State of the Law and Practice: Insider Trading

Schulte Roth&Zabel

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Partner
New York Office
+1 212.756.2380
barry.bohrer@srz.com

Practices

Litigation

Securities Enforcement

White Collar Defense
& Government Investigations

Barry A. Bohrer

Barry is co-chair of Schulte Roth & Zabel's White Collar Defense & Government Investigations Group. Barry has extensive litigation experience handling white collar criminal and complex civil matters in federal and state courts for individual and corporate clients. He also has an active trial and appellate practice. Barry has successfully defended clients, including major corporations, financial institutions, political figures, corporate executives and individuals, professionals and prominent law firms, in a wide variety of high-profile and complex cases, jury trials, regulatory actions and investigations. He regularly represents clients in matters pertaining to securities and commodities litigation and regulatory enforcement; other forms of financial fraud; antitrust litigation; and allegations of environmental offenses. He frequently represents clients in parallel enforcement proceedings involving the U.S. Department of Justice, the Securities and Exchange Commission and the Commodity Futures Trading Commission. He also conducts corporate internal investigations and counsels individuals involved in them. In his appellate practice, Barry has won appeals at all levels of the federal and state court systems throughout the nation, and is retained in high-stakes appellate cases where he is brought in by other legal teams specifically for his appellate proficiency.

Barry has been named a leading litigation, white collar criminal defense and investigations lawyer by *Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms and Attorneys*, *The Best Lawyers in America*, *Chambers USA*, *Expert Guide to the Best of the Best USA*, *Expert Guide to the World's Leading White Collar Crime Lawyers*, *The Legal 500 United States*, *New York's Best Lawyers*, *New York Super Lawyers, Who's Who Legal: Business Crime Defence* and *Who's Who Legal: Investigations*. In 2014, Barry received The Norman S. Ostrow Award from the New York Council of Defense Lawyers in recognition of his outstanding contributions as a defense lawyer. He was the author of the "White Collar Crime" column in the *New York Law Journal* from 2002 to 2013 and is on the board of editors of the *White Collar Crime Reporter*. He speaks frequently on various topics, including issues relating to trial and appellate practice, securities enforcement and arbitration, internal investigations and insider trading. Barry is a Fellow of the American College of Trial Lawyers, former president of the New York Council of Defense Lawyers, and chair of the board of directors of the Fund for Modern Courts and Committee for Modern Courts, non-profit organizations dedicated to judicial reform in New York State. He is a member of the board of directors of the Legal Aid Society (chairman of the Audit Committee) and received awards in 2005 and 2006 for Outstanding Pro Bono Service for his advocacy. He is also a member of the New York City Bar Association (former member of the Criminal Law Committee) and the New York State and American Bar Associations (Criminal Justice and Litigation Sections), and he serves on the advisory boards of Bloomberg BNA's *The Criminal Law Reporter* and *White Collar Crime Report*.

Barry earned his J.D. from New York University School of Law and his B.A. from Duke University.

Partner

Washington, DC Office
+1 202.729.7480

New York Office
+1 212.756.2046

charles.clark@srz.com

Practices

Litigation

Complex Commercial Litigation

Regulatory & Compliance

Securities Enforcement

Securities Litigation

White Collar Defense & Government Investigations

Charles J. Clark

Charles represents financial institutions, public companies and accounting firms, and their senior executives, in securities-related enforcement proceedings before the SEC, DOJ, FINRA, CFPB, and other federal and state law enforcement and regulatory authorities. In particular, he counsels hedge funds, private equity firms, venture capital funds and other asset managers through regulatory scrutiny, including in routine and risk-based inspections and examinations and in enforcement proceedings. He defends investigations involving a broad spectrum of issues, including accounting and disclosure fraud, insider trading, foreign corruption, offering fraud, market manipulation, breach of fiduciary duty and conflicts of interest. In addition, Charles represents boards of directors and associated committees in internal investigations, and he provides guidance on corporate governance and trading practices for public companies and private funds. Prior to entering private practice, Charles served for nine years in the SEC's Division of Enforcement, most recently as assistant director supervising the investigation and prosecution of some of the SEC's most significant matters, including its investigation of Enron Corporation.

Charles is recognized as a leading litigator by *Chambers USA* and *The Legal 500 United States*. A frequent speaker and panelist, he has addressed a wide variety of topics of interest to the white collar defense community, including, most recently, the Wells settlement process at the SEC and short-selling violations under Rule 105. Charles also contributed the "Use of Paid Consultants" chapter in the *Insider Trading Law and Compliance Answer Book* (Practising Law Institute). He serves as a resource for numerous media publications, including *Bloomberg News*, *Financial Times*, *The Wall Street Journal* and *The Washington Post*.

Charles holds a J.D. from New York University School of Law and a B.A., *with high distinction*, from the University of Virginia.

Partner
New York Office
+1 212.756.2773
douglas.koff@srz.com

Practices

Broker-Dealer Regulatory & Enforcement

Litigation

Securities Enforcement

White Collar Defense & Government Investigations

Douglas I. Koff

Doug represents clients in high-profile civil and criminal proceedings, as well as investigative matters. Doug is best known for supervising these types of matters for financial institutions and broker-dealers as well as representing executives in the crosshairs of the government regulators and criminal authorities. Doug has been actively engaged in cases involving financial service institutions, broker-dealers and corporate executives relating to securities, derivative products and other complex financial instruments. In this regard, he has advised and defended companies and corporate executives in virtually all types of inquiries by civil and criminal authorities (as well as SROs) into business practices on Wall Street, including a wide array of matters involving the financial crisis. He has also handled major civil litigations and arbitrations involving a broad spectrum of substantive legal issues, including fraud, breach of contract, antitrust, breach of fiduciary duty, reinsurance, piercing the corporate veil, mergers and acquisitions, and money laundering, as well as federal securities law.

Doug has been recognized as a leading lawyer by *Chambers USA*, which noted that he is “hard working, attentive and client-focused” and “a smart, thorough litigator who is always on top of things.” *Chambers* also noted that he “has everything on his radar screen” and has a “remarkable ability to get along with anyone, making it his business to develop a rapport with other attorneys involved in his cases.” He has spoken and written widely on key industry topics, including current trends in financial regulation and enforcement and securities laws violations.

Doug received his J.D. from Columbia Law School, where he was managing editor of *Columbia Human Rights Law Review*, and his B.A. from Earlham College.

Partner
New York Office
+1 212.756.2268
david.momborquette@srz.com

Practices

Litigation

Complex Commercial Litigation

Regulatory & Compliance

Securities Enforcement

Securities Litigation

David K. Momborquette

David focuses on complex commercial litigation and regulatory matters primarily for financial services industry clients, including hedge funds, funds of funds and private equity funds. He has substantial experience in both private securities litigation and securities regulatory matters, investigations by the U.S. Securities and Exchange Commission, the New York Stock Exchange, the Financial Industry Regulatory Authority and state attorneys general offices, investor disputes and class action litigation. David also provides day-to-day counseling for financial services companies on these issues. His significant engagements include successfully representing investment managers in connection with regulatory investigations into trading activities; an interdealer broker in various arbitrations and related civil actions arising from the hiring of brokers by a competitor; an investment manager in connection with the wind-up of funds and related U.S.- and Cayman Island-based litigation, as well as related state and federal regulatory investigations; and a group of investment managers and related entities in fraudulent conveyance actions arising from leveraged buyout transactions.

David has written extensively on securities regulation and frequently presents on regulatory compliance and enforcement issues. In addition to participating in firm-sponsored seminars and workshops and authoring client alerts, he is the co-author of "Rule 105 Update: New Round of Enforcement Highlights SEC Approach on Short-Selling Violations" in *The Hedge Fund Journal* and the author of the "Big Boy Letters" chapter in the *Insider Trading Law and Compliance Answer Book* (Practising Law Institute). He has spoken on topics including insider trading, SEC examinations and compliance issues for private investment funds.

David was awarded his J.D. from Boston University School of Law, where he was a G. Joseph Tauro Scholar and an Edward F. Hennessey Scholar, and his B.A. from Boston University.

Partner

Washington, DC Office
+1 202.729.7461

New York Office
+1 212.756.2733

howard.schiffman@srz.com

Practices

Litigation

Broker-Dealer Regulatory & Enforcement

Complex Commercial Litigation

Regulatory & Compliance

Securities Enforcement

Securities Litigation

White Collar Defense & Government Investigations

Howard Schiffman

Howard is co-chair of Schulte Roth & Zabel's Litigation Group. Nationally known in the area of securities litigation and regulatory developments, his practice focuses on investigations and enforcement proceedings brought by various exchanges and government agencies, including the SEC, the DOJ and FINRA, as well as a diverse array of civil litigation, including securities class actions and arbitrations. A corporate problem solver, Howard is as adept at dispute containment and resolution as he is at arguing to a jury. He counsels clients, including major financial institutions and investment banks, leading Nasdaq market-makers, institutional and retail brokerage firms and their registered representatives, trade execution and clearing firms, prime brokers, national accounting firms, hedge funds, and public and private companies and their senior officers in risk analysis and litigation avoidance. With his extensive trial experience and solid record of success in numerous SEC enforcement actions, SRO proceedings and FINRA arbitrations, Howard has the confidence to take a case to trial when necessary. Recently, he won dismissal on statute of limitations grounds in the U.S. Court of Appeals for the Second Circuit for The Royal Bank of Scotland Group, as successor to National Westminster Bank PLC, of a suit brought by investors alleging fraud in connection with loans related to a tax shelter scheme known as Bond Linked Issue Premium Structure, or BLIPS. He also obtained victories in other significant matters, including prevailing in a price adjustment case involving the dispute of several $100 million for a portfolio of real estate mortgages. He represented the former CEO of the largest Nasdaq market-making firm, Knight Securities, in a federal court action brought by the SEC. After a 14-day bench trial, all parties were completely cleared of wrongdoing. Howard began his career as a trial attorney with the SEC Division of Enforcement. In private practice for more than 30 years, he has long been at the forefront of securities litigation and regulatory developments, including his current representation of hedge funds, leading prime brokers and clearance firms in regulatory and civil litigation.

Howard was included in *Washingtonian* magazine's "Washington's Top Lawyers" listing (a ranking of "Washington's best — the top one percent") and in *Washington DC Super Lawyers*, and he has been recognized by *Chambers USA*, *The Legal 500 United States*, *Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms and Attorneys*. Noted for being a "committed and effective advocate" by *Chambers USA*, he is a member of American Bar Association sections on Litigation, Corporation, Finance and Securities Law and a fellow of the Litigation Counsel of America, and a director and former president of the Association of Securities and Exchange Commission Alumni Inc. Howard is the author of the "Tipper and Tippee Liability" chapter in the *Insider Trading Law and Compliance Answer Book* (Practising Law Institute). He recently presented on ethical issues for general counsels and chief compliance officers and trading-related compliance and enforcement activities.

Howard received his J.D., *cum laude*, from Fordham University School of Law and his B.A., *cum laude*, from Colgate University.

State of the Law and Practice: Insider Trading

I. Insider Trading Overview

A. Over the past decade, federal prosecutors and the SEC have been cracking down on insider trading and what they perceive to be a systemic abuse.

B. Insider trading is investigated and prosecuted on the civil regulatory side by the SEC, and on the criminal side by the Department of Justice and the various U.S. Attorneys' offices around the country.

1. Civil Liability

(a) Proof of a "reckless state of mind" is sufficient scienter for liability.

(b) Proof must be by a preponderance of evidence (51-percent likelihood).

2. Criminal Liability

(a) Proof of a "criminal intent" (knowledge) is required for liability.

(b) Proof must be beyond a reasonable doubt.

II. Elements of Insider Trading

A. Element 1: Trading in a security;

B. Element 2: On the basis of material nonpublic information (MNPI) relating to the issuer;

C. Element 3: That was secured in breach of a fiduciary duty or a duty of trust or confidence owed to the issuer and its shareholders, or any other source of nonpublic information.

III. Element 1: Trading in a Security

A. The term "security" is broadly defined. There is no requirement that securities be publicly traded on an exchange. Courts have routinely found insider trading to exist in privately traded securities.

B. Some examples of securities:

1. Equity interests (common and preferred stock, partnership interests, membership interest in LLC)

2. Debt instruments (notes, bonds, convertible debt)

3. Warrants

4. Options

5. Futures

6. Derivatives

IV. Element 2: Trading on the Basis of Material Nonpublic Information

A. Trading "on the basis of" differs in the civil and criminal contexts:

1. Civil

(a) Section 10b5-1 provides that in SEC actions if someone makes a trade while in possession of information, the trade is "on the basis of" that information.

"Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is 'on the basis of' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale."

(b) However, the trade is not "on the basis of" such information if:

(i) Before coming into possession of the information the person had contracted to, given instructions to someone else to, or adopted a written plan to sell or purchase the securities;

(ii) Such contract, instructions or plan either specify the amounts and price for the trade, include a formula or algorithm for calculating amounts and price, or did not grant the person any subsequent influence over the amounts or price; and

(iii) The trade occurred pursuant to the contract, instructions or plan.

2. Criminal

Circuit courts are split on whether the "knowing possession" or "use" standard applies in the criminal context.

(a) The Ninth Circuit has held that "knowing possession" is not enough; there must also be "use." E.g., *United States v. Smith*, 155 F.3d 1051 (9th Cir. 1998).

(b) The Second Circuit has explicitly endorsed the "knowing possession" standard in criminal insider trading cases. E.g., *United States v. Teicher,* 987 F.2d 112 (2d Cir. 1993).

(i) In *United States v. Rajaratnam,* the Second Circuit affirmed the use of a "knowing possession" standard and upheld the conviction of Galleon founder Raj Rajaratnam. 719 F.3d 139, 157-161 (2d Cir. 2013).

The court found that the district court's instruction to the jury — that it could convict if the nonpublic information Rajaratnam obtained was "a factor, however small" in his decision to trade stock — was proper.

(ii) Three Second Circuit cases, including *Rajaratnam*, have held that "knowing possession" is enough. However, the jury charges in these cases did not use the "knowing possession" standard and instead relied on actual use.

B. "Material"

1. Material information is information that a reasonable investor would find important in making an investment decision within the particular context of the purchase and sale of a security.

   Materiality has also been described as information that a reasonable investor would believe alters significantly the total mix of publicly available information.

2. Materiality does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused a reasonable investor to trade in the security.

3. Materiality is determined in hindsight.

   The "mosaic theory" of insider trading is sometimes invoked to argue that certain nonpublic information is not material.

   (a) The "mosaic theory" involves putting together many disparate pieces of data that individually are not material, but when put together, provide a valuable informational edge.

   (b) While putting together a "mosaic" may be more akin to research, not insider trading, the line between immaterial nonpublic information and material nonpublic information is vague and can be hard to draw.

C. "Nonpublic Information"

Information is nonpublic if it was not available to the public through sources such as press releases, SEC filings, trade publications, analyst reports, newspapers, magazines, television, radio or word of mouth.

1. If the information is not generally available, and the owner would not make it available in response to a request, then it is nonpublic rather than public.

2. Because the reliability of rumors or press reports is sometimes difficult to evaluate, a trier of fact may find that information obtained from a particular insider, even if it mirrors rumors or press reports, is sufficiently more reliable to render it material and nonpublic.

V. Element 3: Breach of a Duty

A. To constitute a deceptive act under the securities laws, the trading must be in breach of a duty of trust or confidence.

Courts have explained this duty in the context of the three theories of insider trading. Although each theory focuses on a different category of trader, each premises liability on trading in a security on the basis of MNPI by one who violates a duty by making the trade.

B. Trading on the basis of MNPI concerning a tender offer, which is governed by SEC Rule 14e-3, is prohibited whether or not the MNPI was obtained in breach of a duty of trust or confidence.[1] For the rule to apply, MNPI about a tender offer must be received directly or indirectly from someone involved in the tender offer, such as a person engaging in the tender offer, the issuer of the subject securities or any officer, director, partner, employee or other person acting on behalf of either the offering person or the issuer.

[1] *See* Section 14(e) of the Exchange Act and SEC Rule 14e-3.

C. Classical Theory

A corporate insider is liable for insider trading if he or she trades in a security based on MNPI:

1. The insider must owe a duty of confidentiality to the corporation.

2. "Insiders" include:

   (a) Officers, directors or employees of a company; and

   (b) "Temporary insiders," such as attorneys, accountants and other outside service providers who temporarily assume a fiduciary duty to the company.

D. Misappropriation Theory

1. An individual may be liable for insider trading if he or she:

   (a) Has a relationship of trust and confidence with the owner of certain business information; and

   (b) As a result of that relationship, was entrusted with information with the reasonable expectation that he would keep it confidential and would not use it for his personal benefit.

2. Relevant Question: Did the owner of the information expect the individual to keep that information confidential and to refrain from improperly disclosing it?

   (a) The owner of the information need not be the issuer of the security traded. For example, the information can be knowledge of a nonpublic press report that belongs to a media company or a pending change in a research rating that belongs to a broker-dealer.

   (b) This expectation need not have been expressed explicitly or in writing. It may be inferred from the nature and circumstances of the relationship between the individual at issue and the owner of the business information at issue.

3. Rule 10b5-2 provides some guidance on the types of circumstances that could give rise to a duty of trust or confidence. Those circumstances include:

   (a) Whether a person agreed to maintain information in confidence;

   (b) Whether the parties have a history, pattern or practice of sharing confidences, such that the recipient of the information knows or reasonably should know that the person communicating the information expects the recipient to maintain its confidentiality; and

   (c) Whether a person received or obtained information from his or her spouse, parent, child or sibling.

   (d) *SEC v. Cuban*

      (i) In 2009, the Northern District of Texas rejected Rule 10b5-2(b)(1) as an inappropriate extension of the SEC's authority and held that an agreement not to disclose confidential information by itself was insufficient to establish liability. 634 F. Supp. 2d 713 (N.D. Tex. 2009).

(ii) The court reasoned that an agreement not to disclose is sufficient to establish insider trading only if it also contains a promise by the noninsider to "refrain from trading" on the information.

(iii) In September 2010, the Fifth Circuit vacated the district court's decision and reinstated the charges, holding that the complaint contained adequate allegations that Cuban had agreed both not to disclose and not to trade on the information. *SEC v. Cuban*, 620 F.3d 551 (5th Cir. 2010).

(iv) The Fifth Circuit did not address whether Rule 10b5-2(b)(1) is valid.

(v) The district court denied Cuban's motion for summary judgment and the case proceeded to jury trial in 2013. At trial, Cuban won on all counts. The jury found that the information Cuban acted on was not confidential and that he had not promised not to trade on it.

E. Tipper/Tippee Theory

1. Both the classical and misappropriation theories extend to cases in which the "insider" or misappropriator does not personally trade, but reveals MNPI to another person who does trade.

(a) For the tipper to be liable, it must be established that the tipper disclosed MNPI in breach of a fiduciary duty of confidentiality owed to shareholders (classical theory) or the source of the information (misappropriation theory) for a personal benefit.

The personal benefit need not be financial. It includes the "gift of information" to family and friends, currying favor with a supervisor and reputational benefits.

(b) Tippees can be held liable only if the tipper breaches a duty by tipping the MNPI, and the tippee knew or should have known that the tip constitutes a breach.

2. In 2014, the Second Circuit held in *United States v. Newman* that the tippee must have knowledge that the tipper is receiving a personal benefit. It also stated that sufficient proof of receipt of a personal benefit requires a showing of a potential gain of a pecuniary or similarly valuable nature.

(a) Potential implications of the *Newman* decision:

(i) *Newman* arguably made it more difficult for the government to prosecute remote tippees and shifts the focus to insiders and tippees involved in the initial disclosure of confidential information.

(ii) Although *Newman* involved criminal liability, it could also limit the SEC's ability to bring civil enforcement actions against remote tippees.

(b) In October 2015, the Supreme Court denied the government's petition for certiorari of the Second Circuit's decision in *Newman*.

3. In December 2016, the Supreme Court affirmed the Ninth Circuit's decision in *United States v. Salman*, which made a deviation from *Newman*. The Court rejected the argument that the direct tippee's familial relationship with his tipper brother was insufficient to demonstrate a "potential gain" under *Newman*, and stated that to the extent that *Newman* could be read so broadly, the Ninth Circuit declined to follow it.

It is important to note that this narrow holding does not address tipper-tippee liability outside the scope of trading relatives and friends. Although the Supreme Court's decision in *Salman* is important, it is also important to recognize that *Salman* does not cast doubt on the Second Circuit's reversal of the two hedge fund traders' convictions in *Newman* or arguably the most consequential holding of *Newman*, that a remote tippee must know that the tipper received a personal benefit in exchange for the tip.

VI. Insider Trading Law Enforcement Techniques

A. Conventional law enforcement methods include:

1. Obtaining records, such as telephone records, bank records, brokerage statements, trading records, e-mails, instant messages, historical trading patterns and analyst reports.

2. Requests to broker-dealer firms to provide chronologies, lists of deal team members, calendars and other documents that identify the who, what, where and when of a transaction.

3. Using experts to ascertain reasons for movement in stock prices and volume. The government looks not only at trades in individual stocks, but trades in whole industries or sectors that could be affected by certain information, particularly where "expert networks" are involved in providing industry information to hedge funds.

4. Social media such as Facebook, LinkedIn, MySpace and other social networks can be a fertile source of information about relationships among people.

5. Credit cards, cellphones and MetroCards can be sources of information about the whereabouts of people. MetroCard swipes by a tipper and tippee, for example, in the same subway turnstile seconds apart have been used to show their location in the same place at the same time.

B. Wiretap Evidence

1. Historically, the use of wiretap evidence was limited to the prosecution of "predicate" crimes specifically enumerated in Title III of the Omnibus Crime Control and Safe Streets Act of 1968. *See* 18 U.S.C. §2510, *et seq*. The evidence was admitted primarily in drug cartel, alien smuggling and organized crime cases.

2. Recently, federal courts have upheld the use of wiretap evidence several times in insider trading prosecutions. *See,* e.g., *United States v. Rajaratnam*, 802 F. Supp. 2d 491 (S.D.N.Y. 2011). The Second Circuit again upheld the use of evidence obtained by wiretap in an offshoot of the *Rajaratnam* case. *See United States v. Goffer*, No. 11-CR-907, 2013 U.S. App. LEXIS 13388, at *1, *14-15, *17 (2d Cir. July 1, 2013).

    (a) The court held that the government may investigate offenses not enumerated in the Act so long as "there is no indication of bad faith or subterfuge by federal officials."

    (b) The court explained that the government's wiretap application indicated "that, in addition to wire fraud, they expected to uncover evidence of securities fraud (which, they expressly noted, is 'not a predicate offense') ... . This representation ensured that the wiretaps were not obtained as a 'subterfuge' or to surreptitiously investigate crimes other than those about which they informed the court."

C. In addition to using wiretaps, the FBI established the Financial Intelligence Center and the SEC has established an Office of Market Intelligence.

1. These offices use technological tools and screening programs to analyze trading and other activity across markets, and cross-reference that activity with public announcements and regulatory disclosures.

2. FINRA uses similar systems to identify suspicious trading patterns and match them to contemporaneous news, announcements and events.

D. There is also early cooperation between the SEC and the Department of Justice.

These offices work together to obtain records and conduct covert investigations targeted at insider trading.

1. The SEC and federal prosecutors gather evidence of bad acts to convince individuals to act as informants.

2. Informants are typically asked to wear, and do wear, wires to record conversations with the subjects of governmental investigations.

E. In many instances, the Department of Justice uses some of the information it obtained through covert investigations in order to apply for court-ordered wiretaps of telephones and emails, and court ordered bugs of offices, cars or residences.

VII. Consequences of Insider Trading

A. Civil

1. The SEC may seek disgorgement of up to three times any profits earned or any loss avoided.

2. Monetary penalties:

(a) For primary violators, penalties can be up to three times the profit gained or loss avoided.

(b) For control persons, penalties can be up to $1 million or three times the profit gained or loss avoided.

3. Individuals lose their jobs and may be barred against future employment in the securities industry.

4. Mere allegations of insider trading can put firms out of business through massive investor redemptions or withdrawals, losses of licenses and reputational damage.

B. Criminal

1. Defendants face up to:

(a) 20 years of imprisonment per count for violations charged under the Securities Exchange Act and fines of $5 million (individuals) or $25 million (organizations); and

(b) 25 years of imprisonment per count for violations charged under 18 U.S.C. §1348 (securities and commodities fraud) and criminal fines.

2. The United States may also seek criminal forfeiture of profits in addition to restitution.

VIII. Insider Trading Controls

Supervisory Requirements/Controls

1. Section 15(g) of the 1934 Act requires registered broker-dealers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of MNPI, taking into consideration the nature of each broker-dealer's business.

2. Section 204A of the Investment Advisers Act places similar obligations on registered investment advisers.

IX. Insider Trading Cases Brought/Decided in 2016

A. Charges/Cases Filed in 2016

In the Matter of Vivian S. Shields
Date: Jan. 4, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: According to the SEC, Shields allegedly engaged in insider trading on the basis of material nonpublic information by purchasing stock in advance of a positive news announcement regarding the acquisition of J. Alexander's Corporation. More specifically, the SEC alleged that, from May 29, 2012 to June 6, 2012, Shields purchased 12,600 shares of J. Alexander's Corporation stock while in possession of material nonpublic information relating to what was ultimately a tender offer for J. Alexander's by Fidelity National Financial Inc. Shields indirectly acquired the information from a J. Alexander's employee while the two were on a vacation together. During the vacation, the J. Alexander's employee had learned of the tender offer. On July 18, 2012, following a J. Alexander's press release that announced Fidelity's acquisition of J. Alexander's, Shields sold 1,000 shares of her J. Alexander's stock and tendered the remainder of her holdings in mid-September 2012. In total, Shields realized a profit of $71,401.12.

Status: On Jan. 4, 2016, Shields settled with the SEC. Pursuant to the terms of the settlement, Shields agreed to cease and desist from future violations. Shields also agreed to pay disgorgement of $71,401.12, prejudgment interest of $5,724.46 and a civil penalty in the amount of $71,401.12.

In the Matter of Reid A. Hackney, CPA
Date: Jan. 9, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The SEC alleged that Hackney, chief financial officer and senior vice president of the Dress Barn subsidiary of Ascena Retail Group Inc., engaged in insider trading in advance of two public announcements on the basis of material nonpublic information he obtained from his employer. First, in January 2012, Hackney became aware of Ascena's positive holiday sales results and traded Ascena securities in advance of the public release of this information, realizing ill-gotten gains of $3,300. Two months later, in March 2012, Hackney became aware, in the course of his employment, of Ascena's plans to acquire Charming Shoppes Inc. Hackney allegedly used his inside knowledge about Ascena's plans to acquire Charming Shoppes to purchase Charming Shoppes securities prior to the public announcement of the transaction. As a result, Hackney realized trading profits of $44,750.

Status: On Jan. 12, 2016, Hackney settled with the SEC. Pursuant to the terms of the settlement, Hackney can no longer appear or practice before the SEC as an accountant, and he is prohibited from acting as an officer or director of a public company for a period of five years. He also agreed to pay disgorgement of $48,050, prejudgment interest of $4,670 and a civil penalty of $48,050, for a total of $100,770.

SEC v. Munakash, et al.
Date: Feb. 5, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the Central District of California (C.D. Cal.)
Event: Civil Complaint Filed; Settlement Reached with Rodriguez, Winters and Munakash

Summary: The SEC alleged that during a trip to the Super Bowl, Munakash learned from a close friend, an executive at GSI Commerce Inc. ("GSIC"), that GSIC was likely to engage in a strategic transaction with a private equity firm or be acquired by another company. Munakash allegedly used this information to purchase GSIC stock for his personal account and tipped both his mentee and employee, Carlos Rodriguez, and his registered representative, Marc Winters. Rodriguez used the information to purchase GSIC stock for himself and tipped a close relative, who also purchased GSIC stock. Winters used the information to first purchase GSIC stock for two discretionary client accounts and then to purchase GSIC stock for his personal account. Subsequently, Munakash learned additional information about the potential acquisition from his friend (a GSIC executive) a few weeks after the Super Bowl, during the executive's birthday dinner. The following day, Munakash used this information to purchase additional shares of GSIC stock in his parents' account and again tipped Rodriguez, who also purchased additional GSIC stock. Following the public announcement of GSIC's proposed acquisition by eBay Inc. on March 28, 2011, GSIC's stock price increased by over 51 percent. Munakash, Rodriguez and his relative, and Winters and his clients, all sold their respective positions in GSIC stock within hours of the announcement, realizing over $250,000 in ill-gotten gains.

Status: On June 6, 2016, Rodriguez consented to a judgment against him, agreeing to be permanently enjoined from future violations. Rodriguez also agreed to pay disgorgement plus prejudgment interest in the amount of $20,899.33 and to pay a $42,575.69 civil penalty, for a total of $63,475.02. On Dec. 2, 2016, Winters agreed to pay disgorgement of $4,103, prejudgment interest of $837 and a penalty of $31,944. Finally, on Dec. 7, 2016, Munakash agreed to pay disgorgement and prejudgment interest of $212,975 and a civil penalty in the amount of $200,907. Munakash also agreed to be permanently enjoined from future violations.

SEC v. Dennis W. Hamilton; United States v. Dennis W. Hamilton
Date: Feb. 5, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: U.S. District Court for the District of Connecticut (D. Conn.)
Event: Parallel Civil and Criminal Proceedings Initiated; Guilty Plea Entered in Criminal Case

Summary: The SEC alleged that Hamilton, a former tax executive at Harman International Industries (an automotive audio and technology company), knew in October 2013 that his company would have a good first quarter in 2014. In his role as Harman's vice president of tax, Hamilton had reviewed Harman's earnings and learned the company would report stronger-than-expected results for its first quarter in 2014. Pursuant to that material nonpublic information, Hamilton purchased shares of Harman stock before Harman publicly released its financial results. Harman's stock price rose more than 12 percent on the news, and Hamilton reaped $131,958. In a parallel action, the DOJ announced criminal charges against Hamilton.

Status: On March 28, 2016, Hamilton pled guilty to insider trading in the criminal case against him. On Sept. 1, 2016, he was sentenced to a term of imprisonment of eight months, followed by one year of supervised release. Hamilton was also ordered to pay a $131,958 fine. On Aug. 30, 2016, the SEC filed an amended complaint, alleging that Hamilton obtained more than $977,000 in illicit profits from four additional instances of insider trading in the company's securities on the basis of material nonpublic information, bringing the total alleged illicit profits to over $1.1 million. On Sept. 6, 2016, the court scheduled a settlement conference to be held on Oct. 26, 2016. No settlement was reached. The current scheduling order stipulates for all discovery to be completed by Sept. 1, 2017 and dispositive motions filed by Oct. 1, 2017.

In the Matter of Jarrod L. Spector
Date: Feb. 9, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: According to the SEC, Spector allegedly traded in the securities of GSI Commerce Inc. in advance of the March 28, 2011 announcement that eBay Inc. had agreed to acquire GSI. On or about Feb. 24, 2011, Spector learned material nonpublic information about the acquisition of GSI from a friend, who was married to a GSI employee. A day later, Spector purchased out of the money GSI call options on the basis of the information he had received. After public announcement of the eBay acquisition of GSI, the market reacted significantly, with GSI's stock increasing approximately 50.6 percent. Spector subsequently exercised his GSI options contracts. Immediately thereafter Spector sold the shares he had purchased, garnering trading profits of $21,350.

Status: On Feb. 9, 2016, Spector agreed to cease and desist from future violations and also agreed to pay disgorgement of $21,350, prejudgment interest of $3,104 and a civil penalty in the amount of $21,350.

In the Matter of Abdallah Fadel
Date: Feb. 10, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The proceedings arose out of insider trading by Fadel, who purchased securities of Whirlpool Corporation while in possession of material nonpublic information that he learned while employed at Whirlpool as a financial analyst. On three separate occasions, Fadel traded option contracts on Whirlpool's common stock prior to Whirlpool announcing its earnings to the public. When Fadel purchased the option contracts, he was aware of Whirlpool's financial results that were going to be announced to the public. Fadel then sold the option contracts after the market reacted to Whirlpool's public announcements, realizing illicit profits of more than $100,000.

Status: On Feb. 10, 2016, Fadel agreed to cease and desist from future violations and also agreed to be barred from acting as an officer or director of any issuer. Further, Fadel agreed to pay disgorgement of $109,077, prejudgment interest of $17,259 and a civil penalty of $36,000, for a total payment of $162,336.

SEC v. Evgenii Zavodchiko, et al.
Date: Feb. 17, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the District of New Jersey (D.N.J.)
Event: Civil Complaint Filed

Summary: The government charged multiple defendants with taking part in a scheme to profit from hacked nonpublic information about corporate earnings. The government alleged that Ukraine-based hackers Ivan Turchynov and Oleksander Ieremenko spearheaded the scheme by hacking into Marketwire LP, PR Newswire Association LLC and Business Wire, stealing more than 100,000 press releases for publicly traded companies before they were publicly issued over a period of five years. Many of the releases contained quarterly and annual earnings data. According to the SEC's complaint, the hackers transmitted the stolen data to multiple groups of traders in Russia, Ukraine, Malta, Cyprus, France and three U.S. states: Georgia, New York and Pennsylvania. In the SEC's action, the SEC alleged that Evgenii Zavodchiko, Extra Trading Company, Andrey Bokarev, Radion Panko, Green Road Corp., Natalia Andreeva Alepko, Solar Line Inc., Anton Maslov and Tarek Investors Inc. used this same nonpublic information to place illicit trades in stocks and options, reaping over $19.5 million in illicit profits. The traders charged (including Zavodchiko) were brokerage customers of Malta-based Exante Ltd., and engaged in their allegedly illegal trading through a brokerage account held in Exante's name. The traders also purportedly paid the hackers for the stolen information, either giving a flat fee or a percentage of the proceeds from the illegal trades.

Status: The case remains ongoing.

In the Matter of Nicholas A. Prezioso
Date: Feb. 19, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The SEC found that Prezioso engaged in insider trading by trading in advance of three public announcements based on material nonpublic information he obtained while serving as assistant controller of the Dress Barn subsidiary of Ascena Retail Group Inc. In December 2011, Prezioso became aware of Ascena's strong holiday sales results. Prezioso subsequently traded Ascena securities in advance of the public release of this information and realized ill-gotten gains of $114,710. In February 2012, Prezioso also became aware of Ascena's positive sales results for its fiscal second quarter. Prezioso traded Ascena securities in advance of the public release of this information and realized ill-gotten gains of $71,334. In March 2012, Prezioso became aware of Ascena's plans to acquire Charming Shoppes Inc. Prezioso later traded Charming Shoppes securities before the public announcement of the transaction and realized ill-gotten gains of $76,432.

Status: On Feb. 19, 2016, Prezioso agreed to cease and desist from future violations and agreed to be barred from acting as an officer or director for any issuer. Prezioso also agreed to pay disgorgement of $262,476, prejudgment interest of $26,955 and a civil penalty of $131,238, for a total of $420,669.

In the Matter of Craig N. Salamone; In the Matter of Patricia Zajick Meltzer et al.; In the Matter of Lawrence M. Gincel
Date: March 1, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: This matter involved insider trading by Craig N. Salamone, Patricia Zajick Meltzer, Daniel P. Meltzer and Donald C. Zajick in the securities of GSI Commerce Inc. in advance of the March 28, 2011 announcement that eBay Inc. had agreed to acquire GSI. In the months prior to the announcement, Patricia received information about the acquisition of GSI from her friend, who was married to a GSI employee at the time. Patricia then tipped her father, Donald C. Zajick, and her husband, Daniel P. Melzter. Daniel, in turn, tipped his good friend, Salamone, about the upcoming acquisition of GSI. Patricia's father, Daniel, and Salamone subsequently traded on the basis of the information they received, garnering trading profits of $161,111. Patricia also tipped her good friend Lawrence M. Gincel about the upcoming acquisition of GSI. Gincel traded on the basis of the information and garnered trading profits of $1,083.

Status: On March 1, 2016, all of the parties agreed to cease and desist from future violations. In addition, Salamone agreed to pay disgorgement of $9,491, prejudgment interest of $461 and a civil penalty of $4,745. Patricia Zajick Meltzer and Daniel Meltzer agreed to pay, jointly and severally, disgorgement of $53,037, prejudgment interest of $7,791 and a civil penalty of $107,224. Donald Zajick agreed to pay disgorgement of $97,500, prejudgment interest of $4,322 and a civil penalty in the amount of $97,500. Gincel agreed to pay disgorgement of $1,083, prejudgment interest of $159 and a civil money penalty of $1,083.

SEC v. Fung; United States v. Fung; SEC v. Dowd; United States v. Dowd
Date: March 9, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: D.N.J.
Event: Parallel Civil and Criminal Proceedings Initiated; Civil Settlements Reached and Guilty Pleas Entered

Summary: The SEC alleged that Fung had purchased stock and call options in Pharmasset Inc. based on his friend's tip that it was about to be acquired. The friend, Kevin Dowd, had learned the nonpublic information during his employment at an investment advisory firm where a Pharmasset board member maintained an account and confidentially sought financial advice in advance of the acquisition. Fung cashed in when Pharamasset's stock rose 84 percent after its acquisition by Gilead Sciences was publicly announced, and he paid kickbacks ($35,000) to Dowd. The DOJ brought parallel criminal actions against both Fung and Dowd.

Status: On Sept. 30, 2013, Dowd pled guilty in his criminal case. On March 9, 2016, both Dowd and Fung settled with the SEC. Dowd agreed to pay back the $35,000 cash kickbacks he received from Fung and also agreed to be barred from the securities industry and penny stock offerings. Fung agreed to pay back more than $700,000 in illegal profits and $60,000 in interest earned. On March 9, 2016, Fung also entered into a plea agreement with the DOJ. Pursuant to the plea agreement, Fung pled guilty to conspiring to commit securities fraud and consented to an entry of a forfeiture money judgment in the amount of $345,245. Fung's sentencing is scheduled for April 10, 2017.

In the Matter of Eric J. Wolff
Date: March 16, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The proceeding involved insider trading by Wolff in advance of the June 9, 2014 public announcement that Merck & Co. Inc. would submit a tender offer to acquire the outstanding shares of Idenix Pharmaceuticals Inc. for $3.85 billion or $24.50 per share in cash. In May 2014, Wolff obtained material nonpublic information concerning the transaction from his life partner, who was a scientist at Merck. Wolff understood that this information was conveyed to him in confidence and that he should not trade on it. However, Wolff traded Idenix securities before the public announcement of the transaction and generated ill-gotten gains of $87,600.

Status: On March 16, 2016, Wolff agreed to cease and desist from any future violations. He also agreed to pay disgorgement of $87,600, prejudgment interest of $657 and a civil penalty in the amount of $87,600, for a total of $175,857.

SEC v. John E. Hardy III
Date: March 18, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the Western District of Washington (W.D. Wash.)
Event: Civil Complaint Filed; Settlement Reached

Summary: The SEC alleged that Hardy, who worked in Microsoft's corporate financial planning and analysis group, purchased Microsoft put options after learning from highly confidential internal Microsoft documents, including a draft presentation to Microsoft's board of directors, that the company's fiscal-year 2013 financial results would not meet Wall Street analysts' expectations. When Microsoft issued a July 18, 2013 earnings release containing those financial results, the company's stock price decreased over 11 percent. Hardy sold the put options shortly after the announcement, realizing ill-gotten gains of approximately $9,000. The SEC also alleged that, in August 2013, Hardy purchased Nokia call options after learning in the course of his work in the financial planning and analysis group that Microsoft was planning to acquire Nokia's mobile phone business. After the public announcement of the acquisition on Sept. 2, 2013 caused the price of Nokia American Depositary Shares trading in the United States to rise more than 30 percent, Hardy sold the Nokia call options, resulting in illegal profits of approximately $175,000.

Status: On March 18, 2016, Hardy consented to an entry of judgment permanently enjoining him from future violations. Hardy also agreed to disgorge all of his ill-gotten gains of $184,132, pay a civil penalty of $184,132 and pay prejudgment interest of $11,389, for a total of $379,653. In addition, Hardy agreed to a five-year ban from serving as an officer or director of a publicly traded company.

SEC v. Afriyie et al.; United States v. Afriyie
Date: April 13, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: U.S. District Court for the Southern District of New York (S.D.N.Y.)
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: The SEC alleged that a research analyst, John Afriyie, reaped more than $1.5 million in February 2016 through trades he made in his mother's brokerage account based on nonpublic information he learned at work. More specifically, the SEC alleged that Afriyie found out about an impending acquisition of a home security company, The ADT Corporation, when prospective acquirer Apollo Global Management approached the Manhattan-based investment firm where Afriyie was employed and discussed potential debt financing for a public-to-private deal. Afriyie subsequently accessed several highly confidential, deal-related documents on the firm's computer network and purchased thousands of high-risk, out-of-the-money ADT call options in his mother's account in anticipation that ADT's stock price would rise when the transaction was publicly announced. After the ADT deal was announced, Afriyie sold all of the ADT options in his mother's account to obtain his illicit profits. The SEC's civil complaint also names Afriyie's mother as a relief defendant for the purposes of recovering ill-gotten gains that Afriyie generated by trading in his mother's name. In a parallel action, the DOJ announced criminal charges against Afriyie.

Status: On July 20, 2016, in the SEC's case against Afriyie, the DOJ moved to stay pending resolution of the criminal proceedings. On July 26, 2016, the court granted the DOJ's motion to intervene and stay the civil proceedings until the criminal proceedings against Afriyie are resolved. The DOJ's criminal case against Afriyie remains ongoing.

SEC v. Nunan
Date: May 2, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the Northern District of California (N.D. Cal.)
Event: Civil Complaint Filed; Settlement Reached

Summary: The SEC alleged that Nunan, a senior engineering executive at a subsidiary of a semiconductor equipment manufacturer named Screen Holdings Company, was contacted by a board member at FSI International and confidentially informed that a Japan-based semiconductor equipment company, Tokyo Electron Ltd., was negotiating to acquire FSI. The board member knew that Nunan knew the executive responsible for evaluating potential corporate acquisitions at Screen Holdings. Nunan thereafter acted as a conduit for communications between the two companies as FSI sought a competing bid. According to the SEC's complaint, Nunan misused the confidential information entrusted to him about FSI's potential merger plans and bought 105,000 FSI shares during the next six months. He also recommended the trade to his brother, who purchased 1,000 shares of FSI stock. Once Tokyo Electron and FSI publicly announced a merger agreement on Aug. 13, 2012, Nunan sold most of his FSI stock the next day and the illicit profits from his unlawful trading and tipping totaled $254,858.

Status: On May 2, 2016, Nunan agreed to be permanently enjoined from future violations and ordered to pay $254,858 in disgorgement of ill-gotten gains plus interest of $24,587 and a penalty of $254,858 for a total of $534,303.

SEC v. Walters, et al.; United States v. Davis, et al.
Date: May 19, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: S.D.N.Y.
Event: Davis Pled Guilty in Criminal Action; Mickelson and Davis settled with SEC

Summary: The SEC charged William "Billy" Walters, a sports bettor, investor, and the CEO and chairman of the Walters Group, and former Dean Foods director, Thomas Davis, with insider trading. They allegedly operated a scheme in which Davis would leak material nonpublic information regarding Dean Foods to Walters, who in turn traded on it and shared it with the professional golfer Phil Mickelson, whom the SEC named as a relief defendant. According to the SEC's complaint, Walters was owed money by then-Dean Foods Company board member Davis. Davis regularly shared inside information about Dean Foods with Walters in advance of market-moving events, using prepaid cell phones and other methods in an effort to avoid detection. Among the various efforts made to avoid detection, Walters instructed Davis to refer to Dean Foods as the "Dallas Cowboys" during conversations. Furthermore, while Walters made millions of dollars insider trading using the confidential information, he provided Davis with almost $1 million and other benefits to help Davis address his financial debts. In addition, the SEC's complaint alleged that professional golfer Phil Mickelson traded Dean Foods' securities at Walters' urging and then used his almost $1 million of trading profits to help repay his own gambling debt to Walters. As a result of this scheme and based on the illegal tips received from Davis, Walters allegedly made $40 million. In a parallel action, the DOJ announced criminal charges against Walters and Davis.

Status: Davis pled guilty in the DOJ criminal case on May 16, 2016. On May 24, 2016, Phil Mickelson neither admitted nor denied the allegations in the SEC's complaint and agreed to pay full disgorgement of his trading profits totaling $931,738.12 plus interest of $105,291.69 (a total of $1,037,029.81). On Aug. 10, 2016, in the SEC's case against Walters, the DOJ moved to stay the case pending resolution of the criminal proceedings against Walters. On Aug. 26, 2016, the court denied the government's motion to stay. On Oct. 14, 2016, Davis settled with the SEC. The court entered a consent judgment pursuant to which disgorgement and potential civil penalties will be determined at a later date. Walters' cases remain ongoing.

SEC v. McClatchey, et al.; United States v. McClatchey; United States v. Pusey
Date: May 27, 2016
Agency: DOJ and SEC
Authority: Joint Civil/Criminal
Forum: S.D.N.Y.
Event: Parallel Civil and Criminal Proceedings Filed; Guilty Pleas by Pusey and McClatchey

Summary: The SEC alleged that Steven McClatchey, an investment banker, had regular access to highly confidential nonpublic information about impending transactions being pursued for investment bank clients. McClatchey allegedly tipped insider information that he gleaned as part of his work duties to Gary Pusey, a plumber and close friend of McClatchey's who helped remodel his bathroom. Pusey then proceeded to trade on the tips on at least 10 different occasions ahead of unannounced public mergers. He generated $76,000 in allegedly illicit trading profits. In exchange for the tips, Pusey provided McClatchey with free services as well as thousands of dollars. In parallel actions, the DOJ announced criminal charges against McClatchey and Pusey.

Status: On May 31, 2016, Pusey pled guilty. He has yet to be sentenced. On July 12, 2016, McClatchey pled guilty to conspiracy and fraud charges, and on Jan. 11, 2017, McClatchey was sentenced to five months in prison and ordered to forfeit $76,000 and pay a fine of $10,000. The SEC case remains ongoing.

SEC v. Maciocio, et al.; United States v. Maciocio
Date: June 3, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: S.D.N.Y.
Event: Consent Judgment against Maciocio; Guilty Plea by Hobson

Summary: The government alleged that Michael Maciocio, who worked in various roles at an unnamed multinational pharmaceutical corporation, used confidential information about pharmaceutical firms being considered by his employer for potential acquisitions to trade in the stock of potential targets. He allegedly gained approximately $116,000. He also allegedly tipped his childhood friend, stockbroker David P. Hobson, who traded on the nonpublic information and realized at least $187,000 in profits for himself and $145,000 for his customers. In a parallel action, the DOJ announced criminal charges against Maciocio and Hobson.

Status: On June 24, 2016, the court entered a consent judgment enjoining Maciocio from violating Section 10(b) of the Exchange Act and ordering him to pay disgorgement and a civil penalty to be determined at a later date upon motion of the SEC. On Oct. 25, 2016, Hobson pled guilty. He was ordered to forfeit $385,664 and his sentencing is scheduled for March 2, 2017.

SEC v. Ma
Date: June 9, 2016
Agency: SEC
Authority: Civil
Forum: N.D. Cal.
Event: Civil Complaint Filed; Settlement Reached

Summary: The SEC alleged that Guolin Ma, an optical physicist who served as a consultant to two China-based equity firms, traded on confidential information he obtained while advising the firms in connection with their potential buyout of Silicon Valley optical semiconductor maker OmniVision Technologies. According to the SEC's complaint, one of the firms advised by Ma joined a group of Chinese investment firms in making a bid to buy OmniVision. Ma stockpiled 39,373 shares of OmniVision stock through a series of purchases in April and May 2014 while possessing nonpublic information. OmniVision's stock price rose 15 percent when the proposed acquisition was publicly announced in August 2014, allowing Ma to generate $367,387 in illegal profits.

Status: On June 9, 2016, the SEC announced that Ma had agreed to pay disgorgement of $367,387 plus interest of $21,986 and a penalty of $367,387.

SEC v. Chan; United States. v. Chan
Date: June 14, 2016
Agency: SEC and DOJ
Authority: Joint Criminal/Civil
Forum: U.S. District Court for the District of Massachusetts (D. Mass.)
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: The government alleged that Schultz Chan, a director of biostatistics at Akebia Therapeutics, purchased shares of Akebia and tipped his wife and friend (who had previously lent him about $80,000) to purchase Akebia shares ahead of a positive announcement regarding Akebia's leading drug. The three collectively earned $288,000 once the positive information was publicly announced.

Status: In the DOJ's criminal case, Chan entered a not guilty plea on Sept. 20, 2016. On Oct. 3, 2016, Chan moved to the stay the proceedings in the SEC's civil case pending resolution of the DOJ's criminal proceedings against him. On Oct. 4, 2016, the court granted Chan's motion to stay. The DOJ's criminal case against Chan remains ongoing.

SEC v. Valvani, et al.; United States v. Valvani; SEC v. Plaford
Date: June 15, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: S.D.N.Y.
Event: Parallel Civil and Criminal Proceedings Initiated; Civil Settlement Reached with Johnston

Summary: The SEC alleged that Sanjay Valvani secured unlawful profits of nearly $32 million for hedge funds investing in health care securities by trading on tips he received from Gordon Johnston, who had worked at the FDA and remained in close contact with former colleagues while working for a trade association representing generic drug manufacturers and distributors. Johnston allegedly concealed his separate role as a hedge fund consultant and obtained confidential information regarding anticipated FDA drug approvals from FDA personnel, including a close friend he had mentored during his time at the agency, and passed the information on to Valvani, who then traded in advance of public announcements concerning the approvals. The SEC further alleged that Valvani in turn tipped fellow hedge fund manager Christopher Plaford, who is charged in a separate complaint with insider trading on this, as well as other material nonpublic information. According to the complaint, Plaford profitably traded on behalf of one of the funds he managed based on material nonpublic information he received from Valvani concerning an impending approval by the FDA's Office of Generic Drugs (OGD) to permit the sale of a drug called enoxaparin. Three years later, Plaford profitably traded on behalf of managed funds based on material nonpublic information that he received confidentially from a former Centers for Medicare and Medicaid Services official and paid consultant about an impending cut to Medicare reimbursement rates for certain home health services. The former official and paid consultant informed Plaford that this information concerning the impending announcement came from sources within the Centers for Medicare and Medicaid Services. Plaford allegedly made approximately $300,000 by trading based on inside information in the hedge funds he managed. In parallel actions, the DOJ announced criminal charges against Valvani, Johnston and Plaford.

Status: On June 21, 2016, Valvani was found dead in his Brooklyn home in a suspected suicide, according to police. On July 6, 2016, the DOJ dropped all charges against Valvani. On Nov. 14, 2016, the SEC entered into a settlement agreement with Johnston. Johnston agreed to pay disgorgement in the amount of $108,000 plus interest of $19,496.03 for a total of $127,496.03. Johnston also agreed to be permanently enjoined from violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. On Aug. 15, 2016, the court granted the DOJ's motion to intervene and stay Plaford's civil proceedings pending the outcome of the criminal case against Plaford. The DOJ's criminal proceedings against Johnston and Plaford appear to be ongoing.

SEC v. Salis, et al.; United States v. Salis, et al.
Date: June 16, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: U.S. District Court for the Northern District of Indiana (N.D. Ind.)
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: On June 16, 2016, the SEC alleged that Christopher Salis, a former global vice president at SAP America (a multinational software corporation), received thousands of dollars (at least $10,400 in cash) in exchange for tips in advance of SAP's impending acquisition of Concur Technologies, an American travel management company. Specifically, Salis allegedly tipped his close friend and fellow Purdue University alum, Douglas Miller, who in turn tipped his brother Edward and mutual friend Barrett Biehl. The group, which included Salis, purchased short-term call options and realized over half a million dollars of profits less than a month after the merger's announcement. Salis' startup company later received approximately $80,000 from Douglas Miller and his family. In a parallel case brought on Oct. 19, 2016, the DOJ announced criminal charges against Salis, Douglas Miller and Edward Miller. The SEC has also linked Salas and Douglas Miller to suspicious trades in 2007 that were made in advance of a tender offer for a company called Business Objects, where Salis worked at the time. Salas and Miller were charged with this additional count of insider trading in the SEC's complaint, which alleged illicit profits of more than $42,000.

Status: On Aug. 19, 2016, in the SEC's civil proceedings, the defendants moved to dismiss the SEC's complaint for failure to state a claim. More specifically, the defendants argued that in both instances, the SEC had failed to plead with sufficient particularity that the alleged tipper, Salis, obtained material, nonpublic information as to which he owed a duty of confidentiality to his employers, SAP and Business Objects. Furthermore with respect to the trades concerning Business Objects, the defendants argued that the SEC asserted no well-pleaded factual allegations that Salis either tipped Douglas Miller any material nonpublic information concerning the merger or that Miller otherwise knew that Salis disclosed the information in violation of a duty of confidentiality to Business Objects. On Nov. 29, 2016, the DOJ moved to intervene and stay the civil proceedings pending resolution of the criminal proceedings, and on Dec.14, 2016, the court granted the DOJ's motion to intervene and stay pending judgment in the criminal case against Salis and the other defendants. In the DOJ's criminal case, Salis, Douglas Miller and Edward Miller have all pled not guilty. The DOJ's criminal case appears to be ongoing.

SEC v. Hannon
Date: June 20, 2016
Agency: SEC
Authority: Civil
Forum: D. Mass.
Event: Civil Complaint Filed; Settlement Reached

Summary: On June 20, 2016, the SEC charged James S. Hannon, a former mid-level manager of The TJX Companies Inc., the parent company of retail store chains T.J. Maxx, Marshalls and HomeGoods, with insider trading in TJX stock. According to the SEC's complaint, Hannon, who was the northeast regional vice president for T.J. Maxx from 2011 to 2014, had daily access to confidential information about the company's sales data. Hannon purchased TJX stock in advance of press releases announcing favorable sales results and other positive financial information on five occasions in 2012 and 2013. Hannon then sold the TJX stock shortly after the stock price increased following the public issuance of the press releases. TJX expressly prohibited employees from trading in TJX securities when in possession of material nonpublic information, explaining that such insider trading violated both company policy and the law. Hannon's total profit from his trading was $26,679.

Status: On June 20, 2016, Hannon consented to the entry of a final judgment that would permanently enjoin him from future violations of Section 10(b) and Rule 10b-5. He also agreed to pay disgorgement of $26,679, prejudgment interest of $3,008.99 and a civil penalty of $26,679.

SEC v. Kerr
Date: June 29, 2016
Agency: SEC
Authority: Civil
Forum: N.D. Cal.
Event: Civil Complaint Filed; Kerr's Motion to Dismiss Denied

Summary: The SEC alleged that Andrew Kerr, the younger brother of an executive at fingerprint sensor maker AuthenTec Inc. (which was ultimately purchased by Apple in 2012), bought AuthenTec shares based on material nonpublic information that he learned from his mother, who in turn learned it from the older brother. Specifically, the older brother divulged information regarding the company's potential acquisition by Apple to the mother, who soon after informed Kerr of the negotiations. Kerr proceeded to purchase AuthenTec stock, which included funds borrowed from his mother (for the stated purpose of financing a new home). Kerr liquidated his positions after the acquisition's public announcement, and profited $68,439.

Status: On Aug. 22, 2016, Kerr filed a motion to dismiss for failure to state a claim. In his motion, Kerr argued that the SEC failed to allege any facts demonstrating that Kerr's mother actually received material, nonpublic information regarding the acquisition from Kerr's older brother. According to Kerr, the SEC wholly failed to allege that his brother passed any material nonpublic information to his mother. Moreover, Kerr contended that the SEC had failed to allege sufficient facts to establish that Kerr's mother passed material nonpublic information to him. Therefore, in Kerr's view, the SEC had failed to state a claim for insider trading. Oral argument was scheduled for Nov. 10, 2016. On Nov. 10, 2016, the court denied Kerr's motion to dismiss and referred the case to a magistrate judge for settlement conference, to be completed within 60 days. No settlement seems to have been reached and the case appears to be ongoing.

SEC v. Avent, et al.
Date: July 7, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the Northern District of Georgia (N.D. Ga.)
Event: Civil Complaint Filed; Settlement Reached with Penna

Summary: The SEC filed an insider trading suit in Georgia federal court accusing Thomas W. Avent, Jr., an Atlanta mergers and acquisitions attorney and certified public accountant, and two individuals with connections to the securities industry, Raymond J. Pirrello, Jr., and Lawrence J. Penna, of insider trading in the securities of Radiant Systems Inc., Midas Incorporated Inc. and Brightpoint Inc. According to the SEC's complaint, Avent, while working as a partner in charge of KPMG LLP's accounting and consulting mergers and acquisitions tax practice for the southeast region, obtained highly confidential information about the impending acquisitions of Radiant, Midas and Brightpoint in advance of each acquisition. Avent allegedly tipped his stock broker Pirello about the impending acquisitions, who in turn, used the nonpublic information to tip a former colleague and long-time friend Penna, who traded in the securities of each of the three companies. Avent and Pirello's tips resulted in Penna and his family realizing at least $111,000 in illicit trading profits. In exchange for the tips, Penna allegedly made payments to Pirello, and Pirrello provided cash and other financial benefits to Avent.

Status: On Oct. 25, 2016, Penna settled with the SEC. The court entered a final judgment ordering Penna to pay disgorgement and a civil penalty of $79,992 each. On Sept. 13, 2016, Avent moved to dismiss the SEC's complaint against him for failure to state a claim. According to Avent's motion to dismiss, the SEC failed to plausibly allege that he breached any fiduciary duty owed to his employer. Avent's motion to dismiss also argues that the SEC has failed to allege that Avent acted with scienter or that he received a personal benefit in exchange for the tips. Avent's motion to dismiss remains pending. The case against Avent and Pirrello is ongoing.

In the Matter of Yi Chen, CPA
Date: July 26, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: These proceedings involved insider trading by Chen, a certified public accountant and the former corporate controller of Oplink Communications Inc. The SEC alleged that in October 2014, Chen learned, in the course of her employment, material nonpublic information regarding a planned acquisition of Oplink by Koch Industries Inc. Soon thereafter, Chen purchased a total of 4,740 shares of Oplink stock at prices ranging from $16.57 to $16.98 per share in two brokerage accounts held in the names of her relatives. On Nov. 9, 2014, Oplink and Koch announced the acquisition to the market and Oplink's stock price increased nearly 14 percent to $24.18 per share. In the weeks after, Chen sold all of the Oplink stock in her family members' accounts, realizing ill-gotten gains of $34,678.44.

Status: Chen agreed to cease and desist from future violations. Chen was also prohibited from acting as an officer or director for any issuer for a period of five years. In addition, Chen agreed to pay disgorgement of $34,678.44, prejudgment interest of $1,407.87 and a civil penalty of $34,678.44 for a total of $70,764.75.

SEC v. Kosinski; United States v. Kosinski
Date: Aug. 3, 2016
Agency: DOJ and SEC
Authority: Joint Civil/Criminal
Forum: D. Conn.
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: The government alleged that Dr. Edward Kosinski traded in advance of two negative news announcements by Regado Biosciences Inc., which was pursuing a drug called REG-1 to regulate clotting in patients undergoing coronary angioplasty. Kosinski, who was president of Connecticut Clinical Research and served as a principal investigator at a clinical site involved in the drug trial, sold 40,000 Regado shares after he received advance notice from the manager of the trial that patient enrollment in the trial would be suspended because patients had experienced severe allergic reactions. Consequently, Kosinski avoided approximately $160,000 in losses when the news became public and the stock price dropped. Later, Kosinski received additional material nonpublic information from the trial manager informing him that the clinical trial would be permanently halted because a patient had died. He purchased stock options and bet that the price would drop again. Kosinski made more than $3,000 when he exercised the options after the company's stock fell by 60 percent in the wake of the negative news. A parallel criminal case was brought by the DOJ.

Status: On Nov. 22, 2016, in the SEC's civil proceeding against Kosinski, Kosinski put forth an unopposed motion to stay pending resolution of the criminal proceedings. On Nov. 29, 2016, the court denied the motion to stay. However, pursuant to a scheduling order issued the same day, the court ordered that discovery would commence at the conclusion of the corresponding criminal trial. Kosinski's criminal case appears to be ongoing.

United States v. Klein, et al.
Date: Aug. 4, 2016
Agency: DOJ
Authority: Criminal
Forum: U.S. District Court for the Eastern District of New York (E.D.N.Y.)
Event: Indictment Filed

Summary: On Aug. 4, 2016, a grand jury in the Eastern District of New York returned a two-count indictment against Klein and Schulman. The indictment charged Tibor Klein and Robert Schulman with conspiracy to commit securities fraud and securities fraud based on facts that formed the basis of an SEC action against the two just two years earlier. According to the allegations, patent attorney Robert Schulman informed his investment adviser, Tibor Klein, that Schulman's client, King Pharmaceuticals, was going to be acquired by Pfizer Inc. Schulman allegedly passed the information to Klein while the two were having dinner, together with Schulman's wife, at Schulman's home. Klein then passed the information to Michael Shechtman. Klein and Shechtman subsequently purchased and traded King securities in advance of the acquisition's public announcement. Klein allegedly earned $8,824 in illicit profits for himself and $319,550 in illicit profits for his clients. Shechtman allegedly earned approximately $109,000 in illicit profits.

Status: The case remains ongoing.

SEC v. Rampoldi, et al.; United States v. Rampoldi, et al.
Date: Aug. 11, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: U.S. District Court for the Southern District of California (S.D. Cal.)
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: The SEC alleged that Paul Rampoldi, a stockbroker, and his friend William Scott Blythe, purchased shares of Ardea Biosciences based on tips received from a then-IT executive at Ardea Biosciences. The Ardea employee tipped one of Rampoldi's colleagues at the firm ahead of the company's announcement of an agreement to license a cancer drug and ahead of its acquisition by AstraZeneca PLC. The colleague, in turn, informed Rampoldi of the nonpublic information. To avoid detection at his brokerage firm, Rampoldi tipped the information to Blythe, who then purchased call options in his own brokerage account. They subsequently split the profits, which amounted to approximately $90,000. In a parallel action, the DOJ brought criminal charges against Rampoldi and Blythe.

Status: On Aug. 17, 2016, the DOJ moved to intervene and stay the civil proceedings pending resolution of the criminal case. On Oct. 27, 2016, the court denied the DOJ's motion to intervene and stay the civil proceedings. On Dec. 20, 2016, Rampoldi moved to stay the SEC's civil proceedings pending resolution of the parallel criminal against him and Blythe. The criminal case against Rampoldi and Blythe appears to be ongoing.

SEC v. Leon G. Cooperman and Omega Advisors, Inc.
Date: Sept. 21, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the Eastern District of Pennsylvania (E.D. Pa.)
Event: Civil Complaint Filed

Summary: The SEC alleged that Leon G. Cooperman, the hedge fund manager who founded Omega Advisors, Inc., used material nonpublic information that he learned from a senior executive of Atlas Pipeline Partners LP (an oil pipeline company in which Cooperman also holds a substantial equity stake) to purchase Atlas securities ahead of the sale of Atlas's natural gas processing facility in Elk City, Oklahoma. Cooperman allegedly used his status as one of Atlas Pipeline's largest shareholders to gain access to the executive and obtain confidential details about the sale of this substantial company asset. Cooperman and Omega Advisors allegedly accumulated Atlas Pipeline securities despite explicitly agreeing not to use the material nonpublic information for trading purposes, and when Atlas Pipeline publicly announced the asset sale, its stock price jumped more than 31 percent. At Cooperman's direction, the Cooperman Offshore Account, Hedge Fund Accounts, Managed Accounts and Family Accounts allegedly made significant ill-gotten gains by trading on the basis of this material nonpublic information about Atlas Pipeline's Elk City sale, generating profits of approximately $4.09 million. The SEC seeks disgorgement of ill-gotten gains plus interest, penalties and permanent injunctions against Cooperman and Omega Advisors as well as an officer-and-director bar against Cooperman.

Status: On Dec. 9, 2016, Cooperman and Omega Advisors Inc. filed a motion to dismiss for failure to state a claim. The defendants' motion argues that the SEC's complaint fails to state a claim for insider trading under the misappropriation theory because it fails to allege with particularity that an agreement not to trade (which establishes a relationship of trust and confidence) in fact arose before material nonpublic information was supposedly shared. Consequently, according to the motion, because the SEC failed to allege that an agreement to keep information confidential (or not to trade) was made before the Atlas Pipeline executive shared the material nonpublic information with Cooperman, the SEC's complaint fails to state a claim for insider trading. In this view, without an agreement to keep information confidential, Cooperman never misappropriated material nonpublic information from the Atlas Pipeline executive when he subsequently traded on the information. The SEC responded to Cooperman and Omega's motion to dismiss on Jan. 6, 2017.

SEC v. Colin Whelehan and Sheren Tsai
Date: Sept. 22, 2016
Agency: SEC
Authority: Civil
Forum: S.D.N.Y.
Event: Consent Judgments Against Defendants

Summary: The SEC alleged that Tsai, who then worked at an investment advisory firm, traded in shares of ADT Corp. on the basis of material nonpublic information that she received from her romantic partner, Whelehan. According to the complaint, Whelehan, who was a senior associate at a different investment advisory firm at the time, provided Tsai with inside information that he obtained in the course of his employment regarding an impending acquisition of ADT by funds managed by affiliates of Apollo Global Management, LLC. After receiving the nonpublic information from Whelehan, Tsai purchased 1,500 shares of ADT stock. On that same day, Tsai also recommended to a close relative to purchase ADT stock. Later that day, Tsai's close relative purchased 343 shares of ADT stock. Whelehan did not trade in ADT stock. According to the complaint, when ADT's acquisition was announced on Feb. 16, 2016, its stock price rose 48 percent, resulting in Tsai and her close relative generating illicit profits of approximately $19,500 and $4,414, respectively.

Status: On Sept. 23, 2016, the court entered final consent judgments against both defendants. Whelehan was ordered to pay $23,914 in civil penalties and was enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Tsai was ordered to pay disgorgement and a civil penalty of $23,914 each. She was also enjoined from future violations.

In the Matter of Syed Hashim
Date: Sept. 26, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The SEC's order found that Vijay S. Rajan learned about an impending acquisition of the outstanding shares of Synageva BioPharm Corp. by Alexion Pharmaceuticals Inc. through his work as an information technology executive at Alexion. Ahead of the announcement of Alexion's acquisition of the outstanding shares of Synageva by Alexion, Rajan traded both Alexion and Synageva stock based on material nonpublic information concerning the transaction, reaping $10,032.10 in illicit profits. Rajan also tipped his friend and former colleague, Hashim. Hashim purchased Synageva stock prior to the announcement and earned over $35,747.91 in profits.

Status: Hashim agreed to pay disgorgement of $35,747.91, prejudgment interest of $1,147.86 and a civil penalty in the amount of $35,747.91.

SEC v. Coppero del Valle, et al.
Date: Sept. 28, 2016
Agency: SEC
Authority: Civil
Forum: S.D.N.Y.
Event: Civil Complaint Filed; Judgment against Coppero del Valle

Summary: The SEC alleged that Nino Coppero del Valle, a Peruvian lawyer who worked at HudBay Minerals Inc. (a Canadian mining company) as part of a business team responsible for HudBay's Peruvian mine operations, tipped two friends about HudBay's upcoming tender offer to acquire Augusta Resource Corporation, a NYSE-listed copper mining business. Specifically, Coppero passed the information to Julio Antonio Castro Roca, a close friend and a fellow attorney. Coppero and Castro allegedly traded on the material nonpublic information through a brokerage account held by a British Virgin Islands shell company in an attempt to avoid having the trades traced back to them. According to the SEC's complaint, they earned over $112,000 after the tender offer was announced. Coppero also passed the information to Ricardo Carrion, a business acquaintance who worked at a Peruvian brokerage firm, when seeking his advice about making illegal trades untraceable. Carrion caused the brokerage firm to purchase Augusta shares ahead of the tender offer's public announcement. Carrion's brokerage firm obtained $73,000 in alleged profits. The SEC's complaint seeks disgorgement of ill-gotten gains plus interest and penalties among other things.

Status: On Nov. 30, 2016, the court entered a consent judgment against Coppero del Valle, permanently enjoining him from future securities violations. Coppero del Valle may be liable to pay disgorgement of ill-gotten gains, prejudgment interest and a civil penalty upon a motion by the SEC and a decision as to the appropriate amounts by the court.

SEC v. Gadimian; United States v. Gadimian
Date: Sept. 29, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: D. Mass.
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: The SEC charged the former senior director of regulatory affairs for Puma Biotechnology with insider trading ahead of the company's new announcements about its drug to treat breast cancer. More specifically, the SEC alleged that Robert Gadimian traded on material nonpublic information relating to two clinical trials for Puma's drug. Gadimian allegedly bought shares and short-term call options after learning about positive developments for the drug and profited more than $1.1 million after the results became public. The DOJ announced parallel criminal charges against Gadimian.

Status: On Dec. 5, 2016, the SEC's case against Gadimian was stayed pending resolution of the DOJ's criminal case against Gadimian. The DOJ's criminal case against Gadimian remains ongoing.

SEC v. Cope; United States v. Cope
Date: Oct. 21, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: U.S. District Court for the Middle District of Tennessee (M.D. Tenn.)
Event: Parallel Civil and Criminal Proceedings Initiated; Plea Agreement Entered into by Cope

Summary: The SEC charged James C. Cope, a Tennessee-based lawyer who served on the executive committee of the board of directors of Pinnacle Financial Partners (a Nashville-based bank holding company), with insider trading based on nonpublic information he learned about an impending merger. The SEC alleged that Cope obtained more than $56,000 in ill-gotten gains by purchasing securities in Pinnacle's unannounced acquisition target, Avenue Financial Holdings (also a bank holding company), prior to the banks' joint public announcement later that month. According to the SEC's complaint, Cope learned confidential details about the planned merger during a board executive committee meeting in January 2016, and proceeded to place his first order to purchase Avenue Financial stock while that executive committee meeting was still in progress. Cope allegedly placed four more orders in Avenue Financial within an hour after the meeting had ended. The DOJ filed a parallel criminal case against Cope.

Status: On Dec. 13, 2016, Cope entered into a plea agreement with the DOJ. Cope pled guilty to insider trading and was sentenced to two years of probation and nine months of supervised home detention. Cope was also ordered to pay a $100 assessment and a fine of $200,000. The SEC's case against Cope appears to be ongoing.

SEC v. Ly; United States v. Ly
Date: Dec. 5, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: W.D. Wash.
Event: Parallel Civil and Criminal Proceedings Initiated; Civil Settlement Reached

Summary: The SEC alleged that Ly, who worked in Expedia's corporate IT services department, illegally traded in advance of nine company news announcements from 2013 to 2016 and generated nearly $350,000 in profits. According to the SEC's complaint, Ly exploited administrative access privileges designated for IT personnel to remotely hack into computers and email accounts of senior executives and review confidential documents and pre-earnings reports. Ly particularly targeted information prepared by Expedia's head of investor relations summarizing Expedia's yet-to-be-announced earnings and describing how the market could react to particular announcements. Ly allegedly used this nonpublic information to make highly profitable trades in Expedia securities ahead of the announcements. In a parallel action, the DOJ announced criminal charges against Ly.

Status: To settle the charges in the SEC's complaint, Ly agreed to pay disgorgement of $348,515.72 plus interest of $27,391.30, for a total of $375,907.02. The DOJ's criminal proceeding against Ly appears to be ongoing.

In the Matter of Jo Ann Myers and Hollis Pickett
Date: Dec. 16, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The SEC alleged that Myers, the wife of an officer of Alimera Sciences Inc., a Georgia-based biopharmaceutical company, became aware of material nonpublic information that she misappropriated from her husband and subsequently used the information to tip her son, father and stepmother, leading her son and father to sell a total of 24,440 shares of Alimera stock ahead of a negative news announcement that the U.S. Food and Drug Administration would not approve Alimera's new drug application for Illuvien, a drug used to treat diabetes. Myers' actions allegedly resulted in her son and father avoiding combined losses of $31,661.20. The SEC further alleged that Myers tipped the same relatives ahead of a positive news announcement that Alimera and the FDA had made significant progress in addressing issues related to the FDA's approval of Illuvien. As a result of the tip, Myers' son and father purchased a total of 5,444 shares of Alimera stock, generating combined profits of $8,744.49. Ahead of this same positive news announcement and aware of material nonpublic information misappropriated from Myers' husband, Pickett also allegedly purchased and directed his son to purchase Alimera stock, resulting in profits totaling $8,656.50.

Status: On Dec. 16, 2016 Myers agreed to pay disgorgement of $40,405.69, prejudgment interest of $2,762.36 and a civil penalty of $40,405.69. Pickett agreed to disgorge $8,656.50, pay prejudgment interest of $555.07 and pay a penalty of $8,656.50.

SEC v. Hong et al.; United States v. Hong et al.
Date: Dec. 27, 2016
Agency: SEC and DOJ
Authority: Joint Civil/Criminal
Forum: S.D.N.Y.
Event: Parallel Civil and Criminal Proceedings Initiated

Summary: The SEC alleged that Iat Hong, Bo Zheng and Hung Chin executed a scheme to hack into the networks of two prominent New York-based law firms and steal confidential information pertaining to firm clients that were considering mergers or acquisitions. The alleged hacking incidents involved installing malware on the law firms' networks, compromising accounts that enabled access to all email accounts at the firms, and copying and transmitting dozens of gigabytes of emails to remote internet locations. Once Hong, Zheng and Chin obtained accessed to the law firms' networks, they targeted email accounts of law firm partners who worked on high-profile mergers and acquisitions transactions. According to the SEC's complaint, Hong, Zheng and Chin subsequently used the stolen confidential information contained in the emails to purchase shares in at least three public companies ahead of public announcements about entering into merger agreements. Hong, Zheng and Chin then sold the shares they purchased after the acquisitions were publicly announced, garnering over $4 million in profits. In each case, one of the two law firms represented either the target or a contemplated or actual acquirer in the transaction. In a parallel action, the DOJ brought criminal charges against Hong, Zheng and Chin.

Status: Both cases remain ongoing.

B. Important Rulings/Resolutions

1. Cases Discussing *Newman* and the Personal Benefit Standard

United States v. Riley
Date: Jan. 14, 2016
Agency: DOJ
Authority: Criminal
Forum: U.S. Court of Appeals for the Second Circuit (2d Cir.)
Event: Riley's Challenge to Conviction Rejected

Summary: The government alleged that former vice president of Foundry Networks Inc., David Riley, gave nonpublic information about his company to investment advisory analyst, Matthew Teeple, who advised a group of hedge funds that made more than $16 million in profits and avoided more than $11 million in losses. Teeple also gave the information to pension investment officer, John Johnson, who earned over $136,000 in illicit profits.

Status: On Oct. 2, 2014, a jury found Riley guilty of one count of conspiracy and two counts of securities fraud. The jury deadlocked on a third count of securities fraud. On March 3, 2015, the court denied Riley's motion for a new trial based on the decision in *Newman*. The court ruled that the government had proven that Riley obtained "concrete" benefits in exchange for his tips. Those benefits included investment advice, help with a side business and assistance in securing a new job. Riley was sentenced to 78 months in prison on April 27, 2015. On Jan. 14, 2016, the Second Circuit rejected an appeal by Riley in which Riley challenged the sufficiency of the evidence supporting his conviction (particularly in the wake of *Newman*), several evidentiary rulings, the jury instructions and the calculation of his Guidelines range. *See United States v. Riley*, 638 Fed. Appx. 56 (2d Circuit 2016). The court noted that Riley, the tipper, did in fact receive an immediate pecuniary and tangible benefit in the form of investment advice and profitable purchases of stock. These benefits satisfied the personal benefit standard set forth in *Newman*. *Id.* at 61.

United States v. Smith
Date: March 25, 2016
Agency: DOJ
Authority: Criminal
Forum: S.D.N.Y.
Event: Smith's Petition to Correct Original Judgment Denied

Summary: The government alleged that Smith, while working as a portfolio manager or analyst at the Galleon Group, obtained material nonpublic information from various insiders at publicly traded companies and financial services firms. The government alleged that Smith also shared this information with others at Galleon and used the information to trade securities in accounts affiliated with Galleon.

Status: On Jan. 26, 2011, Smith pled guilty to one count of conspiracy to commit securities fraud and one count of securities fraud. On Dec. 7, 2015, Smith filed a petition for a writ of error coram nobis. Smith argued that he could not have violated insider trading law as characterized in *United States v. Newman* given the lack of evidence in his case of a quid pro quo or any consequential benefit received by a tipper in exchange for insider information. The court, however, denied Smith's request, finding that the tips Smith received involved a personal benefit which met the *Newman* standard. *See United States v. Smith*, 11 Cr. 0079 (JSR), 2016 WL 1248961, at *3 (S.D.N.Y. Mar. 25, 2016). Because one of the insiders in Smith's case would receive a consulting fee (with the money directed to a third party controlled by the insider) in exchange for the insider information, the court found that Smith's arrangement easily met the *Newman* standard of an objective, consequential exchange providing a gain of pecuniary or similarly valuable nature. *Id.*

Barnetson v. United States
Date: May 6, 2016
Agency: DOJ
Authority: Criminal
Forum: S.D.N.Y.
Event: Barnetson's Petition to Correct Original Judgment Denied

Summary: Barnetson was charged with conspiracy to commit wire fraud and securities fraud. On Feb. 17, 2012, Barnetson pled guilty and on June 25, 2013, he was sentenced to a one-year term of probation.

Status: On Dec. 18, 2015, Barnetson petitioned the court for a writ of coram nobis, arguing that the factual basis for his guilty plea was insufficient under *United States v. Newman*. In particular, Barnetson argued that his guilty plea did not meet *Newman's* personal benefit requirement because he did not specifically allocute to receiving a personal benefit. He also argued that the confidential information he received was of no personal benefit to him, and the other gifts were de minimis. The court denied Barnetson's request, finding that the expensive meals, shipments of food and confidential information about other technology companies and industry trends that Barnetson received did in fact satisfy the standard set forth in *Newman*. According to the court, expensive meals and shipments of food are benefits of a pecuniary or similarly valuable nature.

SEC v. Spivak, et al.
Date: July 12, 2016
Agency: SEC
Authority: Civil
Forum: D. Mass.
Event: Spivak's Motion to Dismiss Denied

Summary: The SEC alleged that Vlad Spivak traded on tips in advance of an unannounced acquisition of a dental practice management company. He allegedly received the tips from former Wells Fargo Bank NA financial analyst Shirmila Doddi, with whom he was in a romantic relationship. After the transaction was announced, Spivak realized profits of over $220,000.

Status: On Jan. 20, 2016, the court entered a consent judgment as to Doddi. She was enjoined from violating Section 10(b) of the Exchange Act, with disgorgement and a civil penalty to be determined at a later date. Spivak moved to dismiss the SEC's complaint, contending that the complaint failed to allege that Doddi received an objective, pecuniary personal benefit from tipping him. On July 12, 2016, the court denied Spivak's motion to dismiss, finding that the complaint sufficiently pled that Doddi received a personal benefit by tipping Spivak and thus breached her fiduciary duty to her employer. The court found that Spivak's relationship with Doddi was close enough (given its romantic nature) to satisfy the standards for insider trading under both First Circuit precedent and the Second Circuit's *Newman* decision. *See SEC v. Spivak*, No. 15-13704-FDS, 2016 WL 3774196, at *6-12 (D. Mass. July 12, 2016).

United States v. McPhail
Date: July 26, 2016
Agency: DOJ
Authority: Criminal
Forum: U.S. Court of Appeals for the First Circuit (1st Cir.)
Event: McPhail's Motion to Dismiss Denied; McPhail's Conviction Upheld

Summary: The government alleged that from July 2009 through April 2011, Eric McPhail misappropriated confidential information regarding American Superconductor Corporation that he learned from a close friend and golfing buddy who was an executive with the company by providing it to his friends, Douglas A. Parigian, John J. Gilmartin, Douglas Clapp, James A. Drohen, John C. Drohen and Jamie A. Meadows, who then made a total of more than $554,000 of illegal profits by trading on the information regarding expected earnings, contracts, and other corporate developments. The DOJ brought criminal charges against McPhail for his role in the illegal trading.

Status: In March 2015, McPhail moved to dismiss the criminal indictment against him, and the court denied the motion on May 12, 2015. On June 16, 2015, a jury convicted McPhail of securities fraud and conspiracy to commit securities fraud. On Sept. 17, 2015, he was sentenced to 18 months in prison. He appealed his conviction to the First Circuit. On July 26, 2016, the First Circuit affirmed his conviction, holding that evidence McPhail expected to receive dinners, wine, a spa visit, $3,000 and general gratitude from his tippees was sufficient to show that McPhail anticipated receiving a personal benefit in return for the tips. *United States v. McPhail*, 831 F.3d 1, 11 (1st Cir. 2016).

SEC v. Andrade
Date: Nov. 1, 2016
Agency: SEC
Authority: Civil
Forum: U.S. District Court for the District of Rhode Island (D. R.I.)
Event: Defendants' Motion to Dismiss Denied; Judgments Entered Against Defendants

Summary: The SEC alleged that printing business owner Anthony Andrade tipped three of his friends and business associates — real estate investor Robert Kielbasa, printing business co-owner Fred Goldwyn, and attorney Kenneth Rampino — prior to the announcement of the acquisition of Bancorp of Rhode Island Inc., for which Andrade was a director, at a premium to its stock price, and that the three friends then traded on the information and made more than $80,000 in illicit profits.

Status: In June 2015, prior to the announcement of the SEC's complaint, Kielbasa and Goldwyn entered into consent agreements whereby Kielbasa agreed to a civil penalty and disgorgement of $39,645 each and Goldwyn agreed to a civil penalty and disgorgement of $23,565 each. Once the complaint was filed, Andrade and Rampino moved to dismiss, alleging that the SEC had failed to allege facts showing the requisite relationship and benefit to the tipper described by the Second Circuit in *Newman*. However, on Jan. 15, 2016, the court denied their motions, holding that the SEC had sufficiently pled personal benefit to the tipper. *See SEC v. Andrade*, 157 F. Supp. 3d 124 (D. R.I. 2016). The court noted that even if the SEC had to prove a potential gain of a pecuniary or similarly valuable nature, the SEC's complaint stated a plausible claim given the SEC's allegation that Andrade had personally went with one of his property service vendors to Rampino's home to help resolve a septic issue for Rampino. *Id.* at 129. According to the court, such an allegation made it highly plausible that Rampino and Andrade had the type of relationship where there was a give and take that had the potential for pecuniary gain. *Id.* On Nov. 1, 2016, the federal district court in Rhode Island entered a final judgment against Andrade, ordering him to pay $150,000. Andrade consented to the judgment which also permanently enjoined him from future violations of Section 10(b) of the

Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The judgment also ordered Rampino to pay a civil penalty of $150,000 and barred Rampino from serving as an officer or director of a public company.

SEC v. Payton
Date: Nov. 28, 2016
Agency: SEC
Authority: Civil
Forum: S.D.N.Y.
Event: Defendants' Motions for Judgment as a Matter of Law or a New Trial Dismissed

Summary: The SEC brought an action against Payton and Durant, alleging that they were remote tippees who traded on inside information of a planned corporate acquisition. More specifically, the SEC alleged that Dallas, a lawyer working for IBM's outside counsel, learned in the course of his work that IBM planned to acquire SPSS Inc. ("SPSS"). Dallas subsequently told his friend, Martin, about the SPSS acquisition. Martin tipped his friend and roommate Conradt, and Conradt in turn tipped two of his coworkers, Payton and Durant, who traded on the information.

Status: After Payton and Durant were found civilly liable, they filed a motion for judgment as a matter of law or a new trial, and sought reconsideration of the amount and payment terms of their respective civil penalties. In addition to a host of other arguments, the defendants contended that there was insufficient evidence to find that they knew or had reason to know that Martin disclosed the SPSS information in exchange for a personal benefit. Noting that Payton and Durant neither asked Conradt how his roommate came by the information nor why his roommate shared it with them, the court determined that Payton and Durant's actions were classic examples of conscious disregard. *See SEC v. Payton*, 14 Civ. 4644, 2016 WL 6948685, at *5 (S.D.N.Y. Nov. 28, 2016). According to the court, the defendants' conduct after the SPSS acquisition was announced supported an inference that they generally understood, but had consciously avoided learning, the means by which the confidential SPSS information had been obtained. *Id.* In short, the court found that there was plentiful evidence from which the jury could have concluded that defendants deliberately chose not to ask Conradt questions about the circumstances in which Martin told him about the confidential SPSS information, because they understood that there was a high probability that they would have learned of Martin's personal benefit. *Id.* According to the court, insider trading law could not be circumvented so easily. Finding both this argument and the defendants' remaining arguments lacking, the court dismissed the defendants' motion for judgment as a matter of law or a new trial. *Id.*

Salman v. United States
Date: Dec. 6, 2016
Agency: DOJ
Authority: Criminal
Forum: Supreme Court of the United States
Event: Salman's Conviction Upheld

Summary: The government alleged that Citigroup investment banker Maher Kara passed inside information regarding Biosite Inc.'s impending acquisition by Beckman Coulter Inc. to his brother, Mounir ("Michael") Kara, who provided it to defendant Bassam Yacoub Salman (the Karas' brother-in-law), who in turn passed it to his brother-in-law, Karim Bayyouk, who traded on it and shared some of the profits with Salman. Michael Kara also allegedly tipped Emile Jilwan, Joseph Azar and Zahi Haddad. Azar and Haddad were not prosecuted criminally.

Status: On Sept. 30, 2013, Salman was convicted after a jury trial. On April 9, 2014, he was sentenced to 36 months imprisonment and ordered to pay $738,539.42 in restitution. Salman appealed, and the Ninth Circuit affirmed on July 6, 2015. On Jan. 19, 2016, the U.S. Supreme Court agreed to hear Salman's appeal. On Dec. 6, 2016 the Supreme Court unanimously upheld Salman's conviction. The Court reaffirmed the personal benefit test articulated in *Dirks v. SEC*, 463 U.S. 646 (1983), and held that the Ninth Circuit had properly applied *Dirks* in concluding that a tipper benefits personally by making a gift of confidential information to a trading relative or friend. The Court went on to explain that "to the extent the Second Circuit [in *Newman*] held that the tipper must also receive something of a pecuniary or similarly valuable nature in exchange for a gift to family or friends," "this requirement is inconsistent with *Dirks*." Importantly, however, the Supreme Court's decision in Salman does not cast doubt on the Second Circuit's reversal of the two hedge fund traders' convictions in *Newman*. That is, the Supreme Court's decision refrained from answering what personal benefit is required for tipper-tippee liability outside the factual scenario presented by *Salman*. In *Salman*, the Supreme Court did not address the government's argument that a gift of confidential information to anyone, not just a family member or friend, should be sufficient to prove insider trading. Accordingly, a gift made to a complete stranger, a mere acquaintance or a colleague may require a finding of something of value to satisfy the personal benefit element. Further, arguably the most consequential holding of *Newman* — that a remote tippee must know that the tipper received a personal benefit in exchange for the tip — remains unchanged. The Court made it clear that *Salman* does not implicate that holding of *Newman*.

2. Failure to Supervise Cases

SEC v. Steven A. Cohen
Date: Jan. 8, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The SEC brought failure to supervise charges against SAC Capital Advisors LLC founder Steven A. Cohen for his alleged failure to prevent SAC employees Mathew Martoma and Michael Steinberg from engaging in insider trading that allegedly produced profits and avoided losses totaling $275 million in SAC-advised hedge funds. The SEC's order found that Cohen failed to supervise former portfolio manager Mathew Martoma and that Cohen ignored red flags that should have caused him to take prompt action to determine whether Martoma was engaging in insider trading. Instead, Cohen permitted Martoma to make trades based on material nonpublic information and Cohen placed similar trades in accounts that Cohen controlled.

Status: On Jan. 8, 2016, the SEC and Cohen reached a settlement prohibiting Cohen from supervising funds that manage outside money until 2018. Cohen is barred from serving in a supervisory role at any broker, dealer or investment adviser until Dec. 31, 2017 (until 2018). Under the terms of the settlement Cohen's family office firms are also required to retain an independent consultant and adopt all of the independent consultant's recommendations.

In re Vincent Sbarra
Date: Jan. 20, 2016
Agency: FINRA
Authority: Civil
Forum: FINRA Proceeding
Event: Settlement Reached

Summary: FINRA alleged that Sbarra, the president, CCO and designated supervisory principal of StreetCapital (a FINRA registered broker-dealer), failed to establish and maintain reasonable Written Supervisory Procedures ("WSPs") to enable the firm to monitor for and detect insider trading. Sbarra allegedly failed to include in the firm's WSPs any guidance as to the circumstances under which the securities of an issuer with whom the firm had entered into an investment banking agreement would be placed on a Restricted List. Subsequently, a certain issuer was not timely placed on the firm's Restricted List and a member of the firm traded in the securities of that particular issuer.

Status: On Jan. 20, 2016, FINRA announced a settlement with Sbarra pursuant to a Letter of Acceptance, Waiver and Consent in which FINRA found that Sbarra had violated NASD Rule 3010(b) and FINRA Rule 2010 by failing to establish and maintain reasonable WSPs to monitor for and detect insider trading. Accordingly, Sbarra agreed to a fine of $10,000 and a 90-day suspension from association with any FINRA regulated broker-dealer in a principal capacity.

In the Matter of Artis Capital Management, L.P. and Harden
Date: Oct. 13, 2016
Agency: SEC
Authority: Civil
Forum: SEC Administrative Proceeding
Event: Settled Administrative Order

Summary: The SEC's order found that Artis Capital Management failed to supervise Matthew Teeple, an Artis employee who procured material nonpublic information from an insider at a public company. Artis also failed to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information consistent with the nature of its business. More specifically, on at least two occasions in 2008, Teeple obtained material nonpublic information about the publicly traded company Foundry Networks Inc. from Riley, an employee of Foundry. First, on July 16 2008, Riley allegedly told Teeple that Foundry had agreed to be acquired by Brocade for approximately $3 billion and that such acquisition would be announced on July 21, 2008. Teeple allegedly conveyed the information to Harden, Teeple's supervisor, but Artis nevertheless began buying Foundry stock and call options, and selling short Foundry put options — trades that reflected a positive view of the stock's future price movement. Five days later, when news broke of Brocade's agreement to acquire Foundry, Foundry's stock price increased significantly, generating profits and avoiding losses of over $21 million for Artis' hedge funds. According to the SEC, despite these facts, Harden did not inquire whether Teeple received material nonpublic information about the merger or whether his views about Foundry securities were based on such information. Three months later, Teeple obtained material nonpublic information concerning Foundry's ability to close the previously announced acquisition. Specifically, Riley informed Teeple that there were problems concerning the completion of the acquisition deal. Once again, Teeple conveyed the information to Harden. Artis, however, subsequently decreased its hedge funds' bullish position in Foundry stock. When Foundry announced a delay in the process, Foundry's stock dropped by more than 25 percent. However, because Artis had sold Foundry equity positions based on Teeple's recommendation, Artis' hedge funds avoided trading losses of approximately $4.3 million. On both trading occasions, notwithstanding the information provided by Teeple, Harden neither questioned Teeple about the source of his information nor asked the chief compliance officer (CCO) or any other colleagues at Artis to look into the matter. Artis and Harden also failed to increase their oversight of Teeple's information-gathering activities. As a result of the trades, Artis hedge funds profited and avoid losses totaling approximately $25.3 million. Artis also obtained additional profits of approximately $5.16 million attributable to this trading in Foundry securities. In addition, although Artis had written policies and procedures that prohibited the receipt and use of material, nonpublic information, the firm failed to adopt policies or procedures to address the particular risk presented by Teeple's frequent interaction with contacts at public companies in whose securities Artis traded. For example, Artis did not require Teeple (who worked outside of Artis' offices) to report his interactions with employees of public companies, and it did not have policies to track or monitor these interactions. Furthermore, Artis failed to appropriately enforce its policies and procedures concerning the receipt and use of material nonpublic information. During the relevant period, Artis had a written policy that required employees to bring to the attention of the firm's CCO any potential material nonpublic information received from any source. During 2008, despite at least two instances in which Teeple provided Artis with information regarding Foundry prior to material announcements by the company, these events were not brought to the attention of the CCO.

Status: Artis Capital agreed to settle the SEC's charges by agreeing to pay disgorgement of $5.61 million plus interest of $1.13 milion and a penalty of $2.58 mllion. Harden agreed to pay a $130,000 penalty and agreed to a 12-month suspension from the securities industry.

In re MSC-BD LLC
Date: May 2, 2016
Agency: FINRA
Authority: Civil
Forum: FINRA Proceeding
Event: Settlement Reached

Summary: FINRA alleged, among other claims, that MSC-BD failed to establish a supervisory system and written supervisory procedures ("WSPs") reasonably designed to detect and prevent one of its representatives from causing the firm to participate in unlawful securities transactions. FINRA further alleged that MSC-BD failed to enforce an unwritten policy of placing issuer clients of the representative's Finder Platform (a platform through which the representative would find potential investors for microcap issuers) on MSC-BD's Restricted List upon the execution of consulting agreements between the issuer client and the finder platform. As a result, MSC-BD allegedly failed to maintain current restricted lists with respect to the issuer clients of the Finder Platform.

Status: On May 2, 2016, FINRA announced a settlement with MSC-BD pursuant to a letter of Acceptance, Waiver and Consent in which FINRA found that MSC-BD had violated NASD Rule 3010 by failing to establish the necessary procedures to detect unlawful securities violations and by failing to enforce a policy of placing issuer clients of the Finder Platform on the firm's Restricted List. Under the terms of the settlement, MSC-BD agreed to the imposition of a censure and a fine of $15,000.

3. Case in Which the Government's Motion to Stay Civil Discovery Was Denied

United States v. Davis, et al.
Date: Aug. 26, 2016
Agency: DOJ
Authority: Criminal
Forum: S.D.N.Y.
Event: Government's Motion to Stay Civil Proceedings Denied

Summary: The SEC charged William "Billy" Walters, a sports bettor, investor, and the CEO and chairman of the Walters Group, and former Dean Foods director Thomas Davis with insider trading. They allegedly operated a scheme in which Davis would leak material nonpublic information regarding Dean Foods to Walters, who in turn traded on it and shared it with the professional golfer Phil Mickelson, whom the SEC named as a relief defendant. According to the SEC's complaint, Walters was owed money by then-Dean Foods Company board member Davis. Davis regularly shared inside information about Dean Foods with Walters in advance of market-moving events, using prepaid cell phones and other methods in an effort to avoid detection. Among the various efforts made to avoid detection, Walters instructed Davis to refer to Dean Foods as the "Dallas Cowboys" during conversations. Furthermore, while Walters made millions of dollars insider trading using the confidential information, he provided Davis with almost $1 million and other benefits to help Davis address his financial debts. In addition, the SEC's complaint alleged that professional golfer Phil Mickelson traded Dean Foods' securities at Walters' urging and then used his almost $1 million of trading profits to help repay his own gambling debt to Walters. As a result of this scheme and based on the illegal tips received from Davis, Walters allegedly made $40 million. In a parallel action, the DOJ announced criminal charges against Walters and Davis.

Status: In the criminal case against Walters, the government requested a completed stay of discovery in the SEC's enforcement action against Walters. On Aug. 26, 2016, however, the court denied the government's request. According to the court, the government's evidence in support of the notion that Walters would engage in witness tampering was ambiguous and insufficient to justify a stay of the action. The court also noted that Walters is funding his defense personally and that the cost of doing so will increase if his attorneys cannot work on both cases at the same time. The court also cited Walters' business ties to the gaming industry and stated that tight industry regulations make the pending cases especially damaging and have caused business partners of Walters to sever ties with him. Accordingly, the court said that discovery could proceed usefully during the prosecution of the criminal case.

4. Insider Trading Developments in the United Kingdom

FCA v. Dodgson et al.
Date: May 9, 2016
Agency: FCA
Authority: Criminal
Forum: Southwark Crown Court
Event: Dodgson and Hind Convicted

Summary: The FCA alleged that Martyn Dodgson, the former managing director of Deutsche Bank and a former broker at Lehman Brothers, and Andrew (Grant) Harrison, a former Panmure Gordon corporate broker, passed inside information gleaned from their work on six stocks, including nCipher and BskyB, to Andrew Hind, an accountant and former finance director at Arcadia Group's Topshop, who then asked Iraj Parvizi and Ben Anderson (both day traders) to trade on his behalf. According to the FCA, Dodgson and Hind subsequently split the profits and generated £7.4 million in ill-gotten gains. The men employed military-grade encryption devices, pay-as-you-go mobile phones and Panamanian bank accounts to cover up the insider trading.

Status: On May 9, 2016, Dodgson and Hind were found guilty of insider trading. Dodgson was sentenced to four and a half years in prison and Hind was sentenced to three and a half years in prison.

FCA v. Lyttleton
Date: Dec. 21, 2016
Agency: FCA
Authority: Criminal
Forum: Southwark Crown Court
Event: Lyttleton Convicted

Summary: According to the FCA, Lyttleton, a former Blackrock executive and investment manager, bought 170,000 shares in Encore Oil PLC in early October 2011, profiting from early knowledge of the company's takeover by Premier Oil PLC. Lyttleton then purchased 120 call options for Cairn Energy PLC on Nov. 4, 2011, trading on inside knowledge of an oil discovery the company had made in Greenland. According to the FCA, Lyttleton used a complex web of offshore accounts and companies to disguise what he had done, using a Panama-registered company beneficially owned by his wife to book the trades. Lyttleton booked £45,000 profit on the first trade and made a loss of £10,000 on the second trade when Cairn's oil discovery was found to be uncommercial.

Status: On Dec. 21, 2016, Lyttleton was sentenced to 12 months in prison. Lyttleton was also ordered to pay a £149,861 ($185,513) confiscation order and £83,225 in court costs within 28 days.

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