

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MATTHEW J. DODDS  
(CRD No. 2176100),

Respondent.

Disciplinary Proceeding  
No. 2014043020901

Hearing Officer—CC

**EXTENDED HEARING  
PANEL DECISION**

Date: August 16, 2017

**Complaint alleges that Respondent selectively disclosed material, non-public information and later attempted to destroy evidence related to the disclosure, in violation of FINRA Rule 2010. Held, Department of Enforcement failed to prove alleged violations by a preponderance of the evidence. Complaint dismissed.**

*Appearances*

For the Complainant: William L. Thompson, III, Esq., and Philip J. Berkowitz, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Robert L. Herskovits, Esq., Herskovits, PLLC.

**DECISION**

**I. Introduction**

This case involves allegations that Matthew J. Dodds (“Dodds”), an equity research analyst with Citigroup Global Markets Inc. (“CGMI”), selectively disclosed material, non-public information to an individual associated with Citadel LLC (“Citadel”), a hedge fund client of CGMI. It also involves allegations that Dodds attempted to conceal evidence of his misconduct by asking the information recipient to delete a voicemail message from Dodds.

We find that Enforcement failed to prove the alleged violations by a preponderance of the evidence and dismiss all allegations against Dodds.

## **II. Procedural History**

FINRA's Department of Enforcement ("Enforcement") filed the two-cause Complaint on October 19, 2015. Cause one of the Complaint alleges that during a telephone call placed at 9:23 p.m. Eastern Time<sup>1</sup> on October 2, 2014, Dodds selectively disclosed to Citadel analyst Nicholas Nohling ("Nohling") that, before the market opened the next day, medical technology company Medtronic Inc. ("Medtronic") would issue a press release reaffirming its commitment to merge with medical device and health care product company Covidien plc ("Covidien"). The Complaint alleges that a notice of proposed regulation previously issued by the United States Treasury Department cast doubt on whether Medtronic intended to continue with the planned merger with Covidien. Cause one alleges that, by selectively disclosing this material, non-public information, Dodds breached his duty, imposed in CGMI's policies and procedures, to refrain from disclosing material, non-public information and failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

Cause two of the Complaint alleges that on October 4, 2014, Dodds contacted Nohling by telephone, informed Nohling that CGMI was investigating Dodds, and asked Nohling to delete a voicemail message Dodds left for Nohling shortly before they spoke on October 2, 2014. The Complaint alleges that the voicemail alluded to the October 3, 2014 Medtronic press release concerning Medtronic's merger with Covidien. Cause two alleges that Dodds knew or should have known that his voicemail message to Nohling was potential evidence of violations of CGMI's policies and procedures and FINRA's rules. Cause two alleges that by asking Nohling to destroy potential evidence of violations Dodds failed to observe high standards of commercial honor and just and equitable principles of trade and violated FINRA Rule 2010.

The parties participated in a five-day hearing in May and September 2016 and April 2017.

## **III. Facts**

### **A. Respondent's Background and Association with CGMI**

Dodds entered the securities industry in the early 1990s.<sup>2</sup> He was associated with CGMI from April 2004 through October 2014, when he voluntarily terminated his association.<sup>3</sup> While associated with CGMI, Dodds was registered as a general securities representative and a research analyst.<sup>4</sup> He is not currently registered with a FINRA member firm.<sup>5</sup>

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<sup>1</sup> Unless otherwise noted, all references to time in this Decision are Eastern Time.

<sup>2</sup> Complainant's Exhibit ("CX")-7, at 7-8; Hearing Transcript ("Tr.") 241.

<sup>3</sup> CX-7, at 3.

<sup>4</sup> CX-7, at 3-4; Tr. 240.

<sup>5</sup> CX-7, at 3.

In October 2014, Dodds was a senior sell-side analyst in equity research at CGMI.<sup>6</sup> He authored and published research reports on public companies.<sup>7</sup> Dodds estimated that he published approximately two to three reports per week. Dodds spoke at two or more CGMI conferences and industry conferences per year. He also met on behalf of CGMI with client groups and sales forces.<sup>8</sup> Dodds followed the medical supplies and devices sector and in 2014, covered approximately 15 companies.<sup>9</sup> These companies included Medtronic, a cardiovascular and neurological device company, and Covidien, a general surgical company.<sup>10</sup> As a research analyst in the medical supplies and devices sector, Dodds regularly reviewed periodicals, trade magazines, public filings, and press releases from the issuers he covered. He attended industry conferences, spoke with company management and outside consultants, and met with issuers' investor relations personnel.<sup>11</sup> In 2014, Dodds had more than 1,000 institutional clients, including hedge funds and mutual funds.<sup>12</sup>

Dodds' main investor relations contact at Medtronic was Jeffrey Warren ("Warren").<sup>13</sup> Warren became the head of Medtronic's investor relations department in 2004, and Dodds knew Warren through Medtronic.<sup>14</sup> Dodds and Warren had a close business relationship that resulted in business meetings for dinner or drinks when they were in the same town.<sup>15</sup> Warren testified that it was his job to maintain a good relationship with all analysts covering Medtronic, and he considered Dodds to be one of the better analysts, whose work he had known and respected for many years.<sup>16</sup> Warren stated that he had known Dodds longer than anyone else on Wall Street.<sup>17</sup> Dodds testified that his relationship with Warren, which occasionally included socializing, was no different than his relationship with other investor relations professionals for issuers he covered.<sup>18</sup>

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<sup>6</sup> Tr. 241, 264.

<sup>7</sup> Tr. 241-42.

<sup>8</sup> Tr. 243-44.

<sup>9</sup> Tr. 244, 246.

<sup>10</sup> Tr. 246-47, 251-52.

<sup>11</sup> Tr. 248, 250.

<sup>12</sup> Tr. 254-55.

<sup>13</sup> Tr. 250.

<sup>14</sup> Tr. 251.

<sup>15</sup> Tr. 252-53; Joint Exhibit ("JX")-16, at 17-18.

<sup>16</sup> JX-16, at 18.

<sup>17</sup> JX-16, at 18.

<sup>18</sup> Tr. 252-53.

## **B. CGMI's Practices**

In 2014, CGMI's research analysts received compensation based in part on ratings they received from clients. Daniel Schnipper ("Schnipper"), general counsel for CGMI's research department, testified that CGMI compensated its research analysts based on a matrix of rankings from the firm's major institutional clients and an institutional investor publication.<sup>19</sup> Schnipper could not otherwise explain CGMI's ranking system and was unable to explain what, if any, weight any particular CGMI client's ranking could have had on Dodds' overall compensation.<sup>20</sup>

Dodds testified that each analyst received a "scorecard" that included "broker votes." Most of CGMI's major institutional clients cast broker votes quarterly or twice per year, plus each research analyst received an annual ranking from an institutional investor publication.<sup>21</sup> The "broker votes" (also called "focus account votes") accounted for approximately 25 percent of the analyst's yearly evaluation.<sup>22</sup> The value of each institutional investor's vote was weighted based on the tier to which the firm assigned the client.<sup>23</sup> For example, the votes of top tier clients (called "hedge fund focus") were weighted at four times their vote score. The votes of clients in the next tier down (called "platinum") were weighted at three times their vote score. The votes of clients in the next tier down (called "gold") were weighted at two times their vote score, and so on down the tiers in descending order.<sup>24</sup> The ranking from an institutional investor publication, labeled on the scorecard as "external survey," accounted for approximately 10 percent of each analyst's yearly evaluation.<sup>25</sup> Dodds testified that CGMI encouraged analysts to maximize broker votes and external survey rankings.<sup>26</sup>

## **C. Medtronic/Covidien Merger**

On June 15, 2014, Medtronic publicly announced a proposed merger with Covidien.<sup>27</sup> According to the announcement, if the shareholders of both companies approved the proposed merger, the resulting company would be headquartered in Ireland, where Covidien is

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<sup>19</sup> Tr. 455-58.

<sup>20</sup> Tr. 504-05; CX-52.

<sup>21</sup> Tr. 358-60, 436-37.

<sup>22</sup> Tr. 424-25; CX-52. Dodds did not believe that the scorecard correlated directly to the amount of his yearly bonus. Tr. 425.

<sup>23</sup> Tr. 429-31.

<sup>24</sup> Tr. 429-31; CX-52; CX-53. Citadel, Nohling's firm, was one of 12 CGMI customers in the top tier hedge fund focus group. Tr. 263, 429-30; CX-52, at 3. Based on the number of clients in each tier and the manner in which the votes were weighted, Dodds could have earned a total of approximately 2900 broker votes. Tr. 428-31; CX-52. Citadel could have given Dodds a total of 40 of the approximately 2900 broker votes available. Tr. 430.

<sup>25</sup> Tr. 426-27, 455-56.

<sup>26</sup> Tr. 428.

<sup>27</sup> Tr. 269; JX-1.

domiciled.<sup>28</sup> This type of merger is known as a tax inversion.<sup>29</sup> As of June 2014, tax inversions of this type offered significant tax benefits to merged entities domiciled outside the United States.<sup>30</sup> At the same time, tax inversions had become politically unpopular in the United States, and the Medtronic/Covidien merger was among the largest inversion deals publicly announced.<sup>31</sup>

Dodds prepared and issued a research report on June 16, 2014, the day after the Medtronic/Covidien merger announcement.<sup>32</sup> In it, Dodds stated that he believed the biggest risk to the success of the merger was political backlash against tax inversions that could result in changes to U.S. tax laws to make tax inversions less appealing.<sup>33</sup> Dodds opined that Congress could make changes that would take effect before the Medtronic/Covidien deal closed.<sup>34</sup> Dodds wrote and issued another report on June 18, 2014, after participating in conference calls and meetings between Medtronic's management team and investors.<sup>35</sup> Dodds concluded from those meetings and wrote in the June 18 report that Medtronic was committed to the Covidien merger regardless of the availability of a tax inversion and that, in his view, Medtronic would want to proceed with the merger even if tax inversions became unavailable.<sup>36</sup>

On July 27, 2014, Dodds authored a research report in which he stated, "Covidien deal ... still offers room for upside."<sup>37</sup> Dodds stated, "While there is still the potential that a bill restricting inversions with a retroactive component could pass, we believe the risk of this occurring before this deal closes is very low."<sup>38</sup> Dodds testified that he believed the risk was low because he did not believe Congress would change tax laws before the merger closed in January 2015.<sup>39</sup>

On August 5, 2014, the United States Treasury Secretary commented publicly that the Treasury Department would attempt to discourage tax inversion transactions through the implementation of tax regulations rather than through the more time-consuming process of

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<sup>28</sup> Tr. 270; JX-1, at 2.

<sup>29</sup> Even though Medtronic, a U.S. company, was acquiring Covidien, the combined company would be headquartered in Ireland to take advantage of a lower corporate tax rate. JX-1, at 2. Medtronic intended to fund the transaction with cash held outside the United States by its foreign subsidiary. Tr. 301.

<sup>30</sup> Tr. 270-73.

<sup>31</sup> Tr. 274, 276.

<sup>32</sup> Tr. 274-75; JX-15.

<sup>33</sup> Tr. 276-77.

<sup>34</sup> Tr. 276.

<sup>35</sup> Tr. 755-56; JX-3.

<sup>36</sup> Tr. 756-57; JX-3, at 1.

<sup>37</sup> Tr. 757; JX4, at 1.

<sup>38</sup> JX-4, at 1.

<sup>39</sup> Tr. 758-59.

changing the tax code.<sup>40</sup> Although Dodds did not believe it was likely that United States tax laws would change before the consummation of the Medtronic/Covidien merger, he felt that less time was needed for the Treasury Department to issue new tax regulations. Dodds co-authored a research report issued on August 6, 2014, stating that given the Treasury Department's proposal to enact new regulations, there could be an increased risk for deals, like the Medtronic/Covidien merger, involving significant amounts of off-shore cash.<sup>41</sup>

Dodds testified that because of the Treasury Secretary's August 5, 2014 statement, he undertook significant amounts of research before preparing his next research report.<sup>42</sup> Dodds consulted with an outside expert on inversions, reviewed sections of the tax code, and spoke with officers of Medtronic and Covidien.<sup>43</sup> In an August 14, 2014 research note, Dodds stated, "Our follow-up analysis of the publicly discussed options available to [the Treasury Department] suggests that anything short of a targeted and significant reclassification of intercompany loans wouldn't put the [Medtronic/Covidien] deal at risk and even then we aren't convinced [Medtronic] would act."<sup>44</sup> Dodds also wrote that while the Treasury Department may move to restrict the use of cash held outside the United States for inversions, he felt the issue was "technically moot" because Medtronic had the capacity "to take on enough U.S. debt to fund" the deal if it could not use funds held by a foreign subsidiary.<sup>45</sup>

On August 19, 2014, Medtronic issued a press release that reported its first quarter earnings and reaffirmed the company's commitment to its merger with Covidien.<sup>46</sup> Dodds testified that this signified to him that Medtronic had already considered possible changes in tax regulations and intended nonetheless to proceed with the merger.<sup>47</sup>

On September 22, 2014, the United States Internal Revenue Service ("IRS") issued a notice of proposed regulation which Dodds discussed in a September 23, 2014 research report he co-authored.<sup>48</sup> The report indicated that the IRS's proposal was broader than originally anticipated with respect to the negative consequences for inversions.<sup>49</sup> On September 23, 2014, Dodds wrote and issued a research report specifically addressing the Medtronic/Covidien

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<sup>40</sup> Tr. 284-85.

<sup>41</sup> Tr. 283, 290-91; CX-34, at 1-2.

<sup>42</sup> Tr. 761-62.

<sup>43</sup> Tr. 762-65.

<sup>44</sup> JX-5, at 1.

<sup>45</sup> JX-5, at 6. Dodds learned from Medtronic that it had already secured \$15 billion in bridge financing to fund the merger if the Treasury Department curbed the use of cash held outside the United States before the Medtronic/Covidien merger closed. Tr. 769-71.

<sup>46</sup> JX-6, at 1.

<sup>47</sup> Tr. 773-74.

<sup>48</sup> Tr. 292-95, 298, 301; CX-2; CX-3; CX-35; JX-7; JX-8.

<sup>49</sup> Tr. 294-95; CX-35, at 1.

merger.<sup>50</sup> Dodds noted that Medtronic had already secured \$15 billion in bridge financing and stated, “Hence, our initial review of Treasury’s proposed changes still suggests to us that [Medtronic] will move forward.”<sup>51</sup>

After the September 22, 2014 IRS notice of proposed regulation, Dodds asked Warren, Medtronic’s head of investor relations, to comment on the Treasury Department’s proposal and its possible effect on the Medtronic/Covidien merger.<sup>52</sup> Warren refused to comment and stated that Medtronic needed to review the Treasury Department’s proposed regulations further.<sup>53</sup> Medtronic did not comment publicly on the merger again until October 3, 2014.<sup>54</sup>

On September 23, 2014, Covidien’s president stated in a filing with the Securities and Exchange Commission, “the combination of Medtronic and Covidien has always been primarily driven by the companies’s [*sic*] strategic decision to become the world’s premier medical technology and services company.”<sup>55</sup> Covidien stated that nothing announced the previous day by the Treasury Department changed or impacted the companies’ “commitment to moving forward and closing the transaction.”<sup>56</sup> Dodds testified that this statement suggested to him the “odds” were low that Covidien would renegotiate the merger.<sup>57</sup>

Dodds testified that between September 23 and October 2, 2014, he believed the Medtronic/Covidien merger would proceed without renegotiation, notwithstanding the Treasury Department’s announcements.<sup>58</sup> The evidence also suggests that the prevailing view on Wall Street was that the Medtronic/Covidien merger would proceed as planned.<sup>59</sup>

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<sup>50</sup> Tr. 767-68; JX-8.

<sup>51</sup> JX-8, at 1.

<sup>52</sup> Tr. 305.

<sup>53</sup> Tr. 305.

<sup>54</sup> Tr. 306-07.

<sup>55</sup> Respondent’s Exhibit (“RX”)-13, at 1.

<sup>56</sup> RX-13, at 1.

<sup>57</sup> Tr. 786.

<sup>58</sup> Tr. 786-87. Dodds testified that, immediately after the merger announcement, Covidien enjoyed a bump in its stock price that held through September 22, 2014, when it closed at approximately \$90 per share. Tr. 788-90. The Treasury Department issued a notice of proposed regulation after the market closed on September 22, 2014. On September 23, 2014, Covidien’s stock price declined to approximately \$88 per share. Tr. 790. Dodds considered this price decline relatively minor and concluded there was little serious doubt about the merger proceeding. Tr. 790.

<sup>59</sup> Tr. 200 (Nohling’s testimony that the prevailing view on Wall Street was that the Treasury Department’s proposed changes to tax regulations would have minimal impact on the Medtronic/Covidien merger).

#### **D. CGMI's Policies and Procedures**

Schnipper, CGMI's general counsel for research, advised CGMI's research department on the firm's policies and procedures.<sup>60</sup> Schnipper testified that, in October 2014, the firm had several policies in place relating to the disclosure of material, non-public information. CGMI's Confidential and Material, Non-public Information Policy, updated April 16, 2014, advised CGMI employees that confidential information belonged to the firm and its clients, and employees were required to safeguard it from improper use or disclosure to anyone without a valid need to know inside or outside the firm.<sup>61</sup> CGMI's Insider Trading Policy, revised January 2014, prohibited CGMI employees from disseminating material, non-public information to anyone internally or externally, unless that person had a legitimate need to know the information.<sup>62</sup> The restriction applied even if the CGMI employee did not believe the recipient would act on the information.<sup>63</sup> CGMI's Communication Policy for Fundamental Equity Research, issued March 1, 2014, established the general rule that CGMI research personnel should communicate their research views simultaneously to all clients.<sup>64</sup> It further stated that oral or written communications with individual clients or third parties would be permitted only if consistent with previously disseminated research.<sup>65</sup>

CGMI monitored research analysts' calls to and from the office. The firm maintained a call log system for its research analysts called "CMS."<sup>66</sup> The firm used the system to count calls to clients from different departments, including research, to document its customer service and validate its commissions.<sup>67</sup> The call log was not connected to research analysts' personal evaluations.<sup>68</sup> Dodds testified that he did not always log outgoing calls, but logged any return calls he received if he actually spoke to a client.<sup>69</sup>

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<sup>60</sup> Tr. 448-49.

<sup>61</sup> Tr. 467-68, 470; CX-60.

<sup>62</sup> Tr. 476-77; CX-65.

<sup>63</sup> Tr. 478-79; CX-65, at 4.

<sup>64</sup> Tr. 482; CX-66.

<sup>65</sup> CX-66, at 1.

<sup>66</sup> Tr. 318; CX-9.

<sup>67</sup> Tr. 322. Analysts could log calls any time after they were made. Thus, the dates reflected on the CMS log are the dates the analysts indicated they made the calls, not the dates when they actually logged the calls into the system. Tr. 320.

<sup>68</sup> Tr. 322.

<sup>69</sup> Tr. 319.

## E. Events of October 2, 2014

Dodds spoke at a cardiovascular conference Medtronic hosted on October 2, 2014. Hospital administrators and executives and Medtronic and Covidien executives attended.<sup>70</sup>

Dodds' recollection of the events on the evening of October 2, 2014 is poor due to anti-anxiety medication he ingested that day to help with public speaking.<sup>71</sup> Dodds testified that he had a vague memory of going from the cardiovascular conference to a tax meeting with his personal accountant, buying power bars to eat on his way home (to break his fast because he felt light-headed), and taking a subway home.<sup>72</sup> Dodds could not specifically recall, but estimated that he returned home at approximately 6:00 p.m.<sup>73</sup> Dodds was told that he went to sleep immediately upon returning home.<sup>74</sup> Dodds also does not recall sending or receiving text messages later that evening, but saw the text exchanges when he awoke on October 3, 2014.<sup>75</sup>

At 8:10 p.m., Warren sent Dodds a text message stating, "How was tax guy? I'm too depressed to face tax guy!! How are you feeling? ... worried about you ... and [your girlfriend] too :)"<sup>76</sup> Warren testified that he was worried about Dodds because he did not seem well when

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<sup>70</sup> Tr. 325.

<sup>71</sup> Tr. 791. Dodds testified that, beginning in 2004, he used anti-anxiety medication as needed to calm himself before making presentations to large groups of individuals. Tr. 792. At the cardiovascular conference, Dodds was expected to present a 30-minute speech to more than 100 attendees. Tr. 325-26. He explained that he generally cut the anti-anxiety pills in half, and on October 2, 2014, he took half of a pill at 1:00 p.m., just prior to arriving at the conference. Tr. 791. When Dodds arrived, Warren advised him that the venture capital group who spoke before him had not done well. Dodds felt increased pressure and anxiety to do well, so he took the second half of the pill at approximately 1:30 p.m. Tr. 791, 793. Dodds was also fasting on that day because his girlfriend had convinced him to fast with her. Tr. 796, 801.

Dodds testified that, before October 2, 2014, he had observed both positive and negative side effects from this anti-anxiety medication. Tr. 793-94. His experience was that the medication helped him relax for presentations and did not cause slurred speech, but it also caused muscle looseness and memory loss. Tr. 793-94. In retrospect, Dodds believed the side effects of the medication were intensified on October 2, 2014, because he was fasting that day. Tr. 795-96.

Dodds' testimony that he took anti-anxiety medication is corroborated by CGMI's October 30, 2014 response to FINRA's request for information, which indicates that Dodds advised CGMI management during an interview on October 6, 2014, that he had difficulty recalling the events of October 2, 2014, because he ingested anti-anxiety medication. CX-70, at 5. Warren (head of Investor Relations at Medtronic) testified on October 13, 2016, before the Securities and Exchange Commission, that he saw Dodds in the afternoon on October 2, 2014, and observed that Dodds was extremely sluggish and lethargic. JX-16, at 38-39. Warren testified that Dodds told him then that he had taken anti-anxiety medication and was fasting that day. JX-16, at 39.

<sup>72</sup> Tr. 796-98.

<sup>73</sup> Tr. 797-98.

<sup>74</sup> Tr. 328-29.

<sup>75</sup> Tr. 798.

<sup>76</sup> Tr. 704-07; CX-95A, at 1.

they parted earlier in the day.<sup>77</sup> Warren testified that, between 3:30 and 4:00 p.m., he and Dodds left the cardiovascular conference together.<sup>78</sup> Warren recalled that Dodds had a personal appointment with a tax advisor.<sup>79</sup> Warren observed that Dodds was “extremely sluggish, lethargic, to the point where [Warren] even carried his bag for a few blocks.”<sup>80</sup> They parted and talked about possibly getting together for drinks or dinner later that night.<sup>81</sup>

At 8:57 p.m., Warren called Dodds, and they spoke for three minutes.<sup>82</sup> Warren testified that he called Dodds to confirm they were not meeting for drinks or dinner that night, thank him for participating in the cardiovascular conference that day, and remind Dodds that he was scheduled to talk to Medtronic’s chief financial officer (“CFO”) the next morning.<sup>83</sup>

At the time of this call, Warren knew that Medtronic’s board had approved the issuance of a press release before the market opened the next morning, confirming that Medtronic intended to proceed with the Covidien merger.<sup>84</sup> Warren testified that he did not tell Dodds about the press release or Medtronic’s decision to proceed with the merger, but he also did not dissuade Dodds from believing a press release would soon be issued.<sup>85</sup>

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<sup>77</sup> JX-16, at 48. Warren testified that Dodds told him that he had taken two doses of an anti-anxiety medication before his presentation and also had been fasting (with his girlfriend) that day. JX-16, at 39.

<sup>78</sup> JX-16, at 38.

<sup>79</sup> JX-16, at 38.

<sup>80</sup> JX-16, at 38-39.

<sup>81</sup> JX-16, at 39.

<sup>82</sup> Tr. 330; JX-14, at 2; JX-16, at 48-49.

<sup>83</sup> JX-16, at 49. Warren testified that, earlier on October 2, 2014, he had talked with Dodds about scheduling a call between Dodds and Medtronic’s CFO for Friday, October 3, 2014. JX-16, at 40. Enforcement argued that the evidence does not support Warren’s testimony that, on the evening of October 2, he was scheduling calls for October 3, 2014, between Medtronic’s CFO and sell-side analysts. We disagree. Emails produced by Medtronic (time-stamped in Universal Coordinated Time, which is four hours ahead of Eastern Time) show that, on October 2, 2014, at 8:40 p.m. Eastern Time, Warren emailed Medtronic’s CFO, “We very much need you to be available for key Sell Side and Top Shareholder calls – we’re working on that plan right now.” Tr. 679, 732-34; CX-103. At 4:39 p.m. on October 2, 2014, Medtronic’s investor relations department began circulating a proposed October 3, 2014 call schedule for Medtronic’s CFO and sell-side analysts, including Dodds. RX-50.

<sup>84</sup> JX-16, at 43-45.

<sup>85</sup> Warren testified:

[Dodds] was a badgerer, But, I mean, you better have a damn press release or something like that, or damn if I’m going to – you know, could he have said something like that? Possibly. But again, it was, you know, I was like, look, we’ll talk in the morning. You know, I mean, if he had said, you know, I’m just assuming you’re going to have a release, I certainly wasn’t dissuading him in any way to think there wasn’t going to be a release.

JX-16, at 51. *See also* JX-16, at 52 (“I said look, we’ll have something to talk about in the morning. Let’s talk. And that, you know, whether that was – again, I was not concerned whether he thought there was going to be a release in the morning.”).

Warren believed that Dodds assumed there would be a press release the next morning.<sup>86</sup> Warren testified that, in his view, the content of the release, not the timing, was what was material and non-public.<sup>87</sup> Warren steadfastly denied that he advised Dodds as to the content of the upcoming Medtronic press release. Warren knew that Dodds believed all along that Medtronic would proceed with a merger with Covidien.<sup>88</sup>

At 9:01 p.m., Dodds placed a call to Jon Wood (“Wood”), an investment analyst at CGMI client T. Rowe Price. Wood covered medical technology and life science tools companies.<sup>89</sup> At 9:06 p.m., Dodds emailed Wood, “Are you around?”<sup>90</sup> Wood responded with his cell phone number.<sup>91</sup>

At 9:31 p.m., Dodds left a voicemail message for Christopher Hawkins (“Hawkins”), a healthcare analyst at CGMI client Citadel.<sup>92</sup> Dodds stated, “I would just say be in early tomorrow. I think this saga is over. If you need to get me ....”<sup>93</sup>

At 9:40 p.m., Dodds spoke with Wood for six minutes.<sup>94</sup> Wood testified that Dodds “communicated [to him] that there would be an announcement the next morning at 8:30 a.m.”<sup>95</sup> Wood could not recall that Dodds specifically stated that it applied to Medtronic and Covidien, but he thought it was implied.<sup>96</sup> Wood did not ask for specifics and Dodds did not offer any that Wood recalled.<sup>97</sup> Earlier that day, Wood heard from another research analyst (unrelated to

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<sup>86</sup> JX-16, at 55-56 (“I think [Dodds] assumed there was going to be a press release the next morning. I do. I think that there were enough dots to connect out there. You know, and I certainly wasn’t trying to tell him there wasn’t going to be a press release. I absolutely believe he believes [*sic*] there was going to be a press release.”); JX-16, at 58 (“not recalling specifically, you know, could I have said, hey, you know, like in the context of, you know, we’ll have something to talk about, hopefully it’s a release, or something like that. I mean, that’s fully possible.”).

<sup>87</sup> JX-16, at 58.

<sup>88</sup> JX-16, at 59.

<sup>89</sup> Tr. 334-35; JX-14, at 2. At 2:38 p.m. on October 2, 2014, Wood emailed Dodds to ask, “Are we still on for the 10/20 visit to [Medtronic]?” Tr. 564-65; CX-17. Dodds responded “yes,” and Wood emailed “what’s the low down on our favorite [Medtronic] topic these days?” *Id.* The record does not include a response.

<sup>90</sup> Tr. 335; CX-19.

<sup>91</sup> Tr. 335; CX-19. Also at 9:06 p.m., Dodds texted Warren, “Tax guy hammered me!” CX-95A, at 2.

<sup>92</sup> Tr. 351-53; JX-14, at 2.

<sup>93</sup> Tr. 354-55; CX-30; CX-31; CX-141, at 43-45.

<sup>94</sup> Tr. 336-37, 566-67, 569; JX-14, at 2.

<sup>95</sup> Tr. 568.

<sup>96</sup> Tr. 568.

<sup>97</sup> Tr. 589-92.

Dodds) that there could be news related to Medtronic and Covidien the next day (October 3, 2014), so this was not news to Wood.<sup>98</sup>

At approximately 9:41 p.m., Dodds received two text messages from Warren stating, “Painful” and “Will be calling you in the morning.”<sup>99</sup>

At 10:04 p.m., Hawkins called Dodds and they spoke for approximately three minutes.<sup>100</sup> Hawkins testified that Dodds told him to get into the office early the next day and that Dodds thought the “saga” was coming to an end.<sup>101</sup> Hawkins stated that he was unclear as to Dodds’ meaning, and Dodds followed up with a reference to Medtronic’s chief executive officer possibly giving some sort of announcement the next morning.<sup>102</sup> Hawkins understood from his conversation with Dodds that Medtronic would announce something the following morning, but he did not know whether the merger would proceed.<sup>103</sup>

The Complaint does not allege that Dodds engaged in misconduct with respect to Dodds’ communications with Hawkins and Wood. The allegations of misconduct relate solely to Dodds’ communications on October 2, 2014, with Citadel analyst Nohling.

At 9:21 p.m. on October 2, 2014, Dodds left Nohling a voicemail message stating, “Hey, Nick. Matt. If you want to give me a ring, I’ll be up for a bit. I would just tell ya [*sic*] – get in early tomorrow. (Laughter). Gonna be a big day. Bye.”<sup>104</sup> Nohling did not understand what Dodds’ message meant, so he returned Dodds’ call at 9:23 p.m., and the two spoke for approximately four minutes.<sup>105</sup>

At 9:44 p.m., Nohling emailed colleagues at Citadel stating:

Dodds called me on [Medtronic]...Said he spoke with them and they are planning on coming out with press release tomorrow before market open giving their take

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<sup>98</sup> Tr. 570. Wood testified that on October 3, 2014, before Medtronic issued its press release, his firm’s compliance department determined to place Medtronic and Covidien on a restricted list based in part on communications he received and reported. Tr. 571.

<sup>99</sup> CX-95A, at 3.

<sup>100</sup> Tr. 357-58; JX-14, at 2.

<sup>101</sup> CX-141, at 46. Hawkins did not testify at the hearing, and FINRA no longer possesses jurisdiction to compel Hawkins to appear. Hawkins testified on the record on January 7, 2015, and Enforcement offered portions of the transcript of his testimony as evidence.

<sup>102</sup> CX-141, at 46-47.

<sup>103</sup> CX-141, at 49.

<sup>104</sup> Tr. 114-15, 343-47; JX-9; JX-10; JX-14, at 2.

<sup>105</sup> Tr. 116-17; JX-14, at 2. Nohling testified that he had a business relationship, not a personal relationship, with Dodds and it seemed odd that Dodds would call him in the evening. Tr. 111-12.

after evaluating the treasury notice. Release will say they are staying the original course and will not engaging [*sic*] [Covidien] to structure the deal differently.

My opinion is [Medtronic] might be slightly weak but not down meaningfully. Feel like sentiment and some numbers are already adjusted for more debt issuance. Probably should see the spread come in though.<sup>106</sup>

Nohling's testimony regarding his conversation with Dodds was somewhat inconsistent. First, Nohling testified that Dodds told him he heard from Medtronic that "they are planning on continuing on with the new deal."<sup>107</sup> On cross examination, Nohling waived and indicated he was unable to say whether Dodds said Medtronic told him that a press release was coming the next day.<sup>108</sup> He could not recall "verbatim" what Dodds had said.<sup>109</sup> He also testified that it was fair to say he could not recall Dodds' telling him that Medtronic told Dodds the substance of the press release.<sup>110</sup> On cross examination, Nohling agreed that it "is a possibility" that Dodds was making assumptions about what the release might say and that Nohling just assumed Dodds said he spoke with Medtronic.<sup>111</sup>

Nohling testified that he believed, going into his October 2, 2014 telephone conversation with Dodds, that the Medtronic/Covidien merger would occur, so Dodds' statements did not affect the opinions he already held.<sup>112</sup> Nohling testified that, given his belief about the merger, as soon as Dodds mentioned a press release, it was a foregone conclusion to Nohling that it related to the Treasury Department's notice of proposed regulation.<sup>113</sup> Nohling assumed on October 2, 2014, that a Medtronic press release would be forthcoming, and he agreed he could not

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<sup>106</sup> Tr. 122-23; CX-5; CX-6.

<sup>107</sup> Tr. 118.

<sup>108</sup> Tr. 163, 216 (Nohling) ("I can't recall exactly what he said but I was under the assumption that he spoke with them.").

<sup>109</sup> Tr. 163, 216.

<sup>110</sup> Tr. 163, 216.

<sup>111</sup> Tr. 163, 216.

<sup>112</sup> Tr. 97 (regarding the September 22, 2014 Treasury Department notice of proposed regulation, Nohling stated, "from my take that [*sic*] the impact would not derail the transaction going forward"), Tr. 98 ("My opinion at the time was the merger would still proceed as originally intended, as originally proposed."), Tr. 129-30 (Nohling's testimony stating that he believed the Medtronic/Covidien merger would proceed as planned before he talked with Dodds on October 2, 2014), Tr. 195 (Nohling's testimony that he did not believe the Treasury Department announcement posed a risk to the Medtronic/Covidien merger), Tr. 202 (Nohling's testimony that the prospect of Medtronic using debt to avoid the use of non-U.S. cash to fund the merger was not sufficient to cause Medtronic to walk away from the merger), Tr. 203 (Nohling's testimony that, before October 3, 2014, he did not believe that Medtronic would seek to renegotiate deal terms with Covidien).

<sup>113</sup> Tr. 163.

specifically recall Dodds' telling him that Medtronic told Dodds the substance of any expected press release.<sup>114</sup>

#### F. Events of October 3, 2014

Nohling had an early morning meeting in his office at Citadel on October 3, 2014.<sup>115</sup> When he arrived, his supervisor stated, "about that e-mail last night, you should have gone to compliance."<sup>116</sup> Citadel's compliance department pulled Nohling out of his morning meeting, expressed concern about the email, and directed him to contact Dodds and CGMI's compliance department.<sup>117</sup> Citadel also halted trading in Medtronic and Covidien.<sup>118</sup>

Dodds testified that he awoke on October 3, 2014, to find that he had sent and received text messages the night before that he did not recall.<sup>119</sup> On October 3, 2014, Dodds sent a text message to Warren at 4:59 a.m. stating, "I'll be at work."<sup>120</sup> Dodds testified that he read Warren's text from the night before stating that Warren would be calling Dodds, so he responded.<sup>121</sup>

Dodds arrived at his office between 7:00 and 7:30 a.m.<sup>122</sup> At approximately 8:20 a.m., Nohling called Dodds, but Dodds did not answer the call.<sup>123</sup> Nohling and Dodds eventually talked and, as requested, Dodds provided Nohling with the name of an individual in CGMI's compliance department.<sup>124</sup> After Dodds talked with Nohling, at approximately 8:24 a.m., another

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<sup>114</sup> Tr. 163 (Nohling's testimony that it is fair to say that he did not recall Dodds' telling him on October 2, 2014, what the substance of Medtronic's press release would be), Tr. 204-05 (Nohling's testimony that, when he left a meeting with Medtronic management on September 23, 2014, he was "under the assumption they would put out a press release or put out an announcement in a formal way some time. I wouldn't say any day but some time in the near future."), Tr. 205-06 (Nohling's testimony that it was a foregone conclusion in his mind on October 2, 2014, when Dodds mentioned a press release, it related to the Treasury Department's notice of proposed regulation), Tr. 220-21 (Nohling's testimony reaffirming prior on-the-record testimony, "I can't remember if [Dodds] explicitly said I talked to Medtronic but I came away with the assumption that he got his news from Medtronic.").

<sup>115</sup> Tr. 140-41.

<sup>116</sup> Tr. 141.

<sup>117</sup> Tr. 141-44.

<sup>118</sup> Tr. 142-45.

<sup>119</sup> Tr. 369-71, 798.

<sup>120</sup> Tr. 803; CX-95A, at 4.

<sup>121</sup> Tr. 804. Warren also asked by text message if Dodds had eaten. Dodds answered that he quit his fast the night before because he had become dizzy. Tr. 804-05; CX-95A, at 4.

<sup>122</sup> Tr. 378.

<sup>123</sup> Tr. 379-81; CX-22.

<sup>124</sup> Tr. 145-46, 379, 382. Dodds did not ask Nohling why he wanted the information, and he did not know it related to Medtronic. Tr. 382-83.

research analyst at CGMI emailed Dodds that she provided the name of a CGMI compliance person to Citadel's compliance department.<sup>125</sup>

At approximately 8:30 a.m., Dodds and Warren exchanged a series of text messages relating to when the two would speak.<sup>126</sup> At 8:48 a.m., Warren texted Dodds, "Preparing for [Medtronic's CFO] and I to call you shortly after 9am – best number to reach you?"<sup>127</sup> Dodds did not know, at that point, why Medtronic's CFO intended to talk with him.<sup>128</sup> At approximately 9:15 a.m., Medtronic issued a press release reaffirming its commitment to merge with Covidien.<sup>129</sup>

Dodds and Nohling spoke a second time at 10:58 a.m.<sup>130</sup> Nohling was very stressed during their conversation, and he attempted to explain to Dodds that he was in trouble at Citadel because he sent an email that was flagged.<sup>131</sup> Dodds remained unclear as to whether Nohling's problem related to him.<sup>132</sup>

Dodds also had a telephone conversation with Schnipper that morning during which they discussed that Nohling had reached out to CGMI's compliance department.<sup>133</sup> Schnipper recalled that his telephone conversation with Dodds on October 3, 2014, lasted for approximately 30 minutes, but he also acknowledged that his recollection of the call was "fuzzy."<sup>134</sup> Dodds recalled that his telephone call with Schnipper was less than five minutes.<sup>135</sup> Dodds testified that, although Schnipper told him Citadel contacted CGMI's compliance department, he did not tell him the contact related to Dodds' conversation with Nohling or the Medtronic/Covidien

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<sup>125</sup> CX-23.

<sup>126</sup> Tr. 805-06; CX-95A, at 5-6.

<sup>127</sup> Tr. 806; CX-95A, at 6.

<sup>128</sup> Tr. 806-07.

<sup>129</sup> Tr. 807; JX-11.

<sup>130</sup> Tr. 149, 397-99; JX-14, at 3.

<sup>131</sup> Tr. 394-401, 813-15.

<sup>132</sup> Tr. 402.

<sup>133</sup> Tr. 394-401, 813. It is not clear what time Schnipper spoke with Dodds.

<sup>134</sup> Tr. 497, 489-90, 497. On October 3, 2014, CGMI received an email from Citadel's compliance department in Chicago (CX-67) that included a recitation of Nohling's October 2, 2014 email to Citadel colleagues and a transcription of Dodds' October 2, 2014 voicemail message for Hawkins. Tr. 489-90, 497; CX-67. Schnipper testified that "the subject of the [October 3, 2014] interview [of Dodds] related to the allegations that came in from Citadel that were referenced in [CX-67]." Tr. 498. CX-67 is an email that appears to have been sent from Citadel's Chicago office at 10:35 a.m. (presumably Central Time) on October 3, 2014. The email was not directed to Schnipper, and he does not appear to have been copied on the email. CX-67. Schnipper did not testify as to when he first saw the email, and the record does not otherwise indicate when Schnipper received the email.

<sup>135</sup> Tr. 394.

merger.<sup>136</sup> Enforcement contends that Dodds learned during this call with Schnipper that he was under investigation at CGMI for possible misconduct.

Warren recalled that he spoke with Dodds on October 3, 2014, before Medtronic issued its press release about the merger.<sup>137</sup> Warren recalled that Dodds expressed concern during that call that he may have “messed up.”<sup>138</sup> Dodds’ phone records, however, show that they spoke at 9:25 a.m. for four minutes and at 10:48 a.m. for nine minutes, both of which were after Medtronic issued its press release.<sup>139</sup> Dodds contended that his conversation with Warren (when he told Warren that he may have done something wrong) occurred on Monday, October 6, 2014, after he had a second, longer meeting with members of CGMI’s compliance department.<sup>140</sup> Dodds’ recollection is supported by the timing of Citadel’s email to CGMI’s compliance department (10:35 a.m. Central Time, 11:35 a.m. Eastern Time, on October 3, 2014), which is subsequent to both of Dodds’ October 3, 2014 telephone conversations with Warren.

Later in the morning on October 3, 2014, Medtronic’s CFO initiated a call to Dodds and walked him through Medtronic’s plan for proceeding with a merger with Covidien.<sup>141</sup> Dodds testified that, as of the close of business on October 3, 2014, he was not concerned that he had done anything inappropriate related to Medtronic and Covidien.<sup>142</sup>

#### **G. Events of October 4, 2014**

Cause two of the Complaint alleges that Dodds violated FINRA Rule 2010 by soliciting the destruction of potential evidence of misconduct (Dodds’ voicemail message for Nohling).

On the morning of Saturday, October 4, 2014, Dodds called Nohling and the two spoke for 25 minutes.<sup>143</sup> Dodds stated that Friday, October 3, 2014, had been busy, and he was concerned about Nohling and still did not understand “if [Nohling] was in the dog house and how bad.”<sup>144</sup> During this call, Nohling explained to Dodds that, on October 3, he thought he would be fired, but it appeared that he would not.<sup>145</sup> Dodds told Nohling that CGMI was

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<sup>136</sup> Tr. 396-97.

<sup>137</sup> JX-16, at 60.

<sup>138</sup> JX-16, at 60-61.

<sup>139</sup> JX-14, at 3.

<sup>140</sup> See JX-14, at 3 (showing 35-minute call between Dodds and Warren at 4:01 p.m. on October 6, 2014).

<sup>141</sup> Tr. 808-09; CX-10, at 2 (showing 18-minute call with number attributed to Medtronic’s CFO at 9:41 a.m. on October 3, 2014). Dodds could not recall if Warren was on the call. Tr. 808-09. He testified that no one else from CGMI was on the call. Tr. 808-09.

<sup>142</sup> Tr. 815.

<sup>143</sup> Tr. 151, 816; JX-14, at 3.

<sup>144</sup> Tr. 816.

<sup>145</sup> Tr. 150-52.

“clamping down” on compliance issues.<sup>146</sup> According to Dodds, Nohling stated something about Dodds saying something he should not have said.<sup>147</sup> Dodds said nothing in response because he did not know what the conversation was about, and he did not want to tell Nohling that he could not recall October 2 because of anti-anxiety medication.<sup>148</sup> When Nohling told Dodds that Dodds left an “odd or weird voicemail” on October 2, 2014, Dodds thought maybe the voicemail had been embarrassing. According to Dodds, he jokingly suggested that Nohling delete it.<sup>149</sup>

Nohling stated that the tone of his October 4, 2014 conversation with Dodds was disappointment.<sup>150</sup> Nohling testified that Dodds was laughing when he made the remark about deleting the voicemail message, and Nohling did not know if Dodds was serious or not.<sup>151</sup> Nohling responded that he was not trying to hide anything.<sup>152</sup> On cross examination, Nohling testified that he did not know whether to take Dodds’ comment about erasing the voicemail message seriously, but he “took it seriously in the sense it was a serious situation. Whether he was joking or serious, I gave a serious response and left it at that.”<sup>153</sup>

#### **H. Events of October 5, 2014**

On Sunday, October 5, 2014, Dodds wrote and published a research note regarding Medtronic.<sup>154</sup> Dodds submitted this note, pursuant to CGMI’s standard practice, to CGMI’s compliance department for review and approval before publication.<sup>155</sup> CGMI allowed Dodds to publish the note and never advised him that he was under any type of internal review or heightened supervision related to Medtronic or Covidien.<sup>156</sup> Dodds commenced the note with the statement, “As we expected, [Medtronic] did not alter the deal terms of its acquisition of [Covidien] and will now use \$16B of U.S. debt for financing the cash portion.”<sup>157</sup> Dodds testified that the October 5, 2014 research note reaffirmed the published research he had disseminated previously.<sup>158</sup>

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<sup>146</sup> Tr. 151.

<sup>147</sup> Tr. 818.

<sup>148</sup> Tr. 818-19.

<sup>149</sup> Tr. 817.

<sup>150</sup> Tr. 152.

<sup>151</sup> Tr. 152, 160.

<sup>152</sup> Tr. 152.

<sup>153</sup> Tr. 214-15.

<sup>154</sup> Tr. 819-21; JX-12.

<sup>155</sup> Tr. 820.

<sup>156</sup> Tr. 820-21.

<sup>157</sup> JX-12, at 1.

<sup>158</sup> Tr. 821.

## I. Events of October 6 - 8, 2014

On Monday, October 6, 2014, three individuals from CGMI's compliance department, including Schnipper, met with Dodds in person.<sup>159</sup> They discussed Citadel, Nohling, and Hawkins.<sup>160</sup> Dodds advised CGMI that he used anti-anxiety medication on October 2 and it affected his memory of the events of that evening.<sup>161</sup> Dodds contended he learned during this meeting that his conduct was under review by CGMI.<sup>162</sup>

Warren contacted Dodds later on October 6, 2014, to discuss a meeting between Dodds and Medtronic managers.<sup>163</sup> During that call, Dodds advised Warren there was "an issue" with his communications with Citadel.<sup>164</sup> Warren was surprised. He stated that, during their October 2, 2014 call, he only "told [Dodds] there was news the morning of October 3<sup>rd</sup> and that [Dodds] had a call with [Medtronic's CFO]."<sup>165</sup>

Dodds worked in his CGMI office during regular hours without restriction on October 6 and 7, 2014.<sup>166</sup> Dodds communicated with clients and public companies on behalf of CGMI on October 6 and 7, 2014.<sup>167</sup> CGMI did not restrict Dodds' duties and allowed him to continue to communicate with Citadel.<sup>168</sup>

Dodds voluntarily resigned from CGMI on October 8, 2014.<sup>169</sup> Dodds testified that he felt overwhelmed by his October 6, 2014 meeting with CGMI's compliance department. In addition, he was unhappy at CGMI.<sup>170</sup> He had been employed there for ten years and his remuneration had decreased steadily over the prior several years.<sup>171</sup> He assumed he would get

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<sup>159</sup> Tr. 498, 823-24.

<sup>160</sup> Tr. 498-99, 823-24.

<sup>161</sup> Tr. 515-16, 824.

<sup>162</sup> Tr. 407-08.

<sup>163</sup> Tr. 825-26.

<sup>164</sup> Tr. 826. This is the conversation that Warren testified occurred on October 3, 2014, although documentary evidence corroborates Dodds' recollection that it occurred on October 6, 2014.

<sup>165</sup> Tr. 826. Warren testified that he told Dodds, "I can see how you'd think there was going to be a press release, but you didn't know what's going to be in the press release. So – and, in fact, there's no way [Dodds] could have known what was in the press release, because he didn't – because I didn't say anything." JX-16, at 57.

<sup>166</sup> Tr. 820-22.

<sup>167</sup> Tr. 822-23.

<sup>168</sup> Tr. 828; RX-55.

<sup>169</sup> Tr. 821-23.

<sup>170</sup> Tr. 847-48.

<sup>171</sup> Tr. 442, 848.

“dinged” by this incident, regardless of the outcome, and believed he could secure other employment.<sup>172</sup> Dodds lost his 2014 bonus by resigning in October 2014.<sup>173</sup>

CGMI filed Dodds’ Uniform Termination Notice for Securities Industry Registration (“Form U5”) on November 6, 2014.<sup>174</sup> The Form U5 reported Dodds’ resignation as voluntary.<sup>175</sup> CGMI answered “no” to the question of whether Dodds was, at termination, under internal review for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct.<sup>176</sup> CGMI answered “yes” to the question of whether Dodds resigned after allegations were made accusing him of violating investment-related statutes, rules, or industry standards of conduct.<sup>177</sup>

#### **IV. Findings**

Enforcement is required to prove its allegations by a preponderance of the evidence.<sup>178</sup> We find that the evidence is insufficient to prove, by a preponderance of the evidence, the allegations of the Complaint.

##### **A. Cause One**

Cause one of the Complaint alleges that Dodds violated FINRA Rule 2010 by selectively disclosing to Nohling on the evening of October 2, 2014, that, before the market opened the next day, Medtronic would issue a press release reaffirming its commitment to merge with Covidien and that this information was material and non-public. The Complaint alleges that Dodds disclosed both that Medtronic would issue a press release on October 3 and the content of the press release. We therefore need not reach the issue of whether disclosing that a press release would issue, without disclosing the content, would constitute the disclosure of material non-public information. We conclude that Enforcement did not prove cause one of the Complaint.

In reaching our conclusion, we assessed witness credibility. We found Nohling to be credible and reliable. On cross examination, Nohling candidly acknowledged the possibility that he may have made assumptions about what Dodds relayed to him based on his own belief that the Medtronic/Covidien merger would proceed and his understanding of Dodds’ belief, as articulated in his published research, that the merger would proceed as planned. Nohling also exhibited uncertainty as to exactly what Dodds said during their October 2, 2014 conversation.

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<sup>172</sup> Tr. 848-49. Dodds secured other employment in early 2015. Tr. 850-51.

<sup>173</sup> Tr. 443.

<sup>174</sup> CX-8, at 1.

<sup>175</sup> CX-8, at 1.

<sup>176</sup> CX-8, at 3.

<sup>177</sup> CX-8, at 4.

<sup>178</sup> See *John D. Audifferen*, Exchange Act Release No. 58230, 2008 SEC LEXIS 1740, at \*12 (July 25, 2008).

Our conclusion is buttressed by other evidence. First, the evidence shows five communications on the evening of October 2, 2014, between Dodds and CGMI clients—voicemail messages for Nohling and Hawkins and telephone conversations with Nohling, Hawkins, and Wood. The evidence demonstrates that Dodds did not communicate material, non-public information in four of the five communications, and Enforcement did not allege misconduct related to these communications.<sup>179</sup> We find that Dodds may have hinted in those four communications that he believed a Medtronic release was imminent, and he may have conveyed that he believed Medtronic would reaffirm its commitment to merge with Covidien. Because the evidence does not show that Dodds communicated material, non-public information in four of the five communications on October 2, 2014, we question why he would have behaved differently in his fifth communication (with Nohling), and Enforcement has not suggested a logical explanation for such conduct.

Second, the evidence strongly suggests that Nohling made assumptions about what Dodds was communicating without actually hearing it first-hand from Dodds. Before October 2, 2014, Dodds clearly articulated his belief that the Medtronic/Covidien merger would proceed as planned. Nohling was aware of Dodds' position and shared the same belief. Nohling also understood it to be the prevailing view on Wall Street. This supports our conclusion that Nohling assumed that Dodds told him the October 3, 2014 Medtronic press release would reaffirm Medtronic's commitment to the merger because that is what Nohling expected to hear from Dodds. We find that, while Dodds may have intimated he believed a Medtronic press release was imminent, he did not say that he knew it to be so based on a communication with Warren or anyone else at Medtronic.

We considered Enforcement's argument that Dodds was motivated to share material, non-public information with Nohling to encourage Nohling to cast "broker votes" for Dodds. This argument does not persuade us for several reasons. First, Citadel's potential votes totaled only 40 out of more than 2000 possible votes. Additionally, the evidence does not demonstrate a significant level of interdependence between Dodds' compensation and broker votes. Dodds was uncertain as to what part the votes played in his compensation package, although he acknowledged they played some part, and Schnipper offered little explanation beyond stating that the "scorecard" was always related to compensation.<sup>180</sup> Furthermore, if Dodds was inclined

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<sup>179</sup> The voicemail message for Hawkins stated, "I would just say be in early tomorrow. I think the saga is over. If you need to get me, call my cell ..." CX-31. The voicemail message for Nohling stated, "If you want to give me a ring, I'll be up for a bit. I would just tell ya – get in early tomorrow. (Laughter). Gonna be a big day." JX-10. Hawkins and Wood testified that they don't recall Dodds' disclosing during their telephone conversation on October 2, 2014, that Medtronic would issue a press release on October 3, 2014, reaffirming its commitment to merge with Covidien. Tr. 568, 588-90; CX-141, at 59.

<sup>180</sup> Tr. 416-17, 425, 458-59; CX-39; CX-52; CX-53. Indeed, when Schnipper was presented with a copy of Dodds' scorecard for the year November 2012 through October 2013, he was not able to say whether CGMI's score of "20" was out of "40," or some other number. Tr. 504-05; CX-52. Schnipper testified as follows:

Q.: And do you know how the score card for Citadel itself impacted upon [Dodds'] overall compensation?

to curry favor (by sharing material, non-public information) for positive broker votes, he had equal incentive to look to Hawkins and Wood. Like Nohling, Hawkins was associated with Citadel, a top tier CGMI client. Hawkins testified that, in September, he received a call from a salesperson at CGMI to ask why he had not cast broker votes for Dodds.<sup>181</sup> Wood was associated with T. Rowe Price which, although not top tier, was one tier below Citadel and also capable of casting broker votes.<sup>182</sup> If Dodds was incentivized by broker votes, Wood and Hawkins would have been equally likely targets, and the evidence does not suggest that he shared material, non-public information with them. We do not find that the evidence supports Enforcement's argument that Dodds shared material, non-public information with Nohling to gain broker votes.

We found credible Dodds' testimony that he could not recall the events of the evening of October 2, 2014. He consistently relayed the same set of circumstances—that while fasting, he ingested anti-anxiety medication to help with anxiety related to public speaking—to Warren on October 2, 2014, CGMI's compliance department on October 6, 2014, and Enforcement during its investigation of this matter. Warren also testified as to his first-hand observations of Dodds on October 2, 2014, and his purported observations are corroborated by the content of his own texts that evening and the next morning, in which he asks after Dodds' welfare and refers to Dodds' fasting.

Enforcement encouraged us to discount Warren's testimony that he did not share material, non-public information as self-serving and inconsistent. While we understand that Warren had a personal interest in downplaying his part in sharing material, non-public information with Dodds, we found Warren's testimony to be candid and credible. He honestly admitted that, although he did not directly tell Dodds that Medtronic would reaffirm its commitment to the merger on October 3, 2014, he also did nothing to discourage that thinking. The fact that Medtronic's CFO intended to talk with sell-side analysts, including Dodds, on October 3, 2014, most likely signaled to Dodds that the press release he had been expecting would be forthcoming the next day.

We find no evidence to suggest what incentive Warren had, if any, to tell Dodds definitively on the evening of October 2, 2014, that Medtronic would issue a press release before the market opened the next day. Although Warren had known Dodds for many years and thought highly of him as an analyst, the evidence does not demonstrate that they were more than business associates.

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A.: I do not.

Q.: For all you know, it was de minimis; correct?

A.: I have no idea.

Tr. 505.

<sup>181</sup> CX-141, at 30-31.

<sup>182</sup> See CX-52, at 4.

In sum, the allegations of cause one of the Complaint are inconsistent with Dodds' testimony, Warren's testimony, and Nohling's testimony on cross examination. We do not find that Warren or Dodds had incentive to share material non-public information, and a finding that Dodds shared such information with Nohling is inconsistent with his behavior vis a vis Hawkins and Wood on the same evening. For these reasons, we find that Enforcement failed to meet its burden of proof with respect to cause one.

## **B. Cause Two**

We also find that Enforcement failed to meet its burden of proof as to cause two. Cause two alleges that Dodds violated FINRA Rule 2010 by asking Nohling to destroy evidence of misconduct. Specifically, cause two alleges that, on October 4, 2014, Dodds contacted Nohling by telephone, informed Nohling that CGMI was investigating Dodds, and asked Nohling to delete a voicemail message Dodds left Nohling on October 2, 2014.

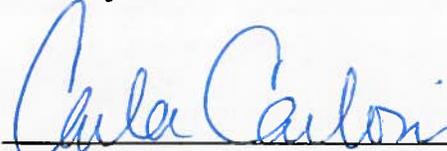
First, we find that the evidence does not show Dodds was aware on October 4, 2014, that CGMI was investigating whether he disclosed material, non-public information to Nohling. Dodds worked as usual on Friday, October 3, 2014, communicated with clients including Citadel and Nohling without limitation, and prepared and issued a research note related to the Medtronic/Covidien merger on October 5, 2014. He submitted the note to CGMI's compliance department on October 5 and received approval that day.

Schnipper's recollection of his conversation with Dodds on October 3, 2014, was less than clear, and the record does not indicate when Schnipper first saw the October 3, 2014 email from Citadel's compliance department (CX-67) that Schnipper purportedly discussed with Dodds. That email was directed to someone other than Schnipper in CGMI's compliance department and appeared to have been sent some time after 11:30 a.m. We find more persuasive Dodds' recollection that his October 3, 2014 telephone conversation with Schnipper was brief (less than five minutes) and that Schnipper did not disclose the full extent of CGMI's investigation until Dodds' lengthier meeting with Schnipper and other members of CGMI's compliance team on October 6, 2014.

Second, we find no support for Enforcement's argument that Dodds seriously sought to destroy evidence of his own misconduct. Nohling testified that Dodds laughed when he talked of Nohling's deleting Dodds' voicemail message. Dodds testified that he laughed because he was joking. The voicemail message does not contain persuasive evidence for or against the allegations of misconduct. The allegations against Dodds turn on Nohling's testimony about their October 2, 2014 telephone conversations, not on the contents of the voicemail message. It simply made no sense for Dodds to seriously request that Nohling delete the voicemail message, and there is insufficient evidence to support such a finding. We dismiss cause two for lack of evidence.

**V. Order**

We find that Enforcement failed to prove the allegations in causes one and two of the Complaint. We therefore dismiss the Complaint in its entirety.



**Carla Carloni**  
**Hearing Officer**  
**For the Extended Hearing Panel**

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