

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

Department of Market Regulation,

Complainant,

v.

Matthew Joseph Sheerin (CRD 2859126)

Respondent.

Disciplinary Proceeding
No. 20110279263-01

Hearing Officer:

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. On or about April 29, 2011, respondent Matthew Joseph Sheerin (“Respondent” or “Sheerin”), while a registered representative of a FINRA member firm and employed by an affiliate of the FINRA member firm, in contravention of the FINRA member firm’s policies, and of the affiliate firm’s policies, disclosed material, confidential, non-public information regarding C&D Technologies Inc. (“CHHP” or “company”) to MM, a registered representative of a Philadelphia Stock Exchange (“PHLX”) member firm. Specifically, Sheerin told MM that CHHP’s earnings report would be released on the following Monday, which was May 2, 2011, and that the “story should read well.”

2. Within 30 minutes of the conversation with Sheerin, MM purchased 500 shares of CHHP in two lots, 374 shares for \$8.25 and 126 shares for \$8.12, using his personal account.

3. By intentionally disclosing material, confidential, non-public information regarding the release date of CHHP's earnings report and that the "story should read well," Sheerin willfully violated Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and violated FINRA Rules 2010 and 2020.

4. Sheerin also violated the policies and procedures of the affiliate employer by violating a Confidentiality, Non-Competition and Non-Solicitation Agreement and Agreement to Arbitrate ("Confidentiality Agreement") in disclosing confidential non-public information about the affiliate's clients to MM and, as such, Sheerin engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

5. Additionally, Sheerin violated the policies and procedures of his employing FINRA member firm by violating its Supervisory and Compliance Procedures regarding insider trading in disclosing material non-public information to a person with no need to know and, as such, Sheerin engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

Respondent and Jurisdiction

6. Sheerin was registered with FINRA member firms from January 1997 until August 2011. He holds Series 7, Series 55, and Series 63 licenses. Sheerin was registered with his most recent employing FINRA member firm from September 5, 2000 through August 12, 2011, when the FINRA member firm filed a Form U5 terminating Sheerin's registration. Although Sheerin is no longer registered or associated with a FINRA member firm, 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 Sheerin's registration with a FINRA member, namely, August 12, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

Statement of Facts

7. At all times relevant to this Complaint, Sheerin was registered with a FINRA member firm and was also employed as a distressed-bonds trader at an affiliate of his FINRA member firm.

8. As a part of his employment with the affiliate firm, Sheerin signed a Confidentiality, Non-Competition, and Non-Solicitation Agreement, and Agreement to Arbitrate ("Confidentiality Agreement"). The Confidentiality Agreement stated that the employing affiliate possessed confidential non-public information about its clients and that, as a result of his employment, Sheerin also had access to confidential non-public information about its clients. The Confidentiality Agreement prohibited Sheerin from disclosing confidential non-public information that he learned during the course of his employment about the affiliate's clients to third parties because such disclosure would cause "grave and irreparable harm."

9. Additionally, as a part of his training and continued employment, Sheerin certified that he had read and understood his employer's FINRA member firm's Supervisory and Compliance Procedures and that he would abide by all of the FINRA member firm's policies. The FINRA member firm's Supervisory and Compliance Procedures included its Insider Trading policy, which prohibited employees from trading on or disclosing material non-public information. The policy provisions included examples of what constituted "material information" including "earnings estimates, changes in previously released earnings estimates, and significant merger or acquisition proposals or agreements." The Insider Trading policy also

stated that information is “non-public” until it has been “effectively communicated to the marketplace.”

10. In September 2010, the affiliate firm acquired a majority ownership of CHHP through a restructuring support agreement. The affiliate firm had access to material confidential non-public information about CHHP as a result of its majority ownership in the company. CHHP was on the list of restricted securities in which the affiliate firm prohibited its employees from trading.

11. Sheerin and MM were close friends and have known each other since they both attended Harvard University, where they played lacrosse together. Sheerin and MM were roommates in 1997, when they first began working on Wall Street in the financial industry. They discussed investment ideas with one another and each made trades based on ideas discussed with the other.

12. In early March 2011, MM asked Sheerin which stocks he liked and which stocks his employing affiliate firm liked. Sheerin told MM that he and his employing affiliate firm liked CHHP, among others.

13. In early April 2011, after MM began working with his PHLX member firm, MM told Sheerin that he had purchased 10,000 shares of CHHP in his firm’s proprietary account and 10,000 shares of CHHP in his personal account. MM told Sheerin that his firm had prohibited him from purchasing any more shares using the proprietary account. MM expressed his frustration to Sheerin that he could not purchase any additional shares in the proprietary account. MM also told Sheerin that he had limited resources to purchase CHHP shares in his personal account.

14. On or about April 23, 2011, MM sent Sheerin a blackberry message in which he told him that he had attempted to contact someone at CHHP to find out more information about the company but was unable to speak with anyone. MM asked Sheerin if CHHP was “in a quiet period before some results come out?” Sheerin replied “Ahh, Good Point. Their 10K being filed 1st week of may [sic].” MM responded “is that what they’ve said” to which Sheerin responded “I heard from analyst that 10K comes out first week.”

15. On April 29, 2011, between 9:41 am and 12:02 pm, MM purchased an additional 590 shares of CHHP in his personal account.

16. On April 29, 2011, at approximately 11:48 am, Sheerin received an email from TA, a credit analyst with Sheerin’s employing affiliate firm and member of CHHP’s Board of Directors. The email was addressed to the Directors and stated that CHHP’s earnings report and 10K filing would be released on the following Monday, May 2, 2011. Additionally, the email stated that CHHP planned to announce the award of a new contract as the exclusive provider of batteries to the Agriculture Bank of China for the next three years. The email also stated that the award was estimated to generate \$28 million in revenue, was the single largest award in the company’s history, and that the Board of Directors was optimistic about the firm’s prospects for the future. The press release, dated for the following Monday, May 2, 2011, announcing the Agriculture Bank of China award, was attached to the email.

17. On April 29, 2011, at approximately 1:49 pm, Sheerin called MM and told him that CHHP’s earnings report was being released on Monday, which was May 2, 2011, and that “the story should read well.”

18. Approximately 10 to 15 minutes after the telephone call with Sheerin, MM sought approval from his firm to resume purchasing shares of CHHP in its proprietary trading account.

19. MM told DA, his firm's Chief Operating Officer, that he learned from a friend, who worked at a hedge fund that was the largest shareholder in CHHP, that the earnings report would be released on Monday, which was May 2, 2011, and that it was going to read really, really well. DA told MM not to purchase any more shares of CHHP in the firm's proprietary account and to go back to his office to await further instructions.

20. MM returned to his office and, at approximately 2:14 pm, he purchased 500 shares of CHHP in his personal account. At approximately 3:15 pm, MM received an email from his firm advising him not to trade in any securities in the firm's proprietary account. At approximately 3:49 pm, MM sold 1,100 shares of CHHP, representing a loss of \$108 on the total of 1,090 shares that he had purchased on April 29, 2011.

21. Later that day, MM's firm liquidated its position in CHHP for \$8.00 per share and sustained a \$3,500 loss.

22. On May 2, 2011, at 4:16 pm, CHHP issued a press release announcing its fourth quarter 2010 and fiscal-year end January 31, 2011 financial results. A second press release on May 2, 2011, at 4:17 pm, announced that CHHP had received a \$28 million contract from the Agriculture Bank of China. On May 3, 2011, CHHP closed at \$8.40, a 4.9 percent increase from the prior day's close on total volume of approximately 12,800 shares. On May 4, 2011, CHHP closed at \$7.60 on total volume of approximately 22,576 shares.

23. Between May 4, 2011 and May 5, 2011, MM liquidated his position of 9,777 CHHP shares in his personal account at prices ranging from \$7.50 to \$8.05. MM's trading in CHHP shares yielded a gross loss of approximately \$3,075.

24. On May 26, 2011, MM's firm terminated his employment.

25. On August 12, 2011, Sheerin's FINRA member firm filed a Form U5 terminating his registration.

CAUSE ONE

Fraud in the Purchase and Sale of Securities (Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and FINRA Rules 2010 and 2020)

26. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

27. The information Sheerin possessed was material, non-public information. Sheerin had a duty to his employing affiliate member firm pursuant to a Confidentiality Agreement to keep the information confidential. Sheerin also had a duty to his FINRA member firm pursuant to its Supervisory and Compliance Procedures to not disclose the information to another person without a need to know. Sheerin breached these duties by disclosing confidential information to MM. In so doing, Sheerin acted with scienter because he either knew, or was reckless in not knowing, that he was doing so in breach of his duties to keep the information confidential and not disclose it.

28. By engaging in the foregoing conduct, Sheerin, in connection with the purchase or sale of a security, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person in willful violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5

thereunder and; induced the purchase or sale of a security by means of a manipulative, deceptive or other fraudulent device or contrivance in violation of FINRA Rules 2010 and 2020.

CAUSE TWO

Standards of Commercial Honor and Principles of Trade (Violation of FINRA Rule 2010)

29. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

30. Sheerin's FINRA member firm's Supervisory and Compliance Procedures with respect to Insider Trading state that no employee while in possession of material non-public information about a company or the market for a company's securities may trade on the information or disclose the information to a second person who has no official need to know.

31. Sheerin violated his FINRA member firm's Supervisory and Compliance Procedures by disclosing material, confidential, non-public information to MM.

32. By engaging in the foregoing conduct, Sheerin, in the conduct of his business, engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

CAUSE THREE

Standards of Commercial Honor and Principles of Trade (Violation of FINRA Rule 2010)

33. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

34. The Confidentiality Agreement Sheerin signed with his employing affiliate firm prohibited him from disclosing confidential non-public information about its clients to third parties.

35. Sheerin violated the Confidentiality Agreement by disclosing material, confidential, non-public information to MM.

36. By engaging in the foregoing conduct, Sheerin, in the conduct of his business, engaged in conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

Prayer for Relief

WHEREFORE, Market Regulation respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent, Matthew Joseph Sheerin, committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Procedural Rule 8310 be imposed,
- C. make specific findings that Respondent willfully violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder;
- D. order that Respondent bear such costs of any proceeding as are deemed fair and appropriate under the circumstances, in accordance with FINRA Procedural Rule 8330; and
- E. grant all further relief, legal or equitable, that is warranted under the circumstances.

Dated: August 1, 2013

FINRA Department of Market Regulation



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