

# SEC and DOJ Announce Four New Insider Trading Cases Against Multiple Defendants

By Brooke E. Conner, Rachel T. Copenhaver, Junaid A. Zubairi and Eric Hyla

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On Thursday, June 29, 2023, the Securities and Exchange Commission (SEC) announced the filing of four civil insider trading cases involving a variety of alleged insider trading violations. These cases were brought against a total of 13 defendants. Simultaneously, the Department of Justice (DOJ), through the U.S. Attorney's Office for the Southern District of New York (SDNY), issued parallel criminal indictments against a subset of 10 of the same individuals. Director of the SEC's Division of Enforcement, Gurbir Grewal, issued a statement noting the seriousness of insider trading by public company insiders, stating that the actions "reaffirm [the SEC's] commitment to leveraging all the tools at our disposal, including our data analytics initiatives, to investigate these abusive trading practices, hold accountable bad actors and ensure the integrity of our markets." U.S. Attorney for the SDNY Damian Williams echoed the sentiment, warning that "[i]nsider trading is not a quick buck... [i]t's a ticket to prison."

Notable aspects of these recent cases are summarized below.

## Pharmaceutical Company Merger

The SEC alleged that five individual defendants engaged in an insider trading scheme prior to the announcement of a tender offer by one pharmaceutical company to acquire another. One defendant, a senior employee at the acquiring company, allegedly tipped the second defendant, a friend, about the upcoming offer. The SEC alleged that the second defendant traded based on the tip, as well as tipped the third and fourth defendants, both of whom traded based on the tip and one of whom tipped the fifth defendant. The four defendants who traded are alleged to have collectively earned over \$2.3 million as a result of the scheme. The SEC also alleged that successive tippees alerted by the fourth and fifth defendants earned an additional \$1.7 million in illicit gains.

The SEC brought civil claims against each of the five defendants, seeking permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties, in addition to officer and director bars against each defendant. Thomas P. Smith, Jr., Associate Director of the SEC's New York Regional Office stated that the case "shows [the SEC's] continuing commitment to rooting out those who cheat the system by misusing material nonpublic information." The DOJ separately charged four of these same defendants with securities fraud under 15 USC § 78ff ("Title 15") and 18 USC § 1348 ("Title 18"). The remaining defendant pled guilty to criminal charges pursuant to a cooperation agreement.

## COVID-19 Drug Announcement

Two individual defendants are alleged by the SEC to have engaged in a scheme to trade in the securities of a large pharmaceutical company based on information regarding the development and planned announcement of the company's upcoming COVID-19 antiviral treatment. The SEC alleged that one defendant, a company employee who compiled and organized data during the drug trials, learned that the drug was successful and that the successful trial results would be announced in early November 2021. The employee allegedly then tipped his close friend and business partner regarding the upcoming announcement. Both defendants are alleged to have traded in company securities based on the information. The SEC alleged that the defendants earned a combined profit of over \$270,000.

The SEC highlighted the fact that the matter originated from its Market Abuse Unit's Analysis and Detection Center, which uses data analysis tools to detect suspicious trading patterns. Joseph Sansone, Chief of the Market Abuse Unit, stated that, due to the SEC surveillance efforts, the "defendants must now face the consequences of their greed." The SEC brought civil charges against

both defendants for violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78 (“Exchange Act”), and Rule 10b-5 promulgated thereunder and seeks injunctive relief, disgorgement with prejudgment interest, and civil penalties. The DOJ also criminally charged both defendants with securities fraud and conspiracy to commit securities fraud.

### **Media Company SPAC Merger**

The SEC alleged that three individual defendants, as well as a venture capital firm owned by one of the individual defendants, used material nonpublic information to trade in the securities of a special purpose acquisition company (SPAC) that was planning to acquire and take public an emerging media company. The SEC alleged that all three individual defendants were investors in the SPAC and signed nondisclosure agreements pursuant to such investments. One of the individual defendants became a member of the board of directors of the SPAC and allegedly learned of the SPAC’s merger negotiations with the media company pursuant to his role as a director and company insider. The director defendant allegedly tipped the second individual defendant and owner of the defendant venture capital firm, who the SEC alleged subsequently tipped his brother, the third individual defendant. The SEC alleged that each of the defendants traded based on material nonpublic information and earned a combined profit of nearly \$23 million.

The SEC alleged that each defendant violated Exchange Act Section 10(b) and Rule 10b-5 thereunder. Moreover, the SEC alleged that the director defendant violated Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder for failure to file with the SEC a Form 4 or Form 5 and failing to report the transactions. The SEC complaint seeks permanent injunctive relief, disgorgement of ill-gotten gains, prejudgment interest, and civil penalties against all defendants, as well as officer and director bars against two of the individual defendants. Director Grewal noted that the “case demonstrates the Commission’s ongoing commitment to exposing insider trading wherever it occurs, including in SPAC mergers, and also highlights the importance of Section 16 filing requirements, as such filings inform the markets and Commission about trades by directors and other corporate insiders.” The DOJ separately criminally charged each of the individual defendants with securities fraud under Title 15 and Title 18 and conspiracy.

### **Misappropriated Information from Investment Bank Regarding Potential Public Company Mergers and Acquisitions**

Two defendants were alleged by the SEC to have traded securities on the basis of material nonpublic information regarding potential mergers and acquisitions of public companies misappropriated by one of the defendants from his romantic partner, an executive assistant at a prominent New York investment bank. The defendant allegedly stole confidential information material to the securities of a large number of corporations from his partner’s laptop while the defendant and his partner both worked at home during the COVID-19 pandemic. The defendant then allegedly shared the material nonpublic information with several of his friends, including the second defendant, a registered representative of a New York broker dealer. The second defendant then allegedly shared the information with colleagues and recommended investments to his brokerage customers on the basis of the alleged material nonpublic information. Together, the two defendants allegedly earned more than \$758,000 from their personal trades, the vast majority of which was earned by the second defendant. The second defendant also allegedly earned several hundred thousand dollars in additional illicit gains in the form of commissions from brokerage client trades.

Scott Thompson, Associate Regional Director of the SEC’s Philadelphia Regional Office, noted that the case represented “brazen betrayals of trust” by the two defendants and that the SEC will “continue to pursue and prosecute insider trading where appropriate to hold people accountable for their actions.” The SEC complaint alleges the defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and seeks permanent injunctive relief, disgorgement with prejudgment interest, civil penalties, and bars on both defendants serving as officers or directors of public companies. The DOJ announced related charges against the second defendant of six counts of securities fraud under Title 15, one count of securities fraud under Title 18, and one count of conspiracy. The DOJ also unsealed charges against the first defendant, who pled guilty pursuant to a cooperation agreement.

These parallel enforcement matters demonstrate the SEC and DOJ’s continued commitment to pursuing insider trading in a variety of circumstances. If you have any questions, please contact Vedder Price attorneys **Brooke E. Conner** at [bconner@vedderprice.com](mailto:bconner@vedderprice.com), **Rachel T. Copenhaver** at [rcopenhaver@vedderprice.com](mailto:rcopenhaver@vedderprice.com), **Junaid A. Zubairi** at [jzubairi@vedderprice.com](mailto:jzubairi@vedderprice.com), **Eric Hyla** at [ehyla@vedderprice.com](mailto:ehyla@vedderprice.com), or any Vedder Price attorney with whom you have worked with any questions.

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