



78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3]. Unless restrained or enjoined by this Court, he will continue to do so.

3. The Commission seeks a permanent injunction enjoining Konyndyk from future violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3], disgorgement of his unlawful trading profits with prejudgment interest, civil monetary penalties, and any additional relief that the Court deems appropriate.

#### **JURISDICTION**

4. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. In connection with the conduct described herein, Konyndyk, directly or indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange.

#### **THE DEFENDANT**

5. Mark A. Konyndyk, age 33, resides in Los Angeles, California. At all relevant times he was a certified public accountant licensed in North Carolina and Georgia. During most of the relevant period, Konyndyk worked at E&Y as a manager in the Transaction Advisory Services Group. Konyndyk left E&Y's employ on November 2, 2007.

#### **THE PUBLIC COMPANY**

6. Activision, Inc. (now Activision Blizzard, Inc.) is a Delaware corporation headquartered in Santa Monica, California, that publishes online, personal computer, console, handheld and mobile video games. Prior to the consummation of its merger with Vivendi, S.A., Activision's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and traded on the NASDAQ Stock Market under the ticker symbol "ATVI." As

of July 9, 2008, the closing date of its merger with Vivendi, Activision had 657,779,121 shares outstanding. This merger was effected through a tender offer; Activision filed with the Commission a Schedule TO on July 16, 2008.

## FACTS

### Konyndyk's Employment Duties

7. Konyndyk worked at E&Y from approximately April 2003 until November 2, 2007.

8. As a condition of his employment with E&Y, Konyndyk signed a confidentiality agreement. Among other things, he agreed that, “[d]uring and after the end of [his] employment,” he would hold in confidence and not use except to further Firm interests “all confidential information concerning Firm clients.” He also expressly agreed not to “make any private use of ‘inside information’ that may come to [his] attention” by virtue of working at E&Y.

9. At least annually, Konyndyk also confirmed his understanding and acceptance of E&Y's insider trading policy. That policy stated, among other things, that the mere fact of E&Y's having been engaged for a due diligence engagement might, in certain circumstances, be considered material information.

10. E&Y also required Konyndyk, after he became a manager, to report to the firm at least quarterly all purchases and sales of securities through accounts he owned or controlled.

**Vivendi's Tender Offer for Activision  
and Konyndyk's Work on Project Segoe**

11. Beginning in or about November 2006, senior executives from Vivendi and Activision engaged in preliminary discussion to explore a possible strategic business combination between the two companies.

12. By April 2007, both companies had hired investment bankers and lawyers to advise them on a possible business combination. Over the next several months, senior executives from both companies, as well as their respective financial and legal advisers, discussed proposals under which Vivendi would acquire a controlling interest in Activision. These discussions ultimately led in December 2007 to a merger entailing a tender offer for Activision's stock at a substantial premium over the current trading price.

13. In or about July 2007, Vivendi's chief executive officer advised his counterpart at Activision that the terms of Activision's proposal, including a higher price and a tender offer, were generally acceptable to Vivendi, subject to both sides completing satisfactory due diligence and documentation.

14. Also in or about July 2007, Vivendi hired E&Y to assist with its due diligence. E&Y assigned a confidential code name to the project, "Project Segoe." In or about August 2007, while employed as a manager in E&Y's Atlanta office, Konyndyk was assigned to work on Project Segoe.

15. Between August 4 and August 10, 2007, Konyndyk traveled to Los Angeles and worked 36 hours on Project Segoe. Konyndyk billed no time to Project Segoe after August 10, 2007. During the course of that work, Konyndyk learned, among other things, that Activision

was the target of acquisition talks in which the potential acquirer was E&Y's client, Vivendi; that the talks had been code-named; and that both Activision and Vivendi had engaged law firms and investment banking firms to assist them in those talks.

16. By reason of the foregoing, Konyndyk possessed material non-public information related to Vivendi's potential acquisition of Activision via a tender offer – information that Konyndyk knew or had reason to know was nonpublic because, among other things, the project was code-named and there was, prior to December 2, 2007, no public announcement concerning any potential acquisition of Activision.

#### **Konyndk's Trading of Activision Securities**

17. On September 11, 2007, using his own account at TD Ameritrade, Konyndyk bought, and then sold at a slight loss later that same day, seven call options in Activision. These trades occurred approximately one month after Konyndyk had last billed time to Project Sego, and while the Vivendi-Activision talks were still ongoing.

18. On November 26, 27 and 30, 2007, approximately three weeks after resigning from E&Y and before any public announcement of the business combination between Vivendi and Activision, Konyndyk purchased a total of 26 out-of-the-money call options in Activision. Konyndyk made these purchases on three of the final five trading days before the public announcement of the acquisition, buying options that were set to expire less than one month later.

19. In a press release dated Sunday, December 2, 2007, Activision and Vivendi announced their business combination involving a post-closing tender offer. This was the first public announcement of the deal of which Konyndyk had been aware. Beginning on the next

trading day, December 3, 2007, Konyndyk sold all 26 Activision options contracts and realized gross profits of \$9,725.00.

20. Konyndyk did not report his September 11, 2007 Activision trades to E&Y as required by the firm.

**CLAIM FOR RELIEF**  
**(Violations of Exchange Act Section 14(e) and Rule 14e-3)**

21. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 20 above.

22. By the date of Konyndyk's first purchase of Activision options in September 2007, Vivendi, the ultimate acquirer of Activision, had taken substantial steps to commence a tender offer for the securities of Activision, including among other things: (1) hiring investment bankers and lawyers to facilitate and complete the transaction; (2) exchanging proposals to merge with Activision; (3) offering to increase its proposed acquisition price; (4) agreeing to move forward with the transaction based on Activision's proposal involving a higher price and a tender offer for the majority of Activision's outstanding shares; and (5) conducting due diligence.

23. At the time Konyndyk purchased Activision securities in September and November 2007, he knew or had reason to know that the material information he possessed relating to the potential Activision acquisition was non-public and came either directly or indirectly from the offeror, the target, or any officer, director, partner or employee or any other person acting on behalf of the offeror or target.

24. By reason of the foregoing acts, practices, and transactions, Konyndyk violated Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

#### **I.**

Grant a Final Judgment of Permanent Injunction restraining and enjoining Konyndyk and his agents, servants, employees, attorneys-in-fact, and assigns and those persons in active concert or participation with him, and each of them, from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder;

#### **II.**

Order Konyndyk to pay disgorgement of illegal trading profits flowing from his trading in Activision securities, as set forth above, together with prejudgment interest thereon;

#### **III.**

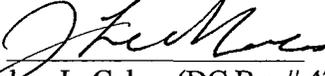
Order Konyndyk to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

Dated: Nov. 18, 2011

Respectfully submitted:

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