

LEGAL ALERT

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NEW INSIDER TRADING PRECEDENT: TIME TO UPDATE INSIDER TRADING POLICY

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On April 5, 2024, the Securities and Exchange Commission (the “SEC”) obtained a verdict after an eight-day civil jury trial in *SEC v. Matthew Panuwat* (“[SEC v. Panuwat](#)”), in which the SEC alleged shadow insider trading, in violation of the federal securities laws. The SEC’s complaint alleged that Panuwat used highly confidential information of his employer, Medivation, Inc.’s (“Medivation”) upcoming acquisition by Pfizer Inc. (“Pfizer”) to trade ahead of the news for his own enrichment. [SEC v. Panuwat](#) is different because Mr. Panuwat did not trade in Medivation’s stock as would be the case with a direct insider trading case, but in its competitor—hence the “shadow insider trading.” According to the complaint, Panuwat utilized confidential information to purchase short-term, out of the money call options of a competitor, Incyte Corporation. The “economically linked” investments in the before-mentioned options were made by Mr. Panuwat seven minutes from his receipt of a call from Medivation’s CEO about Pfizer’s interest in acquiring Medivation.

WARNING COMPANY EXECUTIVES, EMPLOYEES AND THOSE IN THE WEALTH MANAGEMENT INDUSTRY ABOUT “SHADOW INSIDER TRADING”

Most public companies annually send a memorandum to insiders that are expected to have, from time to time, non-public material information. Considering this new precedent, it is prudent to update these memorandums and provide board and executive training.

Executives and employees with material, non-public information should be instructed not to utilize such information to trade in the employer’s stock, as well as any stock that may be “economically linked” such as a competitor, material vendor, or material supplier.

This jury verdict and the accompanying denial of a motion to dismiss, make it necessary for companies to consider explicit trading restrictions for insiders in shares of “economically linked” companies while in possession of material, non-public information. Those trading securities should also be cautious when trading in the securities of a company that is “economically linked” to an insider’s company. The same holds true for

broker-dealers and investment advisors, whether exempt or registered. Compliance Manuals and Code of Ethics may have to be updated for this emerging trend in enforcement.

The SEC's recent Rule 10b5-1 update, strengthening the requirements for insider trading plans combined with the SEC v. Panuwat jury verdict make it important for public companies to update their insider trading policies to forewarn insiders and traders about the SEC's aggressive pursuit of broader theories of insider trading. This case reminds companies and their insiders of the importance of special blackout periods that prohibit insiders from trading while in the possession of material, non-public information and companies would be prudent to adopt a policy that limits trading in company stock as well as companies that are "economically linked."

Clients interested in updating their policies or obtaining training for executives, employees or management, may contact [Molly Brown](#) or [Andrew May](#).

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