Debevoise & Plimpton

July 2024
Volume 11

INSIDER TRADING & DISCLOSURE UPDATE

In This Issue:

From the Editors	1
Enforcement Matters	2
AI Enforcement Starts with Washing: The SEC Charges	2
SEC Charges FinTech CEO with Fraud and Disclosure Failures	3
SEC Charges Former Tallgrass Energy Board Member and Four Friends with Insider Trading	4
One of British Billionaire's Two Personal Pilots Pleads Guilty to Insider Trading Charges	5
Former Ontrak Executive Convicted in Unprecedented 10b5-1 Plan Prosecution	5
Remote Work Insider Trading Actions	6
Dirks v. SEC: The State of Tipper / Tippee Liability	8
Developments to Watch	10
Internal Accounting Controls Claim Rejected in SolarWinds Case	10
Senators Unveil Bipartisan Deal on Stock Trading Ban	10
SEC Climate-Related Disclosure Rules: Insider Trading and Regulation FD Considerations	11
SEC Amendments to Insider Trading-Related Disclosure Requirements	13
Supreme Court Holds That "Pure Omissions" Are Not Actionable in Private Litigation Under Rule 10b-5	14
Notes	15

From the Editors

Welcome to the latest installment of the Insider Trading & Disclosure Update, Debevoise's periodical focusing on the intersection of legal, compliance and enforcement developments in the areas of insider trading, managing material non-public information and disclosure liability.

With the publication of this issue, we note the passing of two individuals who figured prominently in the landscape of insider trading law and enforcement. Raymond Dirks, whose years-long tussle with the SEC led to a seminal Supreme Court case on tipper/tippe liability, passed away in late December 2023. Mr. Dirks was a Wall Street analyst who received an insider tip about fraud at one of his firm's clients and then both "tipped" a Wall Street Journal reporter about the fraud and advised his clients to sell their holdings in the company. Dirks was then subject to SEC investigation and, following a hearing by an Administrative Law Judge, the SEC found that he had aided and abetted violations of the antifraud provisions of the federal securities laws. Dirks spent years litigating with the SEC and was ultimately vindicated by the Supreme Court in 1983 which rejected the SEC's view that anyone who received non-public information from a corporate insider "inherited" the insider's legal obligation to either make the information public or abstain from trading. Instead, a finding of insider trading liability in the tipper/tippee context requires the requisite breach of duty to involve conduct for the benefit of the insider. (See *Dirks v. SEC*: The State of Tipper/Tippee Liability in this issue).[1] Also passing on was Ivan Boesky, a high profile Wall Street financier who went to prison for his role in insider trading scandals in the 1980s and whose cooperation with federal law enforcement facilitated the downfall of Drexel Burnham Lambert, as well as the downfall of Michael Milken. Mr. Boesky passed away in May 2024.

As was the case throughout 2023, the SEC and DOJ remain active in the enforcement arena. Notably, the SEC continues to execute on its plan to target purportedly fraudulent AI-related disclosures, and is deploying the existing federal securities laws to do so. There are also a number of developments to watch, including proposed legislation banning stock trading by members of Congress. In addition, in light of the SEC's (now stayed) climate-related disclosure rules, this issue includes thoughts on disclosure of trading-related matters in connection with the management of potentially material climate-related disclosures.

We hope that you find this issue useful and informative, and we look forward to bringing you further news and analysis in the future.

Enforcement Matters

AI Enforcement Starts with Washing: The SEC Charges Its First AI Fraud Cases

The U.S. Securities and Exchange Commission (the "SEC" or "Commission") is executing on its plan to target "AI-washing."[2] In March this year, the SEC settled charges against two investment advisers, Delphia Inc. ("Delphia") and Global Predictions Inc. ("Global Predictions") for making false and misleading statements about their purported uses of AI. In June, the SEC filed a complaint against the founder and Chief Executive Officer of an AI recruitment company—the SEC's first litigated matter on the issue. The settlements and the complaint reflect the Commission's determination to target AI-washing under existing antifraud provisions of the federal securities laws.

The Delphia and Global Predictions Settlements

The SEC charged both Delphia and Global Predictions with violations of Section 206(2)[3] of the Investment Advisers Act of 1940 ("Advisers Act") for false and misleading claims about the use of AI in connection with their investment advisory services, as well as with violations of the Marketing Rule and Compliance Rules in connection with the alleged misstatements.

According to the SEC order, from at least August 2019 to August 2023, Delphia represented in its Form ADV Part 2A brochures, in a press release and on its website that it used AI and machine learning to analyze customer data to inform its investment advice when, in fact, no such data was being used in its investment process.[4] According to the order, Delphia claimed that it "*put[s] collective data to work to make our artificial intelligence smarter so it can predict which companies and trends are about to make it big and invest in them before everyone else*."[5] The order indicates that these statements were false and misleading because Delphia did not have the AI and machine learning capabilities that it claimed. The firm was also charged with violating the Marketing Rule, which, among other things, prohibits a registered investment adviser from disseminating any advertisement that includes any untrue statement of material fact.[6]

Following an examination by the SEC, in 2021, Delphia agreed to correct the false and misleading statements. The order alleges that Delphia nonetheless continued to make certain false and misleading statements in advertisements regarding the use of client data. The order also cites the failure of Delphia to adopt and implement written policies and procedures to prevent future violations of the Advisers Act.[7]

In the Global Predictions matter, the San Francisco-based investment advisor allegedly made false and misleading claims on its website and on social media regarding its use of AI.[8] For example, according to the order, the firm falsely claimed to be the "*first regulated AI financial advisor*" and misrepresented that its platform provided "*[e]xpert AI-driven forecasts*."[9]

The SEC alleged that Global Predictions made false claims on its website and social media regarding its AI use and violated other provisions of the Advisers Act, including having impermissible liability disclaimer language in its advisory contract with retail clients and having numerous inconsistencies between information in its advisory contract and its Form ADV Part 2A disclosure.[10]

In settlement of the cases, Delphia and Global Predications agreed to pay a civil penalty of $225,000 and $175,000, respectively.[11]

Joonko

On June 11, 2024, the SEC filed a complaint against Ilit Raz, the founder and Chief Executive Officer of Joonko Diversity, Inc., a recruitment company.[12] According to the SEC's complaint, to raise funds from investors, Mr. Raz marketed Joonko as a platform that could perform AI functions, except that Joonko did not have such capabilities and the technology was not as advanced as Mr. Raz claimed.

The complaint against Mr. Raz is the SEC's first litigated AI-washing matter. The case demonstrates the SEC's wider-ranging scrutiny of AI representations, despite previously focusing on registered investment advisers, broker-dealers and public companies.

Key Takeaways

The Delphia and Global Predictions settlements and the Joonko complain indicate that the SEC is forging ahead with its plan to use traditional fraud-based claims relating to misstatements and omissions to regulate AI-related disclosures. These matters follow public warnings about AI-washing by Chair Gensler, who, in prepared remarks before Yale Law School in February this year, warned that companies and broker-dealers should not mislead the public by misrepresenting their use of AI.[13]

As we wrote in our recent Debevoise Data Blog, companies and firms must be able to accurately articulate their AI use cases and the associated risks and should avoid using hypothetical or qualifying language like "may" to describe AI use cases or risks that actually exist.[14]

SEC Charges FinTech CEO with Fraud and Disclosure Failures

On January 11, 2024, the SEC charged Shanchun Huang, CEO of Future FinTech Group Inc. ("Future FinTech") with manipulative trading in Future FinTech's stock. The SEC alleges that Mr. Huang used an offshore account shortly before he became Future FinTech's CEO in 2020 and failed to disclose his beneficial ownership of Future FinTech stock, as well as transactions in the stock.[15]

According to the SEC's complaint, in late 2019 or early 2020, Mr. Huang used an account in Hong Kong to place trades in Future FinTech stock, at a time when Future FinTech was at risk of being delisted from NASDAQ because its stock price had fallen below the NASDAQ's minimum bid price requirement of $1.00 per share for 30 consecutive trading days.[16]

In an effort to avoid Future FinTech being delisted, Mr. Huang allegedly bought more than 530,000 shares of Future FinTech over a two-month period, while trades repeatedly constituted a high percentage of the daily volume of Future FinTech stock transactions—on one day, his trades constituted 60 percent of the daily trading volume of Future FinTech.[17] He also allegedly placed multiple buy orders in short time frames, placed limit buy orders with escalating limit prices from one order to the next and purchased Future FinTech stock at the top of the National Best Bid and Offer spread—trades that generally would not be economic for an investor.[18] The SEC's complaint alleges that Mr. Huang's trades were intended to, and at times did, push the Future FinTech stock price up. For example, on one day, Mr. Huang placed multiple buy orders within nine minutes, driving the price up from $0.89 to $1.05, at which point his trading stopped.

Furthermore, upon becoming Future FinTech's CEO in March 2020, Mr. Huang was required to file initial, annual, and change of ownership forms about his holdings of Future FinTech stock, but he failed to do so for the year after he became CEO. In March 2021, after he no longer owned any Future FinTech stock,

Mr. Huang belatedly filed a misleading initial form representing that he owned no Future FinTech stock.[19]

The SEC charged Mr. Huang with violating the antifraud and beneficial ownership disclosure provisions of the Securities Exchange Act of 1934, as amended (the "Exchange Act").[20] The SEC's complaint, filed in the U.S. District Court for the Southern District of New York, seeks permanent injunctive relief, a civil penalty pursuant to Section 21(d)(3) of the Exchange Act and an officer-and-director bar from any company that has a class of securities registered under Section 15(d) of the Exchange Act.[21] In a press release issued by Future FinTech on January 17, 2024, Mr. Huang denied the allegations.[22]

The case underscores the SEC's continued efforts to bring enforcement cases addressing a variety of abusive trading practices, such as insider trading, front-running and market manipulation. As Joseph Sansone, Chief of the SEC's Market Abuse Unit, stated in March this year: "*We will continue to pursue and prosecute misconduct by trusted insiders at all levels of the corporate hierarchy*."[23]

SEC Charges Former Tallgrass Energy Board Member and Four Friends with Insider Trading

On March 12, 2024, the SEC charged Roy Cook—along with four of his friends, Jeffrey Natrop, Peter Renner, James Rudolph, and Peter Williams—with insider trading in connection with information Cook obtained while serving as an independent director at Tallgrass Energy Partners, LP ("Tallgrass").[24]

According to the SEC's complaint, Blackstone Inc. (the "Blackstone"), along with other co-investors, purchased 44% of Tallgrass's outstanding public shares in March 2019, driving speculation that the group would eventually take Tallgrass private.[25] On July 29, 2019, Blackstone requested Tallgrass's long-term financial forecast, indicating that that the firm was considering an offer on the remaining shares.[26] At this time, Cook was a member of both the Tallgrass Board of Directors as well as the Tallgrass Conflicts Committee, which was tasked with evaluating Blackstone's potential take-private offer.[27] In the days immediately following Blackstone's request, Cook communicated *via* phone and text message with Tallgrass's CEO and other board members before management provided Blackstone with the requested long-term forecast on August 6, 2019.[28]

On August 9, 2019, Cook allegedly asked Tallgrass's General Counsel whether he could trade Tallgrass securities at that time, and shortly thereafter texted another board member that they were in a "blackout period" and not permitted to trade Tallgrass securities due to the potential Blackstone deal.[29] On August 27, 2019, Tallgrass announced Blackstone's offer to acquire all of the company's outstanding shares, causing a 36% increase in stock price the next day.[30]

The SEC's complaint alleged that between July 31 and August 9, Cook made multiple phone calls to the main phone line for Renner Architects LLC, an architecture firm owned by Renner and Natrop, and during those calls he provided Renner and Natrop with material non-public information ("MNPI") regarding Blackstone's offer.[31] On August 8 and 9, Renner, who had never previously traded in Tallgrass options, purchased a total of 300 out-of-the-money Tallgrass call options, which later resulted in $13,520 in profits.[32] On August 9, 2019, Natrop also purchased 482 out-of-the-money Tallgrass call options, which later resulted in $43,862 in profits.[33]

During the week of August 2, 2019, Cook and Rudolph allegedly vacationed in the Bahamas on Rudolph's yacht in celebration of Rudolph's birthday.[34] On August 6, 2019, while still on vacation, Rudolph purchased 15,000 shares of Tallgrass common stock, which later resulted in $31,035 in

profits.[35] He had never before purchased Tallgrass stock.[36]

The SEC also claimed that Cook communicated with his friend and personal accountant, Williams, *via* telephone on August 14, 2019, and both men traveled to Hartland, Wisconsin, Cook's hometown, the following weekend.[37] On August 19, 2019, Williams purchased 166 out-of-the-money Tallgrass call options.[38] Two days later, Williams purchased an additional 4,134 out-of-the-money Tallgrass call options.[39] Williams had never before purchased stock options.[40]

Several months later, around early December 2019, Cook allegedly provided Williams with additional MNPI regarding the Blackstone deal status, and Williams used the information to trade in a Cook family trust.[41]

On December 13, 2019, the Tallgrass Conflicts Committee accepted Blackstone's offer of $22.45 per share. The agreement was publicly announced on December 16, 2019, pushing the Tallgrass share price up 21%.[42]

The SEC charged Cook, Natrop, Renner, Rudolph, and Williams with violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Cook with violating Section 16(a) of the Exchange Act and Rule 16a-13 thereunder.[43] Cook agreed to a civil penalty of $801,742, disgorgement of his illicit trading profits, and an officer-and-director bar, while the other four defendants agreed to disgorge their illicit trading profits and pay civil penalties in equal amounts.[44]

One of British Billionaire's Two Personal Pilots Pleads Guilty to Insider Trading Charges

As discussed in the December 2023 issue of this Update, Patrick O'Connor, one of two private pilots for billionaire Joseph Lewis, was charged in July 2023 by the Department of Justice (the "DOJ") alongside Lewis and a second private pilot with violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The DOJ, in filing the charges against O'Connor, relied in part on communications obtained from encrypted messaging platforms as evidence that Lewis provided O'Connor and the other pilot with the tip as a gift or quid pro quo in lieu of a formal retirement plan, highlighting the government's access to and reliance on messaging application data.[45] O'Connor was arrested in July 2023 in connection with the charges.[46]

On February 26, 2024, O'Connor pleaded guilty to one count of securities fraud and one count of conspiracy to commit securities fraud, which carry maximum potential sentences of twenty and five years in prison, respectively.[47] On June 25, 2024 O'Connor was sentenced to three years of probation, with the first four months to be spent in home confinement.

Former Ontrak Executive Convicted in Unprecedented 10b5-1 Plan Prosecution

On June 21, 2024, a Los Angeles jury convicted Terren S. Peizer—Executive Chairman of Ontrak Inc. ("Ontrak") —on one count of securities fraud and two counts of insider trading, marking the DOJ's first insider trading prosecution based solely on a 10b5-1 trading plan.[48] As discussed in the May 2023 issue of this Update, in March 2023, the SEC charged Terren S. Peizer—Executive Chairman of Ontrak—with insider trading in connection with his sale of approximately $20 million in Ontrak stock pursuant to two trading plans established under Exchange Act Rule 10b5-1.[49] The charges underlined the SEC's recent scrutiny of Rule 10b5-1 plans, including its amendments to Rule 10b5-1 intended to address a perceived misuse of such plans, which shield insider transactions when properly used.[50]

The DOJ also brought securities fraud and insider trading charges against Peizer in early 2023 in connection with the same 10b5-1 plans.[51] In January 2024, the DOJ filed a superseding indictment charging Peizer with additional counts of securities fraud and insider trading.[52]

Peizer moved to dismiss the indictment on February 9, 2024, arguing that the alleged MNPI related to Ontrak's potential loss of a key customer was publicly available when he executed his 10b5-1 plan.[53] Specifically, Peizer claimed that Ontrak's May 6, 2021 Form 10-Q included disclosures that Ontrak's business depended on four key customers, that these customers might not achieve expected savings, and that the customers might decrease their enrollment levels.[54] Peizer also pointed to multiple instances throughout 2021 where Ontrak had disclosed decreased revenue projections in its public filings.[55] In response, the government argued that Ontrak's key customer disclosures were hypothetical and "boilerplate" in nature, and that Ontrak had included the disclosures at issue in every quarterly and annual filing since 2019.[56] Judge Dale Fischer denied Peizer's motion to dismiss on March 7, 2024.[57]

Peizer's trial began on June 4, 2024, and on June 21, 2024 a Los Angeles jury convicted Peizer on one count of securities fraud and two counts of insider trading.[58] Peizer is set to be sentenced on October 21, 2024 and faces a maximum of 20 years imprisonment on each of the insider trading counts and 25 years imprisonment on the securities fraud count.[59]

Remote Work Insider Trading Actions

With continued popularity of remote work in the post-COVID era, new opportunities to trade in non-public information—perhaps obtained from a trusting source sharing the remote workspace or working in close quarters—have emerged, and recent enforcement actions highlight that the SEC and DOJ have taken notice.

MNPI Obtained from M&A Manager Wife

On February 22, 2024, the SEC and DOJ announced parallel actions against Tyler Loudon for allegedly misappropriating MNPI about the oil and gas company BP p.l.c.'s ("BP") planned acquisition of TravelCenters of America Inc. ("TA")—a truck stop and travel center company—from Loudon's wife, a mergers and acquisitions manager at BP who worked on the deal.[60] According to the SEC's complaint, BP and TA first executed a confidentiality agreement regarding a potential strategic relationship in April 2022.[61] In November 2022, TA granted BP access to a virtual data room to enable BP to conduct due diligence regarding its potential acquisition of TA. BP submitted its initial acquisition offer in December 2022 and revised its offer in February 2023, and TA publicly announced the acquisition on February 16, 2023.[62]

Loudon's wife was assigned to work on the acquisition in early 2022 and generally worked remotely during the period leading up to the acquisition—allegedly "within 20 feet" of Loudon.[63] To support the argument that Loudon had various opportunities to obtain information about the TA deal from his wife, the SEC's complaint provided several details about the activities of Loudon and his wife during the relevant time period, including that in December 2022, the couple traveled to Europe and stayed in a small Airbnb, where Loudon's wife regularly worked on and discussed the TA deal.[64] The SEC alleged that Loudon began to purchase TA stock on December 27, 2022, and continued to purchase additional shares over the period leading up to the public announcement of the acquisition, while selling positions in his individual brokerage account and Roth IRA to finance the additional TA stock purchases. By February 15, 2023, Loudon held 46,450 shares of TA stock worth approximately $1.82 million at $49.94 per

share. When TA announced the acquisition the next day, TA's share price rose to $84.43, and Loudon sold all of his TA shares and realized a profit of $1.76 million.[65]

Loudon's trades came to light when FINRA requested a deal chronology from BP in March 2023, including the names of individuals who had knowledge about the TA acquisition. When Loudon's wife informed Loudon about the request, Loudon confessed to his wife that he had traded in TA shares prior to the acquisition announcement.[66] In response, Loudon's wife reported the trading to her employer, which first placed her on administrative leave, then reviewed her emails and texts (finding no evidence that she knowingly leaked the acquisition to or knew of the trading of her husband), and then terminated her employment.[67] The SEC's complaint noted that Loudon subsequently apologized to his (now-ex-) wife, who initiated divorce proceedings.[68]

Loudon consented to the entry of a partial judgment in the SEC's civil case against him imposing an officer and director bar and ordering Loudon to pay total disgorgement and prejudgment interest of $1,845,600, which was deemed satisfied by the $1,763,522 forfeiture ordered by the U.S. District Court for the Southern District of Texas.[69] Loudon pleaded guilty to securities fraud in the DOJ's parallel criminal action, agreeing to forfeit his trading profit of approximately $1.7 million, and was sentenced to serve 24 months in prison immediately followed by one year of supervised release.[70]

MNPI Obtained from Law Firm Associate Girlfriend

On March 13, 2024, Seth Markin—a former FBI agent trainee—was sentenced to 15 months in prison for trading in the shares of Pandion Therapeutics ("Pandion") based on MNPI that Markin misappropriated from his then-girlfriend, an attorney at a law firm assigned to work on the acquisition of Pandion by Merck & Co. ("Merck").[71]

Markin was arrested in July 2022[72] and pleaded guilty to securities fraud charges in December 2023. According to the SEC's July 2022 complaint filed in the parallel civil case, Merck and Pandion representatives began meeting in August 2020 to facilitate Merck's due diligence of Pandion pursuant to a confidentiality agreement. Merck's due diligence continued through January 2021, by which point Merck had retained the law firm where Markin's then-girlfriend worked to represent Merck in developing and implementing its plan to acquire Pandion.[73] By the end of January 2021, Markin's girlfriend joined the team representing Merck on the Pandion deal and continued working on the deal through and after the deal was publicly announced on February 25, 2021.[74] Markin's girlfriend kept a binder of documents concerning the Merck-Pandion deal in her apartment, which included a copy of a January 2021 internal law firm email indicating that Merck was considering the acquisition of Pandion and sought to move quickly, and also noted that the deal was "highly confidential."[75] Markin was also present in his girlfriend's apartment when she took work calls relating to the deal.

According to the DOJ's press release announcing Markin's sentencing, in February 2021, Markin secretly looked through his girlfriend's confidential work documents and learned that Merck was going to acquire Pandion in a matter of weeks, for approximately three times the value of Pandion's share price.[76] Markin then began purchasing Pandion stock based on this MNPI, and told family members and friends, including co-defendant Brian Wong, to do the same.[77] Markin also sent text messages to Wong assuring that Pandion's price was going to increase substantially when the deal was announced. According to the DOJ, Markin and Wong used an encrypted messaging application to communicate and deleted many of their text messages. Overall, Markin

and Wong together made more than $1.4 million in profits through their trades in Pandion stock, and caused at least 20 people to trade in Pandion stock based on MNPI that Markin misappropriated.[78] The duo also used their Pandion proceeds on various items, including a Rolex watch, a trip to Hawaii, a $1,000 meal at a Michelin-starred restaurant, and a house that Wong purchased in Florida. They also attempted to use a cover story about their trades to claim that they anticipated Pandion's stock price increase based on information shared on StockTwits, a social medial platform for sharing stock ideas.

Similar to Loudon's case, Markin's trading scheme unraveled through a FINRA inquiry. Markin ultimately pleaded guilty to one count of securities fraud. In addition to his prison sentence, Markin was sentenced to three years of supervised release and ordered to forfeit $82,366. In addition, in February 2024, Markin consented to the entry of a judgment against him in the SEC's parallel civil case, according to which Markin is permanently restrained and enjoined from violating Sections 10(b) and 14(e) of the Exchange Act, and Rules 10b-5 and 14e-3 thereunder.[79]

Loudon and Markin's cases demonstrate that remote work arrangements will continue to be a focus for enforcement authorities—and that FINRA's trade surveillance systems are adept at identifying timely trades.

Dirks v. SEC: The State of Tipper / Tippee Liability

It has been over 40 years since the Supreme Court decided *Dirks v. Securities and Exchange Commission*[80] and established the "personal benefit" test for joint tipper-tippee liability under federal securities laws. *Dirks* has had a lasting impact on insider trading enforcement and continues to play a significant role in insider trading enforcement.

Background

Dirks, an analyst who provided investment advice for a broker-dealer firm, received information from a former officer of an insurance company, Equity Funding of America ("Equity Funding"), alleging that assets of Equity Funding were fraudulently overstated and urging Dirks to verify the information. Dirks investigated the allegations, including interviewing several officers and employees of Equity Funding.[81] Neither Dirks nor his firm owned or traded any Equity Funding stock. However, in the course of his investigations, Dirks discussed the information he had obtained with clients and investors, some of whom decided to sell their holdings in Equity Funding.[82] After the stock price dropped dramatically and the NYSE halted trading of Equity Funding's shares, the SEC filed a complaint against Dirks for his role in informing clients of the fraud, arguing that Dirks aided and abetted the fraudulent sale of Equity Funding stock.[83]

In a 6-3 decision, the Supreme Court held that Dirks had no duty to abstain from using the insider information he had been given and therefore had not violated the federal securities laws.[84] In doing so, the Court established a test that became the bedrock of "Tipper/Tippee" liability.

Under the *Dirks* test, the complainant must establish that the tipper: (i) had a duty to the company to keep MNPI confidential; (ii) breached that duty by intentionally or recklessly relaying the information to the tippee; and (iii) received a personal benefit from the tip. For a tippee to be liable under the test, the complainant must establish that: (i) the tipper breached his or her fiduciary duty to keep the information confidential; (ii) the tippee knew or had reason to know that the information provided by the tipper was obtained through the tipper's breach; and (iii) the tippee, while in knowing possession of the MNPI, used the information by trading or by tipping for his own benefit.

Development of the Law on Personal Benefits

The Dirks decision has been revisited numerous times since 1983, particularly in the context of cases in which the defendant has argued that they did not receive a "personal benefit."

Following *Dirks*, lower courts tended to take an expansive view on the scope of what constitutes a personal benefit.[85] In *SEC v. Sargent*[86], the First Circuit held that a tip to smooth over a rough patch between two long-time acquaintances' families was sufficient evidence to allow a jury to conclude that there had been a personal benefit. Further, in *SEC v. Obus*[87], the Second Circuit elaborated that the benefit to the tipper is to be interpreted broadly and may include a "cut of the take" from the tippee, reputational gains from having provided the information and other benefits of gifting such information to a friend.

In *SEC v. Yun*[88], the Court of Appeals for the Eleventh Circuit held that the SEC did not need "extensive" proof to establish that the tipper intended to benefit. In that case, the SEC's evidence that the tipper and tippee were friendly coworkers who split real estate commissions was enough to show an expectation of personal benefit from a tip through maintaining a good relationship with the tippee.

In a short-lived move away from the broad interpretation of what constitutes a personal benefit, in *United States v. Newman*[89], the Second Circuit held that the test required proof of a meaningfully close personal relationship "*that generates an exchange that is objective, consequential and represents at least a potential gain of a pecuniary or similarly valuable nature*," and that the tippee knew of that potential gain. In Newman, the defendant was several "layers" removed from the company insiders who were the source of the tips and argued that there was a lack of evidence regarding his knowledge that he was trading on MNPI provided in violation of the insiders' fiduciary duties, which the court agreed with.

However, in 2016 the Supreme Court effectively overruled *Newman* in *Salman v. United States*[90]. In *Salman*, the Supreme Court stated that *"[t]o the extent the Second Circuit held that the tipper must also receive something of a 'pecuniary or similarly valuable nature' in exchange for a gift to family or friends …, we agree with the Ninth Circuit that this requirement is inconsistent with Dirks*." Bassam Salman had indirectly received MNPI from an extended family member who worked as an investment banker at Citigroup. Salman argued that he did not pay for or provide any gifts of property to the tipper in exchange for the tips. The Court held that gratuitous tips could include a personal benefit, regardless of receipt of a pecuniary benefit, but declined to provide further guidance to as to the contours of the personal benefit standard. As a consequence, the debate around the personal benefit standard has continued.

Trends in Insider Trading Enforcement Activity

In recent years, the SEC and DOJ have pursued a number of insider trading cases pursuant to tipper-tippee liability. For example, in the December 2023 issue of this Update, we discussed recent tipper-tippee cases, including against Joseph Lewis, who allegedly orchestrated a tipping scheme involving his girlfriend and his private pilots, and against Anthony Viggiano, who shared MNPI with several friends who then traded on the information. This issue also includes an update on the *Lewis* case, and discussion of a tipper/tippee case involving a former Tallgrass Energy board member and four of his friends.

Moreover, the Director of the Division of Enforcement, Gurbir S. Grewal, recently reaffirmed the SEC's "*commitment to leveraging all the tools at [our] disposal, including [our] data analytics*

initiatives, to investigate abusive trading practices, hold accountable bad actors and ensure the integrity of our markets." We expect the SEC's enforcement zeal in this area of the law to continue.

Developments to Watch

Internal Accounting Controls Claim Rejected in SolarWinds Case

On July 18, 2024, in the landmark *SEC v. SolarWinds Corp.*[91] case, U.S. District Judge Paul Engelmayer dismissed the majority of the claims brought by the SEC against SolarWinds Corporation ("SolarWinds"), including the SEC's previously untested claim that alleged deficiencies in SolarWinds' cybersecurity controls amounted to violations of the internal accounting controls requirements of Section 13(b)(2)(B) of the Exchange Act.

SolarWinds presented the first opportunity for a federal court to evaluate the SEC's theory that Section 13(b)(2)(B) could be extended beyond financial accounting controls, as they were traditionally understood, to include cybersecurity controls related to technology assets more generally. The SEC had alleged that SolarWinds violated Section 13(b)(2)(B) by allegedly failing to "devise and maintain a system of internal accounting controls" to limit access to its "crown jewel" assets, including key software products and associated systems.

In *SolarWinds*, the court found that the SEC's attempt to expand Section 13(b)(2)(B) was an impermissible overreach. The court held that the cybersecurity controls at issue in the SEC's suit against SolarWinds, such as password and VPN protocols, are "*outside the scope of Section 13(b)(2)(B)*" because they "*cannot reasonably be termed an accounting problem.*" Tracing the origins of the internal accounting controls requirements to the 1977 passage of the Foreign Corrupt Practices Act (the "FCPA"), the opinion held that Section 13(b)(2)(B) was "*intended to provide extra assurance of the accuracy and completeness of the financial information on which the issuer's annual and quarterly reports rel*y." Noting also that the FCPA was adopted "*long before cybersecurity became a relevant concept in business or society*," the court concluded that an issuer's cybersecurity controls were not part of the "apparatus" required by Section 13(b)(2)(B).

The court's decision may limit one of the SEC's tools to bring charges in cybersecurity and other disclosure cases without alleging fraud under Section 10(b) of the Exchange Act or Section 17(a) of the Securities Act of 1933, as amended (the "Securities Act").

For additional information on the SolarWinds case, please see our Debevoise Debrief here.

Senators Unveil Bipartisan Deal on Stock Trading Ban

On June 10, 2024, a bipartisan group of senators proposed legislation to ban members of Congress, their spouses and dependent children, from trading in individual stocks.

Under the legislation, members of Congress would be immediately banned from buying stocks and other covered investments and from selling stocks 90 days after enactment. Spouses and dependent children would be banned from trading stocks beginning in March 2027. The legislation would also require members of Congress, the President and the Vice President to divest from all covered investments, starting in 2027. The penalty for violations of the legislation would be either the official's monthly salary or 10% of the value of the assets traded in violation of the law, whichever is greater.

The Homeland Security and Governmental Affairs Committee will vote on whether to advance the

legislation to the Senate floor on July 24. Previous efforts to have a stock trading ban passed through Congress have failed over the last several years, however the bipartisan backing in the Senate could help to progress the bill.

SEC Climate-Related Disclosure Rules: Insider Trading and Regulation FD Considerations

On March 6, 2024, the SEC adopted its long-awaited rule on the "Enhancement and Standardization of Climate-Related Disclosures for Investors" (the "rule"). If the rule goes into effect in its current form, it will require registrants to disclose extensive climate-related information in their registration statements and periodic reports.

On April 4, 2024, the SEC exercised its discretion to stay the rule pending completion of judicial review in the U.S. Court of Appeals for the Eighth Circuit, but stated that it would continue "vigorously defending"[92] the rule in court. The legal challenges leave the future and ultimate scope of the rule uncertain, and the SEC has informally indicated that it may extend compliance timelines should the rule survive legal challenge.

Prior to adoption and notwithstanding the stay, many registrants continue to prepare for the rule's requirements if and when it becomes effective. Among many other considerations, the rule raises a number of questions that registrants should consider in connection with disclosure controls, disclosure liability, insider trading policies and Regulation FD.

Materiality Determinations

Many of the disclosure requirements under the rule are subject to materiality thresholds, including those relating to greenhouse gas emissions, climate-related risks, transition plans and the use of scenario analyses and internal carbon prices. As a result, companies will be required to make materiality determinations about information that many have not historically considered material to investment decisions. Because materiality is a fact-intensive, quantitative and qualitative analysis, subject matter experts—such as Chief Sustainability Officers ("CSOs")—should play a role in these decisions, such as by joining the relevant disclosure committee or subcommittee, and may be asked to sign sub-certifications relating to disclosure decisions. This may be a first for many sustainability professionals, and companies should consider how subject matter experts will be engaged and consider socializing these new requirements and processes with relevant personnel well ahead of time.

The rule also requires that registrants make certain disclosures about the oversight and governance of climate-related risks by, if applicable, both the board of directors and management. As such, CSOs and other sustainability professionals tasked with these responsibilities will be essential to a company's effective integration of disclosure processes and requirements into existing policies, procedures and controls.

In making materiality determinations, companies should consider the relevant information under the typical materiality framework: is there a substantial likelihood that the information would be viewed by the reasonable investor as having significantly altered the "total mix" of information made available. As in other cases, materiality determinations that registrants make under the rule will be fact-specific and should incorporate both quantitative and qualitative considerations. The types of information relevant to the analysis, the interrelated nature of the newly required disclosures and the extensive SEC guidance regarding when climate-related information may be material, will make the determination particularly complex. Registrants should take care to assess whether appropriate disclosure controls and procedures have been developed and implemented and consider testing them ahead of the compliance

deadline, to ensure that the information required to make the relevant materiality determinations is collected and available to management. Adequate processes must be in place to support materiality determinations, even if a registrant ultimately determines that it does not need to provide disclosure because the information is not material.

Disclosure Liability and Insider Trading Considerations

By requiring that climate-related disclosure be included in periodic reports and other filings made with the SEC, including registration statements, the rule creates potential liability for registrants under both the Securities Act and the Exchange Act. Among other rules and regulations, registrants will be subject to the broad antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Registrants will also be subject to strict liability under Section 11 of the Securities Act when the information is included or incorporated by reference into registration statements.

Importantly, the rule extends existing safe harbors for forward-looking statements under the Private Securities Litigation Reform Act of 1995 to aspects of the disclosures (excluding historical facts). This includes disclosures pertaining to transition plans, scenario analysis, the use of internal carbon pricing and targets and goals. The safe harbor is also extended to disclosures made by registrants in connection with certain transactions that are currently excluded from existing safe harbors for forward-looking statements, such as registrants conducting an initial public offering.

Furthermore, because the new disclosure requirements require a variety of materiality determinations, the rule may create a new formally-identified group of insiders at companies—those responsible for collecting, reviewing and reporting sustainability-related information. Registrants should consider reviewing their insider trading and other relevant policies to determine whether there are additional employees or groups who should be subject to trading window or blackout policies and should also consider if new window periods will be necessary to coincide with the collection of climate-related information.

Regulation FD Considerations

Registrants should also keep in mind selective disclosure considerations under Regulation FD as it relates to material, climate-related information. Regulation FD prohibits the selective disclosure of material nonpublic information to certain enumerated persons, unless that information has been publicly disclosed. With this new emphasis on material climate-related disclosure, companies should ensure that their external communications policies and procedures address disclosures of climate-related information, and that CSOs and other sustainability professionals who may communicate with third parties about climate-related information receive relevant training. In light of the additional scrutiny imposed by the rules, climate-related communications should be reviewed prior to their publication to, among other things, be evaluated in the context of prior communications and disclosure, to ensure consistency and supportability.

For additional information on the rule, please see our Debevoise Debrief here and our Debevoise In Depth here. Our ESG Resource Centre can be accessed here.

SEC Amendments to Insider Trading-Related Disclosure Requirements

In December 2022, the SEC adopted amendments to modernize Rule 10b5-1 trading plans and related disclosures. New Item 408(b) of Regulation S-K and new Item 16J to Form 20-F will require public companies to disclose whether they have adopted insider trading policies and procedures governing

trading in the company's securities by directors, officers, and employees of the issuer, or by the issuer itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations and any applicable listing standards. Companies that have not adopted such policies will be required to explain why they have not done so. The SEC also amended Item 601 of Regulation S-K to require insider trading policies to be filed as exhibits to Form 10-K or Form 20-F.

Compliance with these new insider trading policy disclosure requirements for companies with a calendar year fiscal year will begin with the 2024 Form 10-K or Form 20-F, or the related proxy statement, each to be filed in 2025.

As a result, insider trading policies will—in most cases, for the first time—be available for investors, proxy advisors and others to review. We recommend that issuers consider updates and refinements to their insider trading policies in anticipation of the new disclosure requirement. For example, issuers should consider the following:

- Whether the policy covers dispositions of the issuer's securities by bona fide gift. Historically, many trading policies specifically excluded gifts from their scope, but the SEC's position is that gifts of securities may also be subject to insider trading rules under Section 10(b) of the Exchange Act.
- If the issuer maintains multiple insider trading policies (e.g., a separate policy for designated insiders / Section 16 officers and directors), consider consolidating these policies into a single policy to be filed, or otherwise ensuring that the policies are consistent, as applicable, as each will need to be filed.
- If the insider trading policy is contained within another document (e.g., a Code of Conduct) or addresses topics other than insider trading (e.g., confidentiality, compliance with other laws, rules and regulations), consider adopting a stand-alone policy that is limited to compliance with insider trading laws.
- Expressly addressing the use of insider information to trade in securities of an "economically-linked" company, commonly referred to as "shadow trading."

In addition, new Item 408(b) will require companies to disclose whether they have trading policies applicable to transactions by the company, or explain why they do not. Historically, it has not been common for insider trading policies to apply to the company's own trading activity. Though a company may choose to subject itself to an extant insider trading policy, this approach could have a number of unintended consequences. For example, an existing policy could contain certain procedural restrictions (such as pre-clearance procedures) that make sense when applied to individuals, but are less appropriate as applied to the issuer. There may also be substantive restrictions on hedging, pledging or speculative trading that are generally considered best practice for directors and officers, but which transactions could be commercially attractive and appropriate for issuers to engage in. As a result, companies should take care not to adopt a trading policy for the issuer that imposes an undue burden on company activity, and may prefer a more streamlined approach. For example, companies may consider including a statement within an existing trading policy that it is the policy of the issuer to comply with all applicable insider trading laws, rules and regulations. This should allow the company to disclose that it does have applicable policies, while still allowing for sufficient flexibility to engage in appropriate transactions in their own securities.

For additional information on the December 2022 amendments to modernize Rule 10b5-1 trading plans and Related Disclosures, please see our Debevoise Debrief here.

Supreme Court Holds That "Pure Omissions" Are Not Actionable in Private Litigation Under Rule 10b-5

On April 12, 2024, in a highly anticipated decision, the Supreme Court held in *Macquarie Infrastructure Corp. v. Moab Partners, L.P*[93], that pure omissions are not actionable in private litigation under Rule 10b-5(b). Resolving a circuit split, the Court held that Rule 10b-5(b) does not support a "pure omissions" theory based on an alleged failure to disclose material information required by Item 303 of SEC Regulation S-K (Management's discussion and analysis of financial condition and results of operations, or "MD&A"). Instead, a "*failure to disclose information required by [MD&A] can support a Rule 10b-5(b) claim only if the omission renders affirmative statements made misleading*."[94] While the decision arose in the context of Item 303, which requires disclosure of "known trends and uncertainties" that have had or are "reasonably likely" to have a material impact on net sales, revenues or income from continuing operations, the decision stands for the broader principle that Rule 10b-5(b) does not support pure omissions theories based on alleged violation of any disclosure requirement. The Court's decision does not foreclose future plaintiffs from bringing omissions-oriented private litigation claims concerning Item 303 of Regulation S-K under a "half-truths" theory—*i.e.*, that the information omitted from MD&A renders other affirmative statements misleading. Further, pure omissions-based private litigation claims remain viable under Section 11 of the Securities Act, and, of course, issuers remain subject to SEC enforcement activity tied to alleged omissions from MD&A, as well as to SEC review of and comment on public disclosures.

For additional information on Macquarie case, please see our Debevoise Update here.

Notes

---

1 *Dirks v. SEC*, 463 U.S. 646, 663-64 (1983).

2 "AI-washing" refers to the practice making false or misleading claims about AI capabilities or the extent of AI use. The term derives from "greenwashing," a practice of making false or exaggerated claims about the positive impact a company's policies and practices may have on the environment.

3 Section 206(2) of the Advisers Act makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2); a finding of negligence is sufficient. *See SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

4 *Id.* at 3.

5 *Id.*

6 *Id.* at 5.

7 *Id*. at 2.

8 *In the Matter of Global Predictions, Inc.*, Inv. Adv. Act Rel. No. 6574 (Mar. 18, 2024) at 3.

9 *Id.*

10 *Id*. at 4.

11 SEC Press Release No. 2024-36, *SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence* (Mar. 18, 2024), https://www.sec.gov/newsroom/press-releases/2024-36.

12 SEC Complaint, *Securities and Exchange Commission v. Ilat Raz,* 24 Civ. 4466 (S.D.N.Y. Jun. 11, 2024).

13 Video Transcript, *Chair Gary Gensler on AI Washing* (Mar. 18, 2024), https://www.sec.gov/newsroom/speeches-statements/sec-chair-gary-gensler-ai-washing.

14 A version of this article was published on the Debevoise Data Blog, available here. The article was written by Andrew Ceresney, Charu A. Chandrasekhar, Avi Gesser, Arian June, Robert B. Kaplan, Julie M. Riewe, Jeff Robins, Kristin Snyder, Jonathan R. Tuttle, James Amler, Phil Fortino, Matt Kelly, Anna Moody, Stephan J. Schlegelmilch, Gabriel Kohan and Cory Goldstein.

15 SEC Complaint, *Securities and Exchange Commission v. Shanchun Huang,* 24 Civ. 0238 (S.D.N.Y. Jan. 11, 2024).

16 *Id*. at 25.

17 *Id*. at 70.

18 *Id*. at 3.

19 *Id*. at 6.

20 *Id*. at 11.

21 *Id*.

22 PR Newswire Press Release, *Shanchun Huang Responds to SEC Allegations* (Jan. 17, 2024) https://www.prnewswire.com/news-releases/shanchun-huang-responds-to-sec-allegations-302037242.html.

23 SEC Press Release No. 2024-40, *SEC Charges Former Arista Networks Chairman Andy Bechtolsheim with Insider Trading* (Mar. 26, 2024) https://www.sec.gov/news/press-release/2024-40.

24 SEC Complaint, *SEC v. Cook*, Civil Case No. 2:24-cv-313 (E.D. Wis. Mar. 12, 2024) [hereinafter the "Cook Complaint"].

25 *Id*. at ¶18.

26 *Id*. at ¶20.

27 *Id*. at ¶¶21-22.

28 *Id*. at ¶¶21-22.

29 *Id*. at ¶23.

30 *Id*. at ¶25.

31 *Id*. at ¶¶30-31.
32 *Id*. at ¶¶32, 34.
33 *Id*. at ¶35.
34 *Id*. at ¶39.
35 *Id*. at ¶40.
36 *Id*. at ¶42.
37 *Id*. at ¶¶43-45.
38 *Id*. at ¶47.
39 *Id*. at ¶48.
40 *Id*. at ¶51.
41 *Id*. at ¶¶55, 57; see SEC Press Release No. 2024-34, *SEC Charges Tallgrass Energy's Former Board Member Roy Cook and Four Others with Insider Trading in Advance of Blackstone Acquisition* (Mar. 12, 2024), https://www.sec.gov/news/press-release/2024-34.
42 Cook Complaint at ¶54.
43 *Id*. at ¶¶79, 82.
44 SEC Press Release No. 2024-34, *SEC Charges Tallgrass Energy's Former Board Member Roy Cook and Four Others with Insider Trading in Advance of Blackstone Acquisition* (Mar. 12, 2024), https://www.sec.gov/news/press-release/2024-34.
45 *Id*.
46 DOJ Press Release No. 24-069, *Personal Pilot To Billionaire Investor Joseph Lewis Pleads Guilty To Insider Trading Scheme* (Feb. 26, 2024), https://www.justice.gov/usao-sdny/pr/personal-pilot-billionaire-investor-joseph-lewis-pleads-guilty-insider-trading-scheme.
47 *Id*.
48 DOJ Press Release No. 24-797, *Chairman of Publicly Traded Health Care Company Convicted of Insider Trading* (June 21, 2024), https://www.justice.gov/opa/pr/chairman-publicly-traded-health-care-company-convicted-insider-trading.
49 *See* Insider Trading & Disclosure Update, Volume 9 (May 2023), https://www.debevoise.com/insights/publications/2023/05/insider-trading-disclosure-update-volume-9.
50 *Id*. at 11-12.
51 DOJ Pending Criminal Division Cases, *United States v. Peizer*, Court Docket: 2:23-CR-89 (Apr. 4, 2024), https://www.justice.gov/criminal/criminal-vns/case/united-states-v-terren-s-peizer.
52 *Id*.
53 Def.'s Mot. to Dismiss, *United States v. Peizer*, No. 23-00089, ECF Doc. No. 113, at 9 (Feb. 9, 2024).
54 *Id*.
55 *Id*.
56 Gov.'s Opp'n, *United States v. Peizer*, No. 23-00089, ECF Doc. No. 115, at 7 (Feb. 16, 2024).
57 DOJ Pending Criminal Division Cases, *United States v. Peizer*, Court Docket: 2:23-CR-89 (Apr. 4, 2024), https://www.justice.gov/criminal/criminal-vns/case/united-states-v-terren-s-peizer.
58 DOJ Press release No. 24-797, *Chairman of Publicly Traded Health Care Company Convicted of Insider Trading* (June 21, 2024), https://www.justice.gov/opa/pr/chairman-publicly-traded-health-care-company-convicted-insider-trading.
59 *Id*.
60 *See* SEC Press Release No. 2024-24, *SEC Charges Husband of Energy Company Manager with Insider Trading* (Feb. 22, 2024), https://www.sec.gov/news/press-release/2024-24 [hereinafter "SEC Loudon Press Release"]; DOJ Press Release, *Insider trading – Husband illegally profits $1.7M after using wife's private company information* (Feb. 22, 2024), https://www.justice.gov/usao-sdtx/pr/insider-trading-husband-illegally-profits-17m-after-using-wifes-private-company [hereinafter "DOJ Loudon Press Release"].

[61] SEC Complaint, *SEC v. Tyler Loudon*, 24-cv-00622 (S.D. Tex. Feb. 22, 2024), https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-24.pdf [hereinafter "Loudon Complaint"].
[62] *Id*. at ¶ 8.
[63] *Id*. at ¶ 10.
[64] *Id*.
[65] *Id*. at ¶ 12.
[66] *Id*. at ¶ 15.
[67] *Id*.
[68] *Id*. at ¶ 16.
[69] *See* SEC Litigation Release No. 26013, *SEC Obtains Final Judgment Against Houston Resident Charged with Insider Trading Based on Information Misappropriated from His Wife* (May 31, 2024), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26013.
[70] DOJ Press Release, *Houstonian heads to prison in $1.7M insider trading scheme using wife's private company information* (May 21, 2024), https://www.justice.gov/usao-sdtx/pr/houstonian-heads-prison-17m-insider-trading-scheme-using-wifes-private-company.
[71] DOJ Press Release No. 24-092, *Former FBI Agent Trainee Sentenced To 15 Months In Prison For Insider Trading Scheme* (Mar. 13, 2024), https://www.justice.gov/usao-sdny/pr/former-fbi-agent-trainee-sentenced-15-months-prison-insider-trading-scheme [hereinafter "DOJ Markin Press Release"].
[72] Markin was arrested as part of an insider trading probe involving four separate cases against nine individuals. See our September 2022 issue here.
[73] *See* SEC Complaint, *SEC v. Seth Markin and Brandon Wong*, 22-cv-06276 (S.D.N.Y. July 25, 2022), https://www.sec.gov/files/litigation/complaints/2022/comp-pr2022-129-markin.pdf [hereinafter "Loudon Complaint"].
[74] *Id*. at ¶ 27.
[75] *Id*. at ¶ 29.
[76] DOJ Markin Press Release.
[77] Wong pleaded guilty on November 10, 2022 to being an accessory after the fact to conspiracy to commit securities fraud and tender fraud, and was sentenced in April 2023 to three years' probation with three months' home confinement and forfeiture of $403,376. *Id.*
[78] *Id*.
[79] *See SEC v. Seth Markin and Brandon Wong*, 22-cv-06276 (S.D.N.Y. Feb. 9, 2024).
[80] *Id*.
[81] *Id*. at 649.
[82] *Id*.
[83] *Id*. at 650-51.
[84] *Id*. at 650-51, 662, 667.
[85] *Id*.
[86] *Id*. at 72, 77.
[87] *Id*. at 293, *citing Dirks v. SEC*, 463 U.S. 646, 663-64 (1983).
[88] *SEC v. Yun*, 327 F.3d 1263, 1280 (11th Cir. 2003).
[89] *United States v. Newman*, 773 F.3d 438, 442-43 (2d Cir. 2014).
[90] *Salman v. United States*, 580 U.S. 39 (2016).
[91] *Securities and Exchange Commission v. Solarwinds Corp. & Timothy G. Brown*, 23 Civ. 9518 (PAE) (S.D.N.Y. Jun. 7, 2024).
[92] *In re Enhancement and Standardization of Climate-Related Disclosures for Investors*, Rel. Nos. 33-11280, 34-99908 (Apr. 4, 2024) (announcing voluntary stay), https://www.sec.gov/files/rules/other/2024/33-11280.pdf.
[93] *Macquarie Infrastructure Corp. v. Moab Partners,* 601 U.S. Apr. 12, 2024.
[94] *Id.*

Insider Trading & Disclosure Update is a publication of

Debevoise & Plimpton LLP

New York
66 Hudson Boulevard
New York, New York 10001
www.debevoise.com

Washington, D.C.
801 Pennsylvania Avenue N.W.
Washington, D.C. 20004
+1 202383 8000

San Francisco
+1 415 738 5700

London
+44 20 7786 9000

Paris
+33 1 40 73 12 12

Frankfurt
+49 69 2097 5000

Luxembourg
+352 27 33 54 00

Hong Kong
+852 2160 8900

Shanghai
+86 21 5047 1800

Editorial Board

Matthew E. Kaplan
Co-Editor-In-Chief

Jonathan R. Tuttle
Co-Editor-In-Chief

Benjamin R. Pedersen
Managing Editor

Anna Moody
Executive Editor

Mark D. Flinn
Associate Editor

Ashley Yoon
Associate Editor

Amy Pereira
Associate Editor

Bailey Crawford
Associate Editor

All content © 2024 Debevoise & Plimpton LLP. All rights reserved. The articles appearing in this publication provide summary information only and are not intended as legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein. Any discussion of U.S. federal tax law contained in these articles was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer under U.S. federal tax law.