

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94834 / May 2, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20840

In the Matter of

BALASUBRAHMANYA
KUCHIBHOTLA,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Balasubrahmanya Kuchibhotla (“Respondent” or “Kuchibhotla”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of insider trading by Kuchibhotla in the securities of Nutanix, Inc. ("Nutanix" or "NTNX"), a Silicon Valley-based provider of enterprise cloud platform software solutions where Kuchibhotla was employed. While in possession of material nonpublic information that he learned in the course of his work at Nutanix, Kuchibhotla sold Nutanix stock and placed bearish trades in Nutanix options in advance of the company's February 28, 2019 announcement of negative financial results for its second fiscal quarter of 2019 ("February 2019 earnings announcement"). On the day after the February 2019 earnings announcement, Nutanix's stock price decreased by 32.7%. As a result of his trading ahead of the announcement, Kuchibhotla obtained illicit profits and loss avoidance totaling \$292,980.

Respondent

1. **Respondent Balasubrahmanya Kuchibhotla**, age 49, is a resident of San Ramon, California. Respondent was employed at Nutanix between February 2017 and March 2021. Respondent was hired by Nutanix as a Senior Director of Technology and was promoted in February 2019 to the role of Vice President and General Manager, in which he was responsible for managing one of Nutanix's business applications. Currently, Kuchibhotla is self-employed.

Relevant Entity

2. **Nutanix, Inc.** ("Nutanix" or "NTNX"), is a provider of enterprise cloud platform software solutions. Nutanix is a publicly-traded company incorporated in Delaware, with principal corporate offices in San Jose, California. At all relevant times, Nutanix's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act. Nutanix's securities at all relevant times were listed on the NASDAQ Global Select Market and the Chicago Board Options Exchange under the ticker "NTNX."

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

3. Kuchibhotla started working at Nutanix in February 2017 as a Senior Director of Technology. Respondent was promoted to Vice President and General Manager of one of Nutanix's business applications in February 2019.

4. Kuchibhotla knew, or was reckless in not knowing, that he was prohibited from trading on the basis of material nonpublic information that he learned in the course of his employment. At the beginning of his employment with Nutanix in February 2017, Respondent acknowledged that he read and understood Nutanix's insider trading policy, which prohibited Respondent and his immediate family from trading on the basis of material nonpublic information that Respondent learned in the course of his employment. Nutanix's insider trading policy also prohibited Respondent and members of his immediate family from trading at any time in Nutanix publicly-traded options, such as puts and calls, and other Nutanix derivative securities.

5. Kuchibhotla also acknowledged in February 2017 that he read and understood Nutanix's Code of Business Conduct and Ethics, which explained his responsibility to safeguard Nutanix's nonpublic information for business purposes only and reiterated the key provisions of Nutanix's insider trading policy described above.

6. Kuchibhotla received emails from Nutanix management each quarter, reminding him of Nutanix's insider trading policy and the company's "blackout period," which prohibited Kuchibhotla and immediate family members from trading in any Nutanix securities during the period beginning approximately six weeks before company earnings announcements. With respect to Nutanix's February 2019 earnings announcement for the company's second fiscal quarter of 2019 (which closed on January 31, 2019), Kuchibhotla received an email on January 9, 2019 announcing that the "blackout period" began on January 10, 2019 and ended on the start of the second full trading day after the February 2019 earnings announcement. This January 9, 2019 email also summarized key provisions of Nutanix's insider trading policy and contained a link to the company's full insider trading policy.

7. In late January 2019, Kuchibhotla learned through a confidential all-hands company meeting and communications with other Nutanix employees that Nutanix's financial condition had declined during Nutanix's second fiscal quarter of 2019. Kuchibhotla learned that Nutanix was implementing salary and hiring freezes as measures for financial tightening as a result of the company's diminished performance. Kuchibhotla's salary was frozen, although he had recently been promoted, and he could not hire additional employees for his team as a result of the company's financial condition at that time.

8. Kuchibhotla knew, or was reckless in not knowing, that information he learned about Nutanix's declining financial condition was material and nonpublic. Kuchibhotla also knew, or was reckless in not knowing, that he owed a duty of trust and confidence to Nutanix and its shareholders to refrain from trading in Nutanix securities while in possession of the confidential information that he had learned in the course of his employment.

9. Between February 22 and 25, 2019, while in possession of material nonpublic information regarding Nutanix, Kuchibhotla placed or directed a series of bearish trades in Nutanix securities using brokerage accounts owned by him and his wife. These trades included:

- February 22, 2019: Kuchibhotla wrote 40 NTNIX call option contracts with a strike price of \$40 and an expiration date of March 15, 2019, for which he collected a premium of \$56,800.
- February 22, 2019: Kuchibhotla sold 7,475 NTNIX shares, for total proceeds of \$399,228.
- February 25, 2019: Kuchibhotla bought 90 NTNIX put option contracts with a strike price of \$45 and an expiration date of March 15, 2019, at a total cost of \$7,920.

10. On February 28, 2019, after market close, Nutanix announced disappointing quarterly results for its second fiscal quarter of 2019, which showed decreased growth in billings and increased net losses. Nutanix's stock price dropped 32.7% from \$50.09 at market close on February 28, 2019 to \$33.70 at market close on March 1, 2019, the next trading day.

11. On March 1, 2019, Respondent sold the 90 NTNIX put option contracts for \$97,380, reaping a profit of \$89,460. Additionally, on March 3, 2019, Respondent closed out the 40 NTNIX call option contracts at a cost of \$600, netting a profit of \$56,200. Finally, Respondent realized loss avoidance of \$147,320 from his sale of 7,475 NTNIX shares shortly before the February 2019 earnings announcement.

12. In total, Kuchibhotla received \$292,980 in profits and loss avoidance from his illicit transactions in NTNIX securities described above.

13. As a result of the conduct described above, Kuchibhotla violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Kuchibhotla cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Kuchibhotla shall pay a civil money penalty in the amount of \$585,960 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: \$300,000 within 14 days of the entry of this Order; and \$285,960 within 90 days of the entry of this Order. Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Balasubrahmanya Kuchibhotla as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Steven Buchholz, Assistant Regional Director, Securities and Exchange Commission, Division of Enforcement, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed

an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary