM, the senior analyst in Jacobs's research group at CGMI, tasked Jacobs with assisting in the Firm's initial written research notes concerning Facebook. CGMI referred to such notes as "One-Pagers."

11. A One-Pager was a preliminary overview, intended as a quick "snapshot" of CGMI's thoughts on a company as it was preparing to cover that company. In 2012, the ordinary practice in Jacobs's research group was that after any One-Pager was reviewed and revised by members of that group, including MSM, it was used by MSM for talking points on a conference call with CGMI's institutional sales team and might also be used for talking points by the research group in follow-up calls or calls with the Firm's clients.

12. In or about mid-April 2012, Jacobs began to work on CGMI's draft One-Pager for Facebook (the "Facebook One-Pager"). To do so, he reviewed data and information about Facebook from a variety of sources, such as Facebook's Registration Statement on Form S-1 and a number of fee-based or subscription news and analytical sources.

13. By May 2, 2012, Jacobs had created a first draft of the Facebook One-Pager. This first draft Facebook One-Pager included data and information that Jacobs selected and organized into a summary narrative, followed by a series of numbered items reflecting Jacobs's opinion and his analysis of those facts. These items appeared under headings of "Investment Positives" and "Investment Risks."

FIRST CAUSE OF ACTION

(Unauthorized Dissemination of Confidential Information (FINRA Rule 2010))

14. The Department realleges and incorporates by reference paragraphs 1 through 13 above.

15. On May 2, 2012, Jacobs sent an e-mail, with the subject line "Thoughts on FB one pager," from his CGMI e-mail address (the "May 2 E-Mail") to two individuals outside of CGMI, JC and KMC. In that e-mail, "FB" was a reference to Facebook. JC and KMC were journalists at an on-line technology blog, TC. JC and KMC were friends of Jacobs's and he considered them to be "experts" on Facebook.

16. Jacobs wrote to JC and KMC in his May 2 E-Mail:

I'm ramping up coverage on FB and thought you guys might like to see how the street is thinking about it (and our estimates). Any feedback on the investment positives and risks would be super helpful. I want to make sure I'm thinking about this the right way.

This, of course, is confidential.

17. Jacobs attached to his May 2 E-Mail a copy of the Facebook One-Pager.

18. The Facebook One-Pager was not a public document at the time that Jacobs sent it to JC and KMC as an attachment to his May 2 E-Mail. At that time, the Facebook One-Pager contained CGMI's confidential, non-public information and analysis about Facebook.

19. On or before May 2, 2012, Jacobs did not request and he did not have approval from CGMI to disseminate the Facebook One-Pager outside of the Firm or to send his May 2 E-Mail to JC or KMC.

20. CGMI had at least four different policies that prohibited the disclosure of confidential information. These policies were distributed to Jacobs well before he sent the May 2 E-Mail, putting Jacobs on notice that the information should not have been disclosed.

21. By reason of the foregoing, Jacobs disseminated CGMI's confidential information without the Firm's approval to do so, 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.

RELIEF REQUESTED

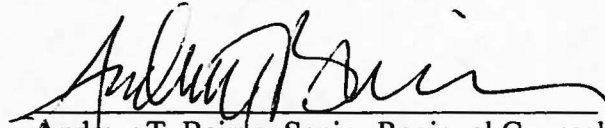
WHEREFORE, the Department respectfully requests that the Panel:

- 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; 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

Date: May 9, 2014



Andrew T. Beirne, Senior Regional Counsel
Lara C. Thyagarajan, Chief Counsel
Gina M. Petrocelli, Director
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
New York, NY 10281
Phone: (212) 858-4080
Fax: (202) 721-6565
E-Mail: andrew.beirne@finra.org