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WHITE PAPER

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Insider Trading Enforcement in 2022

Each year, the Department of Justice ("DOJ"), the Securities and Exchange Commission ("SEC"), and in recent years, the Commodity Futures Trading Commission ("CFTC") dedicate substantial resources to investigating and prosecuting illegal insider trading across U.S. securities and commodities markets. This past year, we have observed significant developments and emerging trends in the enforcement of insider trading laws and regulations. For example:

- 10b5-1 trading plans are under scrutiny and subject to new rules;
- The DOJ and the SEC are applying traditional insider trading concepts to digital assets;
- The Second Circuit Court of Appeals rejected the DOJ's arguments in *Blaszczak II*; and
- The SEC is pursuing novel "shadow trading" legal theories of insider trading liability.

This *White Paper* analyzes these developments and trends. In addition, at the end of this *White Paper,* we have summarized the federal insider trading enforcement actions filed in 2022.

TABLE OF CONTENTS

LEGAL DEVELOPMENTS IN 2022

Amendments to Rule 10b5-1 Trading Plans & Disclosures

On December 14, 2022, the SEC adopted new requirements for so-called "10b5-1 plans" that act as an affirmative defense to insider trading allegations for senior executives.[1] Given the growth of equity compensation as a portion of total executive compensation in recent decades, companies and executives rely on 10b5-1 plans to sell company securities in a manner designed to prevent insider trading. For almost as long as 10b5-1 plans have existed, regulators and industry analysts have expressed concern that corporate insiders have manipulated the rules to their benefit. Specifically, these concerns related to insiders (i) entering into multiple, overlapping trading plans; (ii) entering into plans that become effective soon after adoption and in advance of corporate news; and (iii) opportunistically entering into plans contemplating a single transaction. The new rules come after a year-long review by the SEC and a 10b5-1 trading sweep from the DOJ and the SEC earlier in 2022.

Exchange Act Rule 10b5-1 provides issuers and corporate insiders with an affirmative defense to insider trading claims if a person trades—subject to certain conditions—pursuant to a binding contract, an instruction to another to execute the trade for the person's account, or a written plan, in each case adopted in good faith and when the person is not aware of material nonpublic information ("MNPI"). The new rules impose a variety of new conditions on trading plans intended to satisfy the affirmative defense offered by Rule 10b5-1. Among other new requirements, plans for officers and directors may not become effective until the later of (i) two business days after the issuer files a Form 10-Q or 10-K or (ii) 90 days. At the time of adoption, directors and officers must certify that they are not aware of MNPI related to the issuer and that they are adopting the plan in good faith. And no person except an issuer can have multiple, temporally overlapping plans, though the rules exempt qualified "sell-to-cover" transactions to satisfy tax withholding arising from equity award vesting where the individual does not exercise timing control.

The final rules also impose on issuers more frequent and comprehensive disclosure requirements related to directors' and officers' use of Rule 10b5-1 plans, issuer insider trading policies, and issuer grants of certain equity compensation awards. For more information regarding the new plan requirements and the expanded disclosure requirements, please see Jones Day's *White Paper*, "SEC Adopts Final Rules Regarding Rule 10b5-1 Trading Plans and Related Disclosures."

United States v. Blaszczak

In December 2022, the Second Circuit issued the latest decision in *United States v. Blaszczak* ("*Blaszczak II*"),[2] an insider trading prosecution first filed in 2017. The *Blaszczak* case was based on allegations that an employee at the Centers for Medicare & Medicaid Services ("CMS") provided a hedge fund consultant with confidential government information concerning proposed changes to Medicare and Medicaid reimbursement rates. This consultant allegedly tipped two employees at a hedge fund, which then profitably traded on the confidential government information. The government charged the CMS employee, the consultant, and the two hedge fund employees with various crimes, including insider trading under both Title 15 and Title 18 securities fraud statutes. At trial, the jury acquitted the defendants on all charges brought under Title 15 but convicted three of the defendants for insider trading under Title 18. The split verdict is likely explained by the trial judge's instructions to the jury, which required the jury to find the personal benefit test was met for the Title 15 securities fraud charges but not the Title 18 securities fraud charges. The convictions were affirmed on appeal in *Blaszczak I*.[3]

The case returned to the Second Circuit Court of Appeals after the Supreme Court issued its decision in the "Bridgegate" case, *Kelly v. United States*.[4] In *Kelly*, the Court held that a government entity's regulatory decision (allegedly allocating traffic lanes to cause a politically motivated traffic jam) was not money or property under the wire fraud statute.[5] The question before the Second Circuit in *Blaszczak II* was whether CMS's confidential information concerning reimbursement rates was a regulatory interest akin to *Kelly*, or a property interest akin to the prepublication business information in *Carpenter v. United States*.[6] In a 2-1 decision, the *Blaszczak II* panel vacated all the defendants' insider trading convictions under the Title 18 securities fraud statute, holding that, in light of *Kelly*, the conduct at issue was "regulatory in character" and, therefore, not a thing of value to CMS that could be converted unlawfully.[7] The majority distinguished between a commercial entity's information that is its "stock in trade" and government regulatory information.[8]

Blaszczak II limits the government's ability to bring Title 18 fraud charges in cases involving the misappropriation of government information. Cases could still be brought under the Title 15 securities fraud statutes in such instances, but the government would be required to meet the personal benefit test. Further, as noted by Judge Walker's concurrence, *Blaszczak II* does not address *Blaszczak I*'s holding that Title 18 securities fraud does not require proof that a tipper received a personal benefit.

Insider Trading Prohibition Act

From time to time, Congress has attempted to pass a federal insider trading statute, though none has been enacted. Most recently, the House of Representatives passed the Insider Trading Prohibition Act ("ITPA") in May 2021.[9] The ITPA attempts to codify certain aspects of current insider trading law, while also expanding liability. Among other changes, the ITPA focuses on whether MNPI was obtained wrongfully. Specifically, the ITPA prohibits the trading of securities while a person is aware of MNPI if that person knows, or has reason to know, that the information was obtained wrongfully, such as through theft, bribery, hacking, misappropriation, or a breach of fiduciary duty for a personal benefit. The act also prohibits tippers from providing MNPI to another person if (i) the other person trades or (ii) trading was foreseeable. The ITPA explicitly states that it is not necessary that either the tipper or tippee knows how the information was obtained or whether any personal benefit was paid or promised by or to any person in the chain of communication, "so long as the person trading … was aware, consciously avoided being aware, or recklessly disregarded that such information was wrongfully obtained, improperly used, or wrongfully communicated." In this way, the ITPA would eliminate the current judge-made requirement that a tippee know that the tipper received a personal benefit from tipping.

The 117th Congress ended in January 2023 without the Senate taking action on the ITPA. However, in January 2023, a bill was introduced in the House of Representatives that would prevent lawmakers and their spouses from holding or trading stocks while in office.[10] This comes after several federal agencies have turned their attention to creating stricter ethics rules on trading by agency employees.[11] These developments, in addition to the continued attention to insider trading generally and anomalies in insider trading jurisprudence, as discussed above, increase the likelihood the 118th and future Congresses will revisit legislation.

ENFORCEMENT TRENDS IN 2022

Digital Asset Insider Trading

In the absence of action by Congress, there is considerable uncertainty concerning the status of digital assets under the securities laws. In 2022, both the DOJ and the SEC brought their first two insider trading actions related to cryptocurrency and digital assets. In a nod to the lack of clarity surrounding whether these assets are securities subject to Exchange Act Section 10(b) and Rule 10b-5, the DOJ avoided the issue and charged defendants with wire fraud, money laundering, and conspiracy, none of which require the government to prove that the digital assets at issue are securities. In one of these cases, however, the SEC filed a parallel civil action and will be required to litigate whether certain digital assets listed on a digital asset marketplace are securities under the *Howey* test for determining whether an investment is an "investment contract."

***United States v. Chastain,* 22-cr-305-JMF (S.D.N.Y.):** In June 2022, the U.S. Attorney's Office for the Southern District of New York ("SDNY") announced the indictment of a former project manager at a non-fungible token ("NFT") platform for what it characterized as a scheme to commit insider trading in NFTs.[12] According to the indictment, the platform featured certain NFTs on its homepage, and the featured NFTs frequently rose in value as a result of this prominent placement on the platform. The defendant was allegedly responsible for selecting NFTs to feature on the homepage and used this role to his financial gain by purchasing certain NFTs prior to promoting them on the homepage and then selling them for profit after they were featured. The indictment charged one count each of wire fraud and money laundering. In October 2022, the court denied the defendant's motion to dismiss, but noted that, while SDNY referred to "insider trading" in its indictment and related public statement, the defendant was not charged with insider trading under the securities laws, and the label could be misleading. The SEC did not file an action related to this case.

United States v. Wahi, **1:22-cr-392 (S.D.N.Y.):** In July 2022, SDNY announced the indictment of a product manager at a cryptocurrency exchange, Coinbase. SDNY also indicted the product manager's brother and a friend for insider trading in various crypto assets based on tips received from the product manager.[13] According to the indictment, the product manager had access to MNPI regarding planned listings on the exchange of 25 crypto assets on 14 different occasions. Between June 2021 and April 2022, the project manager allegedly misappropriated that confidential information and tipped his brother and friend, so they could place profitable trades in those assets in advance of listing. The indictment charged each defendant with wire fraud and wire fraud conspiracy. The project manager pleaded guilty to two conspiracy counts in February 2023. His brother pleaded guilty to a conspiracy count in September 2022, and was sentenced to 10 months in prison. The friend is at large.

SEC v. Wahi**, 2:22-cv-01009 (W.D. Wash.):** In July 2022, the SEC filed a civil action against the same defendants based on substantially the same conduct.[14] The SEC alleged that this insider trading violated Section 10(b) of the Exchange Act and Rule 10b-5, thereunder. By charging under the Exchange Act, the SEC was required to parse the 25 crypto assets to take a position on which assets were securities and which were not. The SEC's complaint alleges that nine of the 25 crypto assets are securities under the *Howey* test.[15] The SEC seeks injunctions, penalties, disgorgement, and prejudgment interest. Critics of the SEC's approach—and the defendants, in their efforts to dismiss the claims—have decried the SEC's approach as exceeding the agency's statutory authority and as improper regulation by enforcement. In an April 2023 court filing, the parties stipulated to a two-month briefing extension to allow settlement discussions to continue. If the parties agree to settlement, the court will not need to resolve the defendants' motion to dismiss, leaving in place considerable uncertainty surrounding the application of the securities laws to digital assets.

We expect insider trading investigations and prosecutions in this space to continue. At the time the second of these indictments was unsealed, the U.S. Attorney for SDNY stated "[o]ur message with these charges is clear: fraud is fraud is fraud, whether it occurs on the blockchain or on Wall Street."[16] The SEC has demonstrated its commitment to this market by adding 20 additional positions to the Division of Enforcement's Crypto Assets and Cyber Unit, bringing the total headcount to 50.[17] The high-profile digital asset market fluctuations—the "crypto winter"—in the second half of 2022 caused substantial investor losses, and the DOJ, the SEC, and the CFTC will face pressure from politicians and the public to take actions to punish wrongdoers in this market. With respect to insider trading, the DOJ will have a straighter path because it can bring meaningful prosecutions without needing to prove that a particular cryptocurrency or digital asset is a security. The SEC's ability to charge insider trading involving digital assets likely depends on the outcome of its current litigation and legislative action by Congress.

Scrutiny of 10b5-1 Plan Trading

As discussed above, the SEC's new 10b5-1 rulemaking was driven at least in part by skepticism from various constituencies that some officers and directors were manipulating the current rules for personal gain. At the time the final rules were published, Chair Gary Gensler said the SEC has heard from many audiences that insiders have used the existing rules for personal gain.[18] In 2022, scrutiny of trading under the current rules continued to be a priority, and media reports suggest that, in the second half of the year, the DOJ and the SEC conducted a sweep of potentially suspicious trades tied to Rule 10b5-1 plans.[19]

In the Matter of Sheng Fu and Ming Xu**, Sec. Admin. Proceeding No. 3-21118, Release No. 95847:** On September 21, 2022, the SEC announced settled administrative proceedings against the CEO and former president of a China-based mobile internet company, alleging the two engaged in insider trading by entering into a purported 10b5-1 plan and selling company securities after becoming aware of a material decline in ad revenue from the company's largest partner but before that information was disclosed to the public.[20] The order charged the company's CEO with violations of the antifraud provisions of the Securities Act and the Exchange Act and the company's former president with violations of the antifraud provisions of the Exchange Act. Without admitting or denying the order's allegations, the CEO agreed to entry of a cease-and-desist order, an undertaking requiring a 120-day cooling-off period for any new Rule 10b5-1 plan, and paid a $556,580 penalty. The former president agreed to entry of a cease-and-desist order and paid a $200,254 penalty.

Issuers, officers, and directors, should continue to expect scrutiny of trades conducted pursuant to 10b5-1 plans in 2023 and beyond. When the new regulations come into effect, issuers and individuals should expect scrutiny both of executed trades and compliance with the new disclosure requirements.

"Shadow Trading"

Last year also saw a district court endorse the SEC's aggressive theory of insider trading that has come to be known as "shadow trading." In *SEC v. Panuwat*,[21] the SEC filed a litigated civil action against the former head of business development at a biotechnology company, alleging that he engaged in insider trading in advance of the company's announcement it was being acquired by a pharmaceutical company.[22] Unlike a traditional insider trading case, the executive did not buy or sell securities of the target or the acquirer. According to the SEC's complaint, the defendant gained access from his employment to investment banking analyses that compared the company to another biotechnology firm. The SEC alleges that within minutes of learning that his company would be acquired, the defendant purchased call options in the comparable company. When the acquisition was announced, the stock of the comparable company rose, leading to $107,066 in gains for the executive. The SEC claims the executive misappropriated the company's MNPI and traded in breach of his fiduciary duty and in violation of the company's insider trading policy.

The defendant moved to dismiss the complaint, arguing, among other things, that he did not violate the company's insider trading policy because it did not bar him from trading securities of the comparable company and that the information he possessed was immaterial under the specific language of Rule 10b5-1(a). On January 22, 2022, the district court denied the motion. In rejecting the defendant's arguments about the company's insider trading policy, the court noted that the policy covered trading in the securities of "another publicly traded company." As to the defendant's immateriality argument, the court held that information can be material to more than one company.[23] The court further held that, while Rule 10b5-1(a) prohibits trading in the securities of an issuer on the basis of MNPI about that security or issuer, the SEC's theory of liability fell within the general framework of insider trading, including the expansive language of Section 10(b) of the Exchange Act and related regulations. This case has the potential to expand the scope of liability for misappropriation cases. Issuers should consider whether they should review insider trading compliance policies to prevent this kind of misappropriation.

Although distinct from the above-discussed "shadow trading" theory of liability, academic research published in January 2023 by faculty at the Stockholm School of Economics and University of Technology Sydney claims to "expose and quantify a new type of shadow trading."[24] The research suggests that individuals with MNPI have been using exchange traded funds ("ETFs") to conceal insider trading. ETFs are pooled investment products that are listed on an exchange and can be traded daily, similar to shares of any publicly traded company. After studying numerous mergers and acquisitions, evidence showed that, on average, $212 million per year[25] of trading occurred in same-industry ETFs containing the target company prior to M&A announcements, as opposed to, for example, the underlying shares of the target company itself. The publication's findings suggest that ETF insider trading is more pervasive than traditional forms of insider trading. This may be another area in which enforcement authorities seek to expand the scope of insider trading liability. The SEC has enforced trading in related stocks; the research publication urges officials to expand this approach to related securities such as ETFs.[26]

CFTC Continues to Enhance Insider Trading Enforcement

The CFTC was generally seen to lack much authority to investigate and charge insider trading until it adopted Rule 180.1 in 2011, after the Dodd-Frank Act provided the CFTC with expanded authority to prohibit fraud and manipulation.[27] Rule 180.1 broadly prohibits the use or attempted use of manipulative and deceptive devices in connection with the exchange of commodities. The CFTC modeled the rule after Rule 10b-5 under Section 10(b) of the Exchange Act. However, given the nature of the commodities markets and futures trading, the CFTC solely applies the "misappropriation theory" of insider trading, and not the "classical theory." In sum, derivative markets are designed for risk management—regulations not only permit, but actually encourage, trading on nonpublic information to hedge risks related to fluctuations in commodities prices. Therefore, the CFTC pursues insider trading liability solely where there is a breach of a preexisting duty to the source of the information.

In 2022, Commissioner Kristin Johnson emphasized the CFTC's commitment to enforcing conduct such as fraud, misrepresentation, and deception or lying, cheating, and stealing.[28] The CFTC has dedicated significant resources to setting up an Insider Trading and Information Protection Task Force, sending a message that this will be an enduring priority for the agency going forward. Reflecting this trend, the agency brought several notable insider trading cases in 2022.

***CFTC v. Clark*, 4:22-cv-00365 (S.D. Tex.):** On February 3, 2022, the CFTC filed a complaint against the president of an energy company, alleging that he misappropriated confidential natural gas block trade order information from the company, directed block trades to a brokerage firm in exchange for a share of the commissions, and made false statements to the CFTC about his activities.[29] The CFTC alleged that from 2015 to 2018, the president disclosed the company's confidential natural gas block trade order information to an individual trader in breach of his duty of trust and confidence to the company. According to the CFTC, the president knew the trader would then execute noncompetitive, fictious block trades with him, as well as other trades designed to profit from this information. This scheme allegedly generated more than $1.5 million in illegal profits, which the president and trader shared with the broker. Additionally, from 2009 through 2019, the president allegedly received kickbacks for directing block trades to a voice broker.

***CFTC v. EOX Holdings LLC, et al.*, No. 4:19-cv-02901 (S.D. Tex.):** On August 16, 2022, the CFTC won a $7.49 million jury verdict against an introducing broker and an associated person in a case alleging that the broker and the associated person violated CFTC regulations by secretly taking the other side of customer transactions without consent on 65 occasions and improperly disclosing confidential customer information to favored customers five times.[30] The filing of this case coincided the creation of the CFTC's Insider Trading and Information Protection Task Force in 2018. The jury also found the broker liable for failing to supervise the associated person and to maintain required books and records, resulting in $490,000 of the penalty amount. The court gave the broker 60 days to remediate its compliance polices, and ordered a 120-day trading and registration ban on the associated person.

***CFTC v. Coquest Inc.*, *et al*, No. 3:21-cv-02599-S (N.D. Tex.):** On October 20, 2021, the CFTC announced a litigated civil action against an introducing broker, its two owners, and the owners' trading firms.[31] The CFTC alleged defendants misappropriated block trade information and engaged in unauthorized trading. According to the CFTC, from 2015 to 2019, the introducing broker handled more than 2,000 individual block trades where the broker was the counterparty, without customer knowledge or consent. The defendants were charged with defrauding the broker's customers by intentionally offering prices less favorable to customers than true market prices, so the owners could profit from the difference when they transacted at market prices. One of the introducing broker's owners was charged with affirmatively misleading customers into believing they were negotiating with and trading against third parties when it was actually the owner. In March 2023, the defendants agreed to entry of an injunction, to pay $496,021 in disgorgement and $2.5 million in penalties, and to a two-year ban on brokering block trades.

CFTC-regulated market participants should expect the agency to continue to investigate possible insider trading and expand its enforcement resources in this area.

INSIDER TRADING CASES IN 2022

The balance of this *White Paper* is devoted to summarizing insider trading cases filed in 2022.

Parallel DOJ & SEC Enforcement Actions

***United States v. Bortnovsky & Shapiro*, No. 1:22-cr-10006 (D. Mass.); *United States v. Schottenstein*, No. 1:22-cr-10005 (D. Mass.):** On January 6, 2022, the U.S. Attorney's Office for the District of Massachusetts filed an information charging a tipper with conspiracy and, in a separate case, unsealed an indictment charging two tippees with Title 15 securities fraud and conspiracy.[32] As alleged, the tipper obtained MNPI regarding three different corporations from relatives and business connections, and used it to trade in advance of three public announcements and to tip the other two defendants, who also traded. The tipper allegedly realized more than $600,000 in illegal profits from his trades. The tippees, one of whom also managed trading for his investment management firm and one of its hedge funds, made more than $4 million in profits. The tipper pleaded guilty to conspiracy to commit securities fraud. On December 6, 2022, the DOJ dropped the case against the tippees because the tipper refused to testify against them. Sentencing for the tipper is still pending.

***SEC v. Schottenstein, et al.*, No. 1:22-cv-10023 (D. Mass.):** On January 6, 2022, the SEC filed a litigated civil action against all three individuals, and the investment management firm and related hedge fund controlled by one of the tippees.[33] The SEC charged violations of the antifraud provisions of the Securities Act and the Exchange Act and seeks permanent injunctions and civil penalties.

***United States v. Klundt & Sargent*, No. 22-cr-00015 (N.D. Ill.):** On January 11, 2022, the U.S. Attorney's Office for the Northern District of Illinois unsealed an indictment charging a Chicago attorney and his friend with Title 18 securities fraud, Title 15 securities fraud, and conspiracy.[34] As alleged in the indictment, the friend misappropriated information from his education-technology employer that the company's first-quarter earnings would be strong and shared it with the attorney. The attorney then purchased shares and call options in the company days ahead of the earnings announcement, earning approximately $100,000 in illegal profits after the public release. In January 2023, a jury found the attorney guilty of all securities fraud charges and not guilty of conspiracy. The jury found the attorney's friend not guilty on all seven charges.

***SEC v. Sargent & Klundt*, No. 22-cv-168 (N.D. Ill.):** On January 11, 2022, the SEC filed a litigated civil action against the attorney and his friend alleging that both violated the antifraud provisions of the Exchange Act and seeking permanent injunctions and penalties.[35]

***United States v. Forte, Manning, & Younis*, No. 1:22-cr-06014 (D. Mass):** On January 19, 2022, the U.S. Attorney's Office for the District of Massachusetts charged a municipal police officer and two close friends with one count of conspiracy to commit securities fraud after the officer obtained MNPI regarding a semiconductor company's plan to acquire another company from a close relative and shared it with his friends. The friends purchased shares and call options in the target company leading up to the announcement and, after selling for a profit, shared the gains with the police officer.[36]

***SEC v. Forte, Manning, & Younis*, No. 1:22-CV-10074 (D. Mass.):** On January 19, 2022, the SEC filed a litigated civil action against all three alleging violations of the antifraud provisions of the Exchange Act and seeking permanent injunctions and penalties.[37]

***United States v. Kamujula*, 4:22-cr-00131 (N.D. Cal.):** On March 28, 2022, the U.S. Attorney's Office for the Northern District of California unsealed an indictment charging the friend of an employee of a cloud communications company with Title 18 securities fraud and Title 15 securities fraud.[38] According to the indictment, in the first quarter of 2020, the cloud communications company employee had access to MNPI regarding the company's quarterly earnings and, in violation of company policy, disclosed to his friend that the company would likely exceed earnings expectations because of increased usage during the early days of the COVID-19 pandemic. The friend allegedly purchased call options in the company over the four weeks preceding its earnings announcement and realized illegal profits of $961,662 following the announcement.

***SC v. Sure, et al.*, No. 3:22-cv-01967 (N.D. Cal.):** On March 28, 2022, the SEC filed a litigated civil action against three employees of the company and four of their friends and family members alleging that each violated the antifraud provisions of the Exchange Act in connection with the same misconduct, generating more than $1 million in illegal profits. The SEC's complaint seeks permanent injunctions and penalties from each defendant.[39]

***United States v. Strugano*, No. 22-cr-226 (S.D.N.Y.):** On April 20, 2022, SDNY unsealed an indictment charging an Israeli lawyer with Title 15 securities fraud, Title 18 securities fraud, and conspiracy in connection with a scheme to commit insider trading in advance of a corporate merger.[40] According to the indictment, the lawyer learned from his friend who was the head of mergers and acquisitions at a renewable energy company that the company would soon acquire a U.S. energy company. Allegedly within minutes, the lawyer purchased more than $20,000 of shares in the target company and, over the next several weeks, acquired $2.7 million of shares, representing 3.8% of the target company's equity. During this period, the lawyer's trading accounted for roughly one-third of the target company's total trading volume. After the announcement, the attorney liquidated his holdings and realized illegal profits of approximately $1.2 million.

***SEC v. Strugano & Gazit*, No. 1:22-cv-03216 (S.D.N.Y.):** On April 20, 2022, the SEC filed a litigated civil action against the lawyer and his friend alleging that both violated the antifraud provisions of the Exchange Act.[41] With respect to the lawyer, the SEC sought an injunction, penalties, disgorgement, and prejudgment interest. As to the friend who tipped him, the SEC sought an injunction, penalties, and an officer and director bar.

***United States v. Stone*, 22-cr-3884 (S.D.N.Y.):** On May 3, 2022, SDNY unsealed a complaint charging an Idaho information technology professional with Title 18 securities fraud in connection with a scheme to deceptively obtain stock pick information from an online subscription service and trade on it before publication.[42] As alleged in the complaint, from 2020 to 2022, the defendant obtained unauthorized access to the subscription service's internal computer system, which gave him access to draft and unpublished versions of the service's stock picking newsletters, which, when published, often caused material movements in the share prices of featured companies. The defendant allegedly traded in advance of publication on more than a dozen occasions for approximately $3 million in gains. He also allegedly tipped at least one other person by sending them stock names and tickers on 45 different days, leading the tippee to trade in a dozen companies, resulting in $2.7 million in illegal profits.

***SEC v. Stone*, No. 1:22-cv-03553 (S.D.N.Y.):** On May 3, 2022, the SEC filed a litigated civil action against the two alleging violations of the antifraud provisions of the Securities Act and the Exchange Act arising from the same conduct.[43] According to the SEC, the defendants made illegal profits of $6.9 million, and the SEC's complaint named as relief defendants four friends and family members whose brokerage accounts placed similar trades and generated approximately $5 million in illicit gains. The SEC's complaint seeks injunctions, disgorgement, prejudgment interest, and penalties.

***United States v. Glassner*, 22-cr-451 (S.D.N.Y.):** On May 22, 2022, SDNY filed an information charging an executive compensation consultant with Title 18 securities fraud and Title 15 securities fraud in connection with his misappropriation of client MNPI. The consultant was retained to advise a biopharmaceutical company on its potential acquisition of another company, and he used MNPI from that engagement to trade securities of the target, earning $368,000 in illegal profits. In August 2022, the consultant pleaded guilty to one count of Title 15 securities fraud. In December, he was sentenced to a year and a day in prison and ordered to pay forfeiture in the amount of $368,000.[44]

***SEC v. Glassner*, No. 1:22-cv-04254 (S.D.N.Y.):** On May 22, 2022, the SEC filed a litigated civil action against the consultant alleging violations of the antifraud provisions of the Exchange Act and seeking an injunction, disgorgement, prejudgment interest, and penalties.[45] In August 2022, the consultant entered into a bifurcated settlement and consented to entry of an injunction and to pay disgorgement, prejudgment interest, and penalties in an amount to be determined by the court.

***United States v. Roda*, No. 2:22-cr-00177 (E.D. Pa.):** On June 13, 2022, the U.S. Attorney's Office for the Eastern District of Pennsylvania filed an information charging a former software engineer at a gaming company with one count of violating the antifraud provisions of the Exchange Act.[46] The information alleged that the engineer learned that the parent company of his employer was considering acquiring another media and gaming company and misappropriated that data to buy call options in the target company. After the deal was announced, the engineer received $560,000 in illegal profits. The engineer pleaded guilty to the single count in July 2022.

***SEC v. Roda*, No. 2:22-cv-02317 (E.D. Pa.):** On June 13, 2022, the SEC filed a partially settled civil action against the engineer and a friend he tipped who, in turn, also purchased securities of the target company.[47] In a bifurcated settlement, the engineer consented to entry of an injunction and to pay disgorgement, prejudgment interest, and penalties in an amount to be determined by the court. The engineer's friend consented to entry of an injunction and paid more than $11,000 in disgorgement and penalties.

***United States v. Buyer*, 22-cr-00397 (S.D.N.Y.):** On July 25, 2022, SDNY unsealed an indictment charging a former Indiana Congressman with two counts of violating the antifraud provisions of the Exchange Act and two counts of Title 18 securities fraud in connection with a pair of schemes to misappropriate MNPI obtained through consulting work and make timely, profitable trades based on that information in 2018 and 2019.[48] In both schemes, the Congressman was retained as a consultant to advise on mergers, learned the MNPI through his consulting work, and traded in advance of public announcements in breach of his duty of confidentiality to his clients. The Congressman made approximately $350,000 in illegal profits from his trades. In March 2023, a jury found the Congressman guilty on all four charges.

***SEC v. Buyer*, No. 1:22-cv-6279 (S.D.N.Y.):** On July 25, 2022, the SEC filed a litigated civil action against the Congressman alleging violations of the antifraud provisions of the Exchange Act arising from the same conduct and seeking an injunction, disgorgement, prejudgment interest, penalties, and an officer and director bar.[49] The SEC also sought disgorgement from the Congressman's wife, named as a relief defendant, who profited when the Congressman executed unlawful trades in her brokerage account.

***United States v. Bhardwaj, Kakkera, & Saeedi*, 22-cr-00398 (S.D.N.Y.):** On July 25, 2022, SDNY unsealed an indictment charging the former Chief Information Security Officer ("CISO") of a technology company and two friends with multiple counts of Title 15 securities fraud, wire fraud, conspiracy to commit the substantive charges, and conspiracy to obstruct justice in connection with alleged insider trading in advance of two acquisitions by the company.[50] According to the indictment, the CISO learned in December 2020 that his company planned to acquire another technology company. The CISO used this MNPI to purchase securities in the target company and tipped at least three people, all of whom also purchased securities in the target company and one of whom agreed to share 50% of the profits with the CISO. After the transaction was announced, the CISO received $900,000 in illegal profits. The CISO allegedly engaged in a similar scheme surrounding a second acquisition in October 2021 and shared MNPI with the codefendants, who cumulatively received $4.3 million in realized and unrealized illegal profits.

***SEC v. Bhardwaj, Dhirenkumar, Patel, Kakkera, Saeedi, & Chitor*, No. 1:22-cv-6277 (S.D.N.Y.):** On July 25, 2022, the SEC filed a litigated civil action against the CISO and four tippees charging violations of the antifraud provisions of the Exchange Act arising from the same conduct and seeking injunctions, disgorgement, prejudgment interest, and penalties.[51] The SEC's complaint also seeks disgorgement from four relief defendants.

***United States v. Goel*, No. 22-cr-00396 (S.D.N.Y.):** On July 25, 2022, SDNY unsealed an indictment charging an investment banker with Title 18 securities fraud, Title 15 securities fraud, obstruction of justice, and conspiracy in connection with his misappropriation of MNPI he obtained from his receipt of emails among his employer bank's capital committee that discussed pending mergers and acquisitions the bank was considering funding.[52] Between 2017 and 2018, the banker allegedly shared MNPI about seven transactions with a friend who worked at a different investment bank. The indictment alleges the friend traded in securities of companies involved in the transactions and split the $275,000 in illegal profits with the banker.

***SEC v. Goel & Niranjani*, No. 1:22-cv-06282 (S.D.N.Y.):** On July 25, 2022, the SEC filed a litigated civil action against both men alleging violations of the antifraud provisions of the Exchange Act and seeking an injunction, disgorgement, prejudgment interest, and penalties.[53]

***United States v. Markin & Wong*, No. 22-cr-00395 (S.D.N.Y.):** On July 25, 2022, SDNY unsealed an indictment charging an FBI agent trainee and his friend with Title 15 securities fraud, Title 15 tender offer fraud, Title 18 securities fraud, false statements, and conspiracy in connection with the new agent's misappropriation of MNPI from his then-girlfriend, a law firm attorney representing a health care company in a tender offer deal.[54] According to the indictment, the new agent secretly reviewed a binder of his girlfriend's deal documents without her authorization and proceeded to buy securities in the target company involved in the deal and to tip several friends and family members, including the codefendant, who, collectively, received $1.4 million in illegal profits.

***SEC v. Markin & Wong*, No. 1:22-cv-06276 (S.D.N.Y.):** On July 25, 2022, the SEC filed a litigated civil action against both men alleging violations of the antifraud provisions of the Exchange Act and Section 14(e) and Rule 14e-3 thereunder and seeking injunctions, disgorgement, prejudgment interest, and penalties.[55]

***United States v. Haywood*, No. 22-cr-00237 (D.D.C.):** On July 7, 2022, the U.S. Attorney's Office for the District of Columbia filed an information charging a private investor with one count of securities fraud in connection with his sale of $328,000 of shares in a biopharmaceutical company immediately after learning MNPI about an upcoming registered direct offering from the company and promising he would not execute any securities transactions based on the information.[56] The investor avoided losses of at least $180,000 by selling when he did. The investor pleaded guilty to the single count later in July.

***SEC v. Haywood*, No. 1:22-cv-01971 (D.D.C.):** On July 7, 2022, the SEC filed a partially settled civil action against the investor alleging violations of the antifraud provisions of the Exchange Act in connection with the same conduct.[57] The investor consented to entry of an injunction, an officer-and-director bar, and to pay disgorgement, prejudgment interest, and penalties in an amount to be determined by the court.

***United States v. Mendes*, No. 4:22-cv-00359 (N.D. Cal.):** On September 20, 2022, the U.S. Attorney's Office for the Northern District of California filed an information charging a registered investment adviser representative with one count of Title 15 securities fraud in connection with his trading on MNPI regarding an upcoming corporate acquisition he received from his friend, an insider at the acquiring company.[58] The adviser allegedly purchased securities of the target company for himself, family members, and various clients whose investments he managed, resulting in $240,000 in illegal profits following announcement of the acquisition.

***SEC v. Mendes, et al.*, No. 4:22-cv-05340 (N.D. Cal.):** On September 20, 2022, the SEC filed a partially settled civil action against the adviser and his friend alleging violations of the antifraud provisions of the Exchange Act arising from the same conduct.[59] The adviser consented to entry of an injunction, an order barring him from acting as an officer or director of a public company for five years, and paid $41,985 in disgorgement and prejudgment interest and a $51,579 penalty. The corporate insider consented to entry of an injunction, an order barring him from acting as an officer or director of a public company for three years, and to pay disgorgement, prejudgment interest, and penalties in an amount to be determined by the court.

***United States v. Rayapureddy*, 2:22-cr-00285 (W.D. Pa.):** On November 10, 2022, DOJ's Fraud Section unsealed an indictment charging the Chief Information Officer ("CIO") of a pharmaceutical company with Title 15 securities fraud and conspiracy in connection with the CIO's misappropriation of MNPI regarding the company's drug approvals, financial results, and an impending merger.[60] From 2017 through 2019, the CIO shared the MNPI with a friend and former colleague who used it to place favorable trades in the company's securities, earning nearly $8 million in illegal profits, which were shared with the CIO.

***SEC v. Rayapureddy*, 2:22-cv-01592 (W.D. Pa.):** On November 10, 2022, the SEC filed a litigated civil action against the CIO and his friend alleging that both violated the antifraud provisions of the Exchange Act and seeking injunctions, disgorgement, prejudgment interest, and penalties.[61]

***United States v. Billimek & Williams*, No. 22-cr-675 (S.D.N.Y.):** On December 14, 2022, SDNY unsealed an indictment charging a trader at a major asset management firm and a day trader with Title 18 securities fraud, Title 15 securities fraud, and wire fraud in connection with a six-year scheme to misappropriate the asset management firm's MNPI concerning its stock transactions. Because of the size of the firm's transactions, they were generally market-moving events.[62] The trader used his advance knowledge of the firm's transactions to tip the day trader, who then took favorable positions in the relevant securities in advance of the firm's transactions. By front-running the firm's trading, the day trader generated $47 million in illicit profits from the scheme, millions of which he paid to the trader in exchange for the tips.

***SEC v. Billimek & Williams*, No. 1:22-cv-10542 (S.D.N.Y.):** On December 14, 2022, the SEC filed a litigated civil action against both men alleging violations of the antifraud provisions of the Exchange Act and seeking injunctions, disgorgement, prejudgment interest, and penalties.[63]

***United States v. Pourhassan & Kazempour*, No. 22-cr-440 (D. Md.):** On December 20, 2022, DOJ's Fraud Section unsealed an indictment charging the former CEO of a biotechnology company and the CEO of a research organization with multiple counts of Title 15 securities fraud, wire fraud, and conspiracy in connection with a scheme to make false and misleading statements about the biotechnology company to inflate its share price, allowing the CEO to exercise stock options and liquidate them at inflated prices.[64] The indictment alleges that the defendants exaggerated the status of the company's clinical research into treatments for HIV and COVID-19 and issued a press release claiming the company had filed a "completed" license application to the U.S. Food and Drug Administration, when it had not done so. Following the press release, the CEO allegedly exercised his options and liquidated his stock, gaining illegal profits in excess of $4.7 million. The codefendant allegedly sold his holdings in the company after signing off on the incomplete license application, gaining illegal profits of $340,000.

***SEC v. Pourhassan & Kazempour*, 8:22-cv-03284 (D. Md.):** On December 20, 2022, the SEC filed a litigated civil action against the pair alleging violations of the antifraud provisions of the Securities Act and the Exchange Act and seeking injunctions, disgorgement, prejudgment interest, penalties, and officer and director bars.[65]

SEC Enforcement Actions

***SEC v. Havrilla*, 1:22-cv-01448 (S.D.N.Y.):** On February 22, 2022, the SEC filed a settled civil action against a former investor relations executive of a medical device company, alleging that he violated the antifraud provisions of the Exchange Act in connection with his misappropriation of MNPI relating to the company's 2019 earnings release.[66] According to the SEC, the executive had access to a draft earnings release three days before the announcement, and he purchased 227,500 shares of the company's stock the following day. After liquidating the shares following the announcement, the executive gained $80,000 in illegal profits. The executive consented to entry of an injunction, a five-year officer-and-director bar, and paid a $160,230 penalty.

***SEC v. Iberger & Iberger*, No. 1:22-cv-10565 (D. Mass.):** On April 15, 2022, the SEC filed a settled civil action against the former CFO of a medical diagnostics company and his son, alleging that both violated the antifraud provisions of the Exchange Act in connection with the CFO's misappropriation of MNPI concerning the company's development of an FDA-approved COVID-19 test kit.[67] According to the SEC, the company's CEO informed the CFO in July 2020 that the company and a distribution partner had reached an agreement to distribute the FDA-approved test kit. The CFO then allegedly told his son and another tippee about the news, and both tippees purchased company stock prior to the public announcement. The CFO consented to an injunction and an order barring him from serving as an officer or director of a public company for five years and paid a $69,223 penalty. His son consented to an injunction and paid disgorgement and interest of $71,655 and a $68,350 penalty.

***SEC v. Compton*, No. 3:22-cv-10791 (E.D. Mich.):** On April 13, 2022, the SEC filed a settled civil action against an accountant at a national pizza chain alleging violations of the antifraud provisions of the Exchange Act in connection with his misappropriation of MNPI related to the company's earnings between 2015 and 2020.[68] According to the SEC, the accountant traded in the company's securities ahead of 12 announcements over five years and spread his trading across seven different accounts belonging to himself and various family members, leading to illegal profits of more than $960,000. The accountant consented to entry of an injunction and an order suspending him from appearing before the SEC as an accountant and paid a $1,921,394 penalty.

***SEC v. Joublin*, No. 1:22-cv-04397 (S.D.N.Y.):** On May 27, 2022, the SEC filed a settled civil action against a former employee of a pharmaceutical company alleging violations of the antifraud provisions of the Exchange Act in connection with the employee's misappropriation of MNPI related to the company's negotiations to acquire the development rights to a drug developed by another company.[69] According to the SEC, on the basis of this MNPI, the employee purchased securities of the other company and sold them after the deal was announced, resulting in $4,995 in illegal profits. The employee consented to entry of an injunction and paid a $10,601.37 penalty.

***SEC v. Pithapurwala, Kutiyanawalla, & Kutiyanawalla*, No. 2:21-cv-9384 (C.D. Cal.):** On May 27, 2022, the SEC obtained final judgment against a social medial company engineer and his wife in connection with a litigated civil action filed in December 2021 alleging violations of the antifraud provisions of the Exchange Act.[70] According to the SEC, the engineer shared MNPI concerning the social media company's earnings ahead of a 2018 earnings announcement with his brother-in-law, and, using money from the engineer and his wife, the brother-in-law purchased securities in the company, leading to $261,515 in illegal profits when he sold after the earnings announcement. Both defendants consented to entry of an injunction. The engineer paid a $523,031 penalty, and his wife paid a $75,000 penalty.

***SEC v. Moscatiello*, No. 1:22-cv-04323 (D.N.J.):** On June 29, 2022, the SEC filed a settled civil action against a New Jersey resident alleging violations of the antifraud provisions of the Exchange Act in connection with his trading in securities of an information technology company based on MNPI regarding the company's impending acquisition by a private equity firm.[71] According to the SEC, the man's domestic partner was employed by the company and participated in voice and video calls related to the deal from their shared residence. The SEC claims the defendant overheard those calls and misappropriated the MNPI to trade in the securities of his partner's employer. The defendant consented to entry of an injunction and paid $89,904 in disgorgement, $3,878.74 in prejudgment interest, and a $89,904 penalty.

***SEC v. Tavlin, Farahan, & Gantman*, No. 22-cv-01723 (D. Minn.):** On July 6, 2022, the SEC filed a litigated civil action against a business development executive at a medical device company and two friends, alleging that they violated the antifraud provisions of the Exchange Act in connection with the executive's misappropriation of MNPI concerning the company's impending acquisition by another medical device company.[72] According to the SEC, the executive learned that his employer was going to be acquired by a larger medical device company and shared that information with two friends who used that MNPI to trade in the company's securities in advance of the announcement, realizing nearly $500,000 in illegal profits. The SEC also alleges that the executive demanded payment for the information and accepted a $25,000 kickback. The SEC seeks injunctions, disgorgement, prejudgment interest, penalties, and as to the executive, an officer and director bar.

***SEC v. Klein, et al.*, No. 22-cv-6426 (S.D.N.Y.):** On July 28, 2022, the SEC filed a partially settled civil action against a scientific adviser to a biotechnology company, his brother, and the brother's son-in-law, alleging that each violated the antifraud provisions of the Securities Act and the Exchange Act in connection with the adviser's misappropriation of MNPI concerning the company's clinical trials and communications with the FDA.[73] According to the SEC, in 2018, the adviser learned that FDA had concluded that the company's clinical study for its primary drug in development was inadequate. Before the company disclosed the information, the adviser passed it to his brother, who sold nearly his entire holding of the company and then passed it to his son-in-law, who sold his entire position in the company. By selling in advance of the negative news, the SEC alleges the defendants avoided approximately $430,000 in losses. The adviser consented to entry of an injunction and paid a $226,000 penalty.

***SEC v. Dishinger, Palmer, & Palmer*, No. 1:22-cv-03258-TWT (N.D. Ga.):** On August 16, 2022, the SEC filed a partially settled civil action against a manager at a public relations firm, her domestic partner, and the partner's brother alleging violations of the antifraud provisions of the Exchange Act in connection with the manager's misappropriation of MNPI concerning a firm client's response to a cyber intrusion and data breach.[74] According to the SEC, in 2017, a credit reporting firm retained the public relations firm to assist it in responding to a cyber intrusion and data breach. The manager learned of the incident before any public announcement and shared that information with her partner. The partner then shared the information with his brother. Both brothers used friends and associates as cut-outs to trade in securities of the credit reporting firm, leading to a total of $100,000 in illegal profits following disclosure of the cyber intrusion. The brothers consented to entry of an injunction and paid a total of $207,426 in disgorgement, prejudgment interest, and penalties. Litigation against the manager remains pending.

***SEC v. Daniel*, No. 3:22-cv-04711 (N.D. Cal.):** On August 17, 2022, the SEC filed a settled civil action against a relative of a senior employee at a semiconductor company alleging violations of the antifraud provisions of the Exchange Act in connection with the relative's misappropriation of MNPI concerning the company.[75] According to the SEC, the defendant's mother was at the home of the company employee and, during a phone call, told the defendant that the relative was working on urgent issues related to the semiconductor company's acquisition by another firm. After the call, the defendant allegedly purchased call options in the company and, under false pretenses, borrowed $50,000 from his mother. Following the public announcement of the acquisition, the defendant saw $350,000 in illegal profits. The defendant consented to entry of an injunction and paid $349,588 in disgorgement, $38,829 in prejudgment interest, and a $349,588 penalty.

***SEC v. Doucette*, No. 1:22-cv-00348 (D.N.H.):** On September 6, 2022, the SEC filed a settled civil action against a former executive of a medical device company alleging violations of the antifraud provisions of the Exchange Act in connection with his misappropriation of MNPI concerning the company's earnings in 2018 and 2020.[76] According to the SEC, in both years, the executive obtained prerelease information about the company's earnings and, during company blackout periods, traded in company securities, leading to $348,689 in illegal profits. The executive consented to entry of an injunction and paid $348,689 in disgorgement, $30,793 in prejudgment interest, and a $348,689 penalty.

***SEC v. Weiss*, No. 1:22-cv-08064 (S.D.N.Y.):** On September 21, 2022, the SEC filed a settled civil action against a business development director at a global accounting firm alleging violations of the antifraud provisions of the Exchange Act in connection with his misappropriation of MNPI about four firm clients between 2014 and 2015.[77] According to the SEC, the director learned about the firm clients' confidential information through his job and, in breach of his duties to the firm and the firm's to its clients, purchased client securities in advance of at least four earnings and acquisition announcements, leading to illegal profits of $10,286. The director consented to entry of an injunction and paid $23,900 in disgorgement, interest, and penalties.

***SEC v. Saini & Natividad*, No. 2:22-cv-05788 (D.N.J.):** On September 30, 2022, the SEC filed a litigated civil action against two Canadian software engineers employed by a Canadian newswire service alleging violations of the antifraud provisions of the Exchange Act in connection with the engineers' misappropriation of MNPI concerning corporate announcements scheduled for future publication.[78] According to the SEC, between 2018 and 2021, the engineers used their access to company clients' prepublication releases to trade in advance of more than 1,600 press releases distributed by the company, leading to $1.6 million in illegal profits. The SEC seeks injunctions, disgorgement, prejudgment interest, and penalties. On the same day, the Ontario Securities Commission, or OSC, also announced charges of fraud and insider trading offenses under the Ontario Securities Act.

***EC v. Holzer*, No. 22-cv-08342 (S.D.N.Y.); *SEC v. Moraes*, No. 22-cv-08343 (S.D.N.Y.):** On September 30, 2022, the SEC filed a pair of settled civil actions against the CEO and manager of a family investment office, alleging violations of the antifraud provisions of the Exchange Act in connection with the defendants' misappropriation of MNPI concerning a public company's 2018 acquisition by a private investor group.[79] According to the SEC, the defendants were approached by an adviser seeking the family office's participation in the pooled investment vehicle that announced its acquisition of the company approximately a week later. In violation of the nondisclosure agreement the family office signed before receiving literature about the investment opportunity, the defendants used the information to trade in options of the public company prior to the announcement, leading to $105,000 in illegal profits. The SEC also alleges that the manager tipped his cousin whose trading in the company led to $672,000 in illegal profits. The manager consented to a bifurcated settlement, including entry of an injunction; an order permanently barring him from acting as an officer or director of a public company; and to pay disgorgement, prejudgment interest, and penalties in an amount to be determined by the court. In November 2022, he consented to pay $91,509 in disgorgement, $14,217.67 in prejudgment interest, and a $763,509 penalty.[80] The CEO consented to entry of an injunction and paid $8,842 in disgorgement, $1,647 in interest, and a $48,646 penalty.

KEY TAKEAWAYS

The DOJ, the SEC, and the CFTC have aggressively enforced insider trading laws, and the first quarter of this year showed that this trend will only continue. The DOJ filed the first criminal insider trading case based on an executive's entry into a 10b5-1 plan. Court filings suggest a settlement is likely in the SEC's first digital asset insider trading case. We anticipate the rest of the year will see additional cases filed in both of these areas.

A wave of new regulations adopted by the SEC in 2022 will become effective over the course of 2023, including the new regulations related to 10b5-1 plans and related issuer disclosures. Public companies need to evaluate their existing compliance and disclosure policies to ensure they have adopted and implemented adequate controls for these new requirements.

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ENDNOTES

1 https://www.sec.gov/rules/final/2022/33-11138.pdf.

2 56 F.4th 230 (2d Cir. 2022).

3 947 F.3d 19, 26 (2d Cir. 2019). The Court's ruling was significant because it meant that that Title 18 securities fraud was "a different—and broader—enforcement mechanism" than is available under § 10(b) and Rule 10b-5. *United States v. Blaszczak*, 947 F.3d 19 (2d Cir. 2019) ("Blaszczak I").

4 140 S. Ct. 1565 (2020).

5 *Id.* at 1568-69.

6 484 U.S. 19, 22-24 (1987) (pre-publication disclosure of the content of *Wall Street Journal* columns was money or property under the mail and wire fraud statutes).

7 54 F.4th at 244.

8 *Id.* at 243.

9 H.R. 2655, 117th Cong. (2019).

10 Preventing Elected Leaders from Owning Securities and Investments (PELOSI) Act, H.R. 58, 118th Cong. § 1 (2023); https://www.foxbusiness.com/politics/federal-agencies-push-insider-trading-crackdown-own-officials; https://www.foxnews.com/politics/josh-hawley-introduces-pelosi-act-bar-lawmakers-trading-stocks-profiting-office.

11 Rebecca Ballhaus, *U.S. Agencies Seek Tougher Rules, Internal Probes on Stock Trading by Federal Officials*, Wall. St. J., (Feb. 7, 2023), https://www.wsj.com/articles/u-s-agencies-seek-tougher-rules-internal-probes-on-stock-trading-by-federal-officials-11675789424.

12 https://www.justice.gov/usao-sdny/pr/former-employee-nft-marketplace-charged-first-ever-digital-asset-insider-trading-scheme.

13 https://www.justice.gov/usao-sdny/pr/three-charged-first-ever-cryptocurrency-insider-trading-tipping-scheme.

14 https://www.sec.gov/news/press-release/2022-127.

15 Echoing *Howey*, the SEC alleges that the assets were sold to investors, who made an investment of money in a common enterprise, with a reasonable expectation of profits to be derived from the efforts of others. Compl. ¶ 25.

16 https://www.justice.gov/usao-sdny/pr/three-charged-first-ever-cryptocurrency-insider-trading-tipping-scheme.

17 https://www.sec.gov/news/press-release/2022-78.

18 Statement on Final Amendments to Rule 10b5-1 and Other Insider Trading Requirements, Dec. 14, 2022, available at: https://www.sec.gov/news/statement/gensler-insider-trading-20221214.

19 Tom Schoenberg and Matt Robinson, US Probes Insider Trading in Prearranged Executive Stock Sales, BLOOMBERG, (Nov. 3, 2022).

20 https://www.sec.gov/news/press-release/2022-169.

21 No. 4:21-cv-06322 (N.D. Cal.).

22 https://www.sec.gov/litigation/litreleases/2021/lr25170.htm.

23 This case has some parallels to *SEC v. Huang*, where the SEC alleged that a credit card company employee misappropriated company credit card sales data for various retailers to trade profitably in the retailers' securities. 684 Fed. Appx. 167 (3d Cir. 2017) (affirming jury verdict in the SEC's favor).

24 Eglīte, Elza and Štaermans, Dans and Patel, Vinay and Putnins, Talis J., Using ETFs to Conceal Insider Trading (January 26, 2023). Available at SSRN: https://ssrn.com/abstract=4343579 or http://dx.doi.org/10.2139/ssrn.4343579

25 This was calculated using a sample period of 2009 to 2021. *Id.*

26 *Id.*

27 Shane M. Wilkerson, *CFTC Enforcement of Insider Trading Activity Under Rule 180.1*, 38 No. 10 Futures & Derivatives L. Rep. NL 1 (Nov. 2018).

28 https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072122

29 https://www.cftc.gov/PressRoom/PressReleases/8490-22

30 https://www.cftc.gov/PressRoom/PressReleases/8574-22

31 https://www.cftc.gov/PressRoom/PressReleases/8451-21

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33 https://www.sec.gov/news/press-release/2022-4.

34 https://www.justice.gov/usao-ndil/pr/federal-indictment-charges-chicago-attorney-insider-trading.

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41 https://www.sec.gov/litigation/litreleases/2022/lr25373.htm.

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45 https://www.sec.gov/litigation/litreleases/2022/lr25398.htm.

46 https://www.justice.gov/usao-edpa/pr/former-employee-pa-based-gaming-and-casino-company-charged-insider-trading.

47 https://www.sec.gov/news/press-release/2022-105.

48 https://www.justice.gov/usao-sdny/pr/us-attorney-announces-charges-four-separate-insider-trading-cases-against-nine.

49 https://www.sec.gov/news/press-release/2022-128.

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