The Investment Lawyer

Covering Legal and Regulatory Issues of Asset Management

VOL. 23, NO. 12 • DECEMBER 2016

Do You Think the Second Circuit's Decision in *United States v. Newman* Is a Game Changer for Hedge Funds? Not So Fast.

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In recent years, the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) have substantially increased their scrutiny of insider trading. In 2014, 2015, and 2016, the SEC filed insider trading actions against 111, 87, and 78 individuals or entities, respectively.[1] Since 2009, the DOJ has charged 107 individuals with insider trading and has announced charges against 11 individuals for insider trading in 2016 alone.[2] The government has been overwhelmingly successful in these cases, including against high-profile defendants such as Raj Rajaratnam of the Galleon Group, who was convicted and sentenced to the longest sentence ever imposed for insider trading offenses.[3] Indeed, between 2009 and 2015, the United States Attorneys' Office for the Southern District of New York has garnered 80 convictions and guilty pleas in insider trading cases.[4] In December 2014, the Second Circuit dealt the government its first setback since 2009 in the *Newman* decision when it clarified the law in an effort to reign in the expanding scope of insider trading law.

Many of the insider trading cases over the last six years, both criminal and civil, have involved hedge funds. This article discusses the current legal foundations of insider trading claims for both the SEC and the DOJ and the legal exposure to advisers to hedge funds. In light of the government's continued focus on insider trading, hedge fund advisers should stay vigilant in their efforts to maintain policies and procedures to prevent the misuse of material nonpublic information. Comprehensive procedures and proper documentation will put advisers and their employees in the best position to respond to regulatory inquiries regarding trading decisions and to any charges that result from investigations.

A. The Government's Burden in Insider Trading Cases

Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful for any person "to use or employ, in connection with the purchase or sale of any security… any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe."[5] Rule 10b-5 further provides that "[i]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,… [t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."[6] However, liability extends beyond the corporate insider or misappropriator to those outsiders who trade on the basis of material, nonpublic information improperly received (that is, tipees).[7] The Court and even the SEC recognized, though, that imposing a general duty to disclose or abstain on the basis of the receipt of any material, nonpublic information from an insider or misappropriator would have an unhealthy "inhibiting influence on the role of market analysts."[8] Thus, in order to establish insider trading in violation of Section 10(b) or Rule 10b-5, the government must establish the following:

> (i) that the tipper possessed material, nonpublic information regarding a security's issuer; (ii) the tipper disclosed this information to the tippee; (iii) the tippee traded in the issuer's securities while in possession of the information; (iv) the tippee knew or should have known that the information was disclosed in violation of a relationship of trust; and (v) the tipper benefited by the disclosure to the tippee.[9]

Notwithstanding these limitations that the Court has imposed on insider trading liability, the "topsy-turvy" development of the law since *Dirks* has permitted a growing number of remote tippees to become entangled in insider trading allegations on the basis of increasingly vague "personal benefits" that have allegedly been received by tippers and inferred knowledge on the part of the tippee of such personal benefits.[10] In fact, the Second Circuit recently criticized the "doctrinal novelty of [the government's] recent insider trading prosecutions, which are increasingly targeted at remote tippees many levels removed from corporate insiders."[11] In *Newman*, the government alleged that a "cohort of analysts" from various hedge funds and investment firms obtained material, nonpublic information from employees of publicly traded technology companies (Dell and NVIDIA), shared it amongst themselves, and passed it along to portfolio managers at their respective companies.[12] Todd Newman and Anthony Chiasson were portfolio managers who received the information at the end of this long tipping chain.[13] Newman and Chiasson executed trades in these companies' stocks for profits of approximately $4 million and $68 million, respectively.[14] It was "largely uncontroverted" that Newman and Chiasson knew "next to nothing about the insiders and nothing about what, if any, personal benefit had been provided to them."[15] Newman and Chiasson were convicted on all counts following a six-week jury trial on charges of securities fraud in violation of Sections 10(b) and 32 of the Securities Exchange Act of 1934, SEC Rules 10b-5 and 10b5-2, and 18 U.S.C. § 2, as well as conspiracy to commit securities fraud in violation of 18 U.S.C. § 371.[16] The Second Circuit reversed the jury's conviction on all counts and remanded with instructions to dismiss the indictment as to Newman and Chiasson.[17]

In reviewing the appeal, the Second Circuit rejected the government's argument that it need not prove that Newman and Chiasson knew that the insiders at Dell and NVIDIA received a personal benefit.[18] Indeed, the Second Circuit found *Dirks* "quite clear" that "even in the presence of a tipper's breach, a tippee is liable only if he knows or should have known of the breach."[19]

Instead, the Second Circuit held that "the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he [or she] did so in exchange for a personal benefit."[20] The evidence offered by the government was "insufficient to sustain a guilty verdict" against Newman and Chiasson because the evidence of a personal benefit failed to establish tipper liability from which the tippees' liability derives and because the government presented no evidence that the defendants knew that they were trading on information obtained from insiders who were in breach of a fiduciary duty.[21] The Second Circuit explained that a personal benefit requires "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."[22]

The impact of *Newman*, however, may not be as significant as it would first seem. First, even prior to *Newman,* the Sixth and Seventh Circuits applied *Dirks*' "knew or should have known" that the insider breached his fiduciary duty formulation to criminal securities fraud cases, albeit not with regard to remote tippees.[23] Second, the Second Circuit's definition of a "personal benefit" has not been widely accepted. The First Circuit and the Ninth Circuit have rejected the Second Circuit's definition of personal benefit.[24]

In *Parigian*,[25] the government alleged that the defendant traded on material, nonpublic information that he received from his "golfing buddy," Eric McPhail, who, in turn, acquired the information from a friend who was an executive at American Superconductor Corporation (AMSC). The government alleged that McPhail and the corporate insider had a relationship of "trust and confidence, including a history, pattern, and practice of sharing professional and personal confidences" and "shared an understanding that information conveyed between them was to remain confidential."[26] Additionally, the government alleged that the defendant was aware of McPhail's relationship and knew that the insider was an executive at AMSC.[27]

The First Circuit concluded that it was "plausible" that a relationship existed between the insider and McPhail if the information was shared with the expectation that it would remain confidential.[28] Specifically, the indictment alleged that the insider was an executive who was privy to obviously confidential information that "a corporate executive would undoubtedly know" should not be broadcast and would be "unlikely to disclose … to just any casual acquaintance."[29] The disclosures occurred over a long period of time, and the insider did not know that McPhail was disseminating the information to others.[30] The Court found these allegations were sufficient to allege that McPhail owed the insider a duty of trust and confidence, which McPhail breached by disseminating the information to the defendant.

Importantly, it does not appear that *Newman* affects the SEC's burden of proving civil insider trading violations. At the district court level, Judge Rakoff has recently decided a few related cases in favor of the SEC on the misappropriation theory of insider trading.[31] In *Conradt*, the primary tipper (an associate at a law firm) and the tippee (Martin) were "close friends."[32] The chain of information traveled as follows: Martin, an equities analyst at a securities broker–dealer, received inside information from a close friend, a foreign national who worked as a transactional associate.[33] Martin then gave the information to his roommate, Conradt, who was a registered representative of another broker–dealer.[34] Conradt then passed the information to his coworker, Weishaus.[35] Weishaus challenged the SEC's allegation that the relationship between the associate and Martin went "beyond mere friendship into an actionable relationship of trust and confidence."[36] The court found it compelling that Martin and the associate had only known each other for a brief amount of time—less than one year.[37] The SEC challenged this assertion by alleging that Martin and the associate discussed a family illness and Martin trusted the associate with confidential information. The court found most compelling the allegations that Martin had confessed to trading on the information and apologized to the associate for doing so, once in tears.[38] Judge Rakoff ultimately held that the SEC had alleged enough information about Martin and the associate's relationship to survive a motion to dismiss.

In another case that stemmed from the same facts as *Conradt*, Judge Rakoff denied both a motion to dismiss and a motion for summary judgment of fourth-level remote tippees under the misappropriation theory.[39] In *Payton*, the charges stemmed from Conradt passing the confidential information to two more remote tippees—Payton and Durant. Judge Rakoff described the elements of a misappropriation theory and found that the SEC must show the following by a preponderance of the evidence:

> (1) that Martin owed a duty of trust and confidence to the source of the material non-public information about the SPSS transaction, namely, ["the associate"]; (2) that Martin breached that duty by disclosing the confidential SPSS information to Conradt; (3) that Martin received a personal benefit from disclosing the information to Conradt; and (4) that Conradt's tippees, defendants Payton and Durant, understood both that the SPSS information was confidential and that Martin had disclosed this information to Conradt in exchange for a personal benefit.[40]

As to the first element, Judge Rakoff concluded on summary judgment that questions of fact existed as to whether Martin owed a duty of trust and confidence to the associate and breached it. As discussed above, the undisputed evidence showed that Martin and the associate were close friends who shared confidential information with one another as part of an alleged arrangement of trust and confidence. There was also evidence of text messages between Martin and the associate that suggested that the associate knew that Martin was planning to trade on the information.[41] The Court accordingly concluded that the nature of the associate and Martin's relationship was a matter for the jury to decide.[42]

As to the fourth element, Judge Rakoff ruled that the remote tippee does not need to have personal knowledge of the specific benefit conferred; rather, it was enough to show that the remote tippee "knew or had reason to know of the benefit to the tipper in the general sense that they understood that a benefit was provided.[43] At the motion-to-dismiss stage, Judge Rakoff elaborated that the remote tippees will meet the knowledge standard if they "knew or recklessly disregarded that Martin received a personal benefit in disclosing information to Conradt, and that Martin breached a duty of trust and confidence to the owner of the information."[44] The defendants were subsequently convicted on February 29, 2016.[45]

We will likely have some clarity regarding the "personal benefit" that is necessary to prove a criminal insider trading violation. The Supreme Court granted certiorari in part in *Salman* to decide whether the personal benefit that is necessary to establish insider trading under *Dirks* requires proof of "an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature," as the Second Circuit held in *Newman*, or whether it is enough that the insider and the tippee shared a close family relationship, as the Ninth Circuit held in *Salman*.[46] The Court heard argument on October 5, 2016. As the law stands at present, however, the circuits are divided on the definition of the personal benefit that is necessary in insider trading cases.

Regardless of any clarification regarding a tippee's knowledge of the personal benefit that is received by a tipper, it will not change the fact that investment advisers must ensure that they have policies and procedures that are reasonably designed to prevent the misuse of material, nonpublic information.

B. Investment Adviser and Broker–Dealer Obligations

Under Section 204A of the Investment Advisers Act of 1940, investment advisers have a duty to "establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of this Act, or the Securities Exchange Act of 1934, or the rules or regulations thereunder, of material, nonpublic information by such investment adviser or any person associated with such investment adviser." Similarly, Section 15(g) of the Exchange Act requires broker–dealers to "establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer." When there is an allegation of actual insider trading, the SEC is also able to pursue charges for failure to supervise pursuant to Section 203(e)(6) of the Advisers Act.

The SEC has been successful in bringing—and settling—charges against investment advisers and broker–dealers under these sections when their registered representatives have participated in insider trading or tipping. Most recently, in October 2016, for example, the SEC brought administrative proceedings against Artis Capital Management, L.P., for alleged violations of Section 204A and Section 203(e)(6) of the Advisers Act and against Michael W. Harden for alleged violations of Section 203(e)(6) of the Advisers Act.[47] According to the SEC, despite the existence of policies and procedures that were designed to prevent insider trading, a former analyst at Artis, Matthew Teeple, made trading recommendations on at least two occasions on the basis of information that he had received from his own industry sources rather than by constructing analytical models. As a result of the information that Teeple provided, Artis's hedge funds had profits and avoided losses of more than $25 million and Artis, as the manager, earned profits of more than $5 million. The SEC alleged that Artis failed to adopt policies and procedures that were designed to address an employee's interaction with his contacts at public companies in whose securities Artis traded, that Artis failed to "appropriately enforce its policies and procedures concerning the receipt and use of material nonpublic information," and that Artis and Harden failed to supervise Teeple. Artis agreed to disgorge the $5 million in profits (along with more than $1 million in interest) and to pay a civil monetary penalty of more than $2.5 million.

In May 2016, the SEC brought charges against Federated Global Investment Management Corporation for failing to establish or maintain policies and procedures that would detect insider trading by outside consultants in violation of Section 204A of the Advisers Act. As a result of this failure, the SEC alleged, one of Federated Global Investment Management Corporation's consultants made a number of trading recommendations on the basis of information that he had learned while serving on the boards of various public companies.

In September 2014, the SEC alleged that Wells Fargo Advisors failed to establish and enforce policies and procedures that were reasonably designed to prevent the misuse of material, nonpublic information that its advisers obtained from customers and clients in violation of Section 204A of the Advisers Act and Section 15(g) of the Exchange Act.[48] Particular to that case, the SEC had proven that a registered representative, Waldyr Da Silva Prado Neto, had misappropriated information from one of his customers about Burger King Holdings, Inc., to others, including some of his Wells Fargo Advisors clients. The structure of Wells Fargo Advisors' policies and procedures to review trading in employee accounts failed to detect the trading on the Burger King securities.

The SEC has brought charges even in the absence of any evidence of actual insider trading. For example, in 2016, the SEC brought charges against Deutsche Bank Securities, Inc. (DBSI) for failing to establish clear and consistent policies and procedures to prevent its equity research analysts from disclosing material, nonpublic information, such as information that was to be included in forthcoming DBSI research reports, estimate changes of less than 10 percent, and short-term trading recommendations that were inconsistent with the analyst's published long-term ratings, in violation of Section 15(g) of the Exchange Act. These failures were further compounded by deficiencies in DBSI's policies and procedures pertaining to communications between DBSI's equity research analysts and both DBSI customers and DBSI sales and trading personnel. In particular, DBSI failed to establish, maintain, and enforce policies and procedures that were reasonably designed to prevent its equity research analysts from using various customer interactions and internal communications with DBSI sales and trading personnel, including morning calls, squawks, idea dinners, and non-deal road shows to disclose material, nonpublic information in the form of unpublished, market-sensitive information to select DBSI customers and DBSI sales and trading personnel. These failures were amplified by a compensation structure that heightened the potential for the selective disclosure and misuse of material, nonpublic information that was generated by DBSI equity research analysts.

In November 2015, the SEC brought charges against Marwood Group Research, LLC, for failing to "establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of [material, nonpublic information]," in violation of Section 204A of the Advisers Act and Section 15(g) of the Exchange Act. Specifically, the SEC alleged that Marwood encouraged its employees to maintain relationships with government employees who were likely to have material, nonpublic information but that it did not develop policies and procedures to ensure that those same employees did not misuse the information that they learned. Marwood agreed to cease and desist from the alleged violations and to pay a civil monetary penalty of $375,000.

In 2014, the SEC brought charges against Monness, Crespi, Hardt, & Co., Inc., for violating Section 15(g) of the Exchange Act by failing to (1) enforce its written policies with regard to "Restricted Securities"—those securities that were the subject of the research report that the research analyst was working on—because it did not actually place research reports on a restricted list or require trading approval of the restricted securities; (2) enforce a written policy that required all employees and family members to conduct personal securities transactions through accounts held by the firm; and (3) adopt policies to prevent the misuse of material, nonpublic information with regard to "Corporate Access" and "Idea Dinners" programs, two programs that the firm established and provided as services to existing and prospective clients.

Finally, in 2012, the SEC brought charges against Goldman Sachs for failing to adopt adequate policies and procedures to prevent and monitor the misuse of research information that was created through their newly created trading huddle program—a practice in which Goldman's equity research analysts provided their best trading ideas to firm traders and a select group of Goldman's top clients in violation of Section 15(g) of the Exchange Act.[49]

C. Best Practices

As insider trading will continue to be a priority for the SEC and the DOJ, advisers should ensure that their policies and procedures are specifically designed for their specific fund trading strategies and that those policies and procedures are reviewed regularly to ensure that they are current and are being followed. Here are a few suggestions:

(1) Advisers should ensure that policies and procedures are clearly written and are understood by all employees, especially those employees who are responsible for making trading decisions.
(2) Regular compliance training should be provided to all employees, and the training should be clearly documented.
(3) Policies and procedures should include "escalation" procedures, so that employees know whom to consult if they have questions about specific trades or about information that may have been obtained from "insiders" or from others who may be in a position to obtain confidential information.
(4) Advisers who use "expert networks" should keep documentation regarding all expert consultations and should strongly consider having compliance personnel involved in any such consultations.
(5) Policies should require that traders and portfolio managers document their reasons for specific trades.
(6) Compliance should monitor trading for any suspiciously timed trading and should investigate the responsible trader's reasons for placing the trade.

(7) Policies should include policies that prohibit employees and members of their families from trading in securities in which the adviser's funds are trading.

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NOTES

1 *See* United States Securities and Exchange Commission, "SEC Announces Enforcement Results for FY 2015," Oct. 22, 2015, available at *https://www.sec.gov/news/pressrelease/2015-245.html*.

2 *See* Nate Raymond, "New York's Prosecutors Are Cracking Down on Insider Trading at an Unprecedented Rate," Business Insider, (June 23, 2016), available at *http://www.businessinsider.com/r-after-setbacks-ny-prosecutors-resume-insider-trading-crackdown-2016-6*; *see also* US Attorney for the Southern District of New York, Press Release, July 8, 2015, available at *https://www.justice.gov/usao/priority-areas/financial-fraud/securities-fraud*.

3 U.S. Attorney for the Southern District of New York, Press Release. July 8, 2015, available at *https://www.justice.gov/usao/priority-areas/financial-fraud/securities-fraud*.

4 Michael Bobelian, "Insider Trading Enforcement Remains in a State of Flux," Forbes, Apr. 13, 2015, available at *http://www.forbes.com/sites/michaelbobelian/2015/04/13/insider-trading-enforcement-remains-in-a-state-of-flux/#38d4049c7565*.

5 15 U.S.C. § 78j(b).

6 17 C.F.R. § 240.10b-5 (2014). There are two theories of insider trading—the classical theory and the misappropriation theory. *Compare* United States v. Newman, 773 F.3d 438, 445 (2d Cir. 2014), *cert. denied*, 136 S. Ct. 242 (2015) (noting that "[t]he classical theory holds that a corporate insider (such as an officer or director) violates Section 10(b) and Rule 10b-5 by trading in the corporation's securities on the basis of material, nonpublic information about the corporation"), *with id.* (noting that the misappropriation theory "expands the scope of insider trading liability to certain other 'outsiders,' who do not have any fiduciary or other relationship to a corporation or its shareholders").

7 Dirks v. SEC, 463 U.S. 646, 659 (1983) (explaining that "[n]ot only are insiders forbidden by their fiduciary relationship from personally using undisclosed corporate information to their advantage, but they [also] may not give such information to an outsider for the same improper purpose of exploiting the information for their personal gain").

8 *Id.* at 658–59.

9 SEC v. Sekhri, 333 F. Supp. 2d 222, 227–28 (S.D.N.Y. 2004). "The elements of tipping liability are the same, regardless of whether the tipper's duty arises under the 'classical' or the 'misappropriation' theory." *Id.* (citation omitted).

10 *See* United States v. Whitman, 904 F. Supp. 2d 363, 372 (S.D.N.Y. 2012) (characterizing the development of insider trading law within the courts as "tospy-turvy"), *aff'd*, 555 F. App'x 98 (2d Cir. 2014).

11 United States v. Newman, 773 F.3d 438, 445 (2d Cir. 2014).

12 *Id.* at 442.

13 *Id.* The Dell tipping chain proceeded as follows: Rob Ray in Dell's investor relations department tipped information about Dell's consolidated earning numbers for May 2008 to Sandy Goyal, an analyst at Neuberger Berman. Goyal passed this information to a Diamondback analyst, Jesse Tortora, who in turn relayed the information to his manager, Newman, and another analyst, Sypridon "Sam" Adondakis. Finally, Adondakis shared the information with Chiasson. Newman was thus three levels removed and Chiasson was four levels removed from the inside tipper. *Id.* at 443. The NVIDIA tipping chain followed a similar pattern, but in this chain Newman and Chiasson were both four levels removed from the insider. *Id.*

14 *Id.*

15 *Id.* at 453.

16 *Id.* at 442.

17 *Id.* at 455.

18 *Id.* at 447 (observing that the government's argument sought "to revive the absolute bar on tippee liability that the Supreme Court explicitly rejected in *Dirks*").

19 *Id.*

20 *Id.* at 442; *see also id.* at 449 (citing district court opinions that reached the same conclusion).

21 *Id.*; *see also id.* at 454 ("But in this case, where the financial information is of a nature regularly and accurately predicted by analyst modeling, and the tippees are several levels removed from the source, the inference that defendants knew, or should have known, that the information originated with a corporate insider is unwarranted."); *accord Whitman*, 904 F. Supp. 2d 363, 371 (S.D.N.Y. 2012) ("[I]t is sufficient if [the remote tippee] understands that some benefit, however modest, is being provided in return for the information.").

22 *Newman*, 773 F.3d at 452. The government's evidence did not satisfy this test. *Id.* at 451–52 (evidence of career advice and assistance, including discussing the qualifying exam to become a financial analyst and editing a resume and sending it to a Wall Street recruiter, between individuals who "had known each other for years ... attended business school and worked together at Dell" and "'family friends' that had met through church and occasionally socialized together" was insufficient evidence of personal benefits because then "practically anything would qualify" as a "benefit").

23 *See* United States v. Hughes, 505 F.3d 578, 593–94 (6th Cir. 2007) ("As a knowledgeable investor, [the defendant] would have known that [the insider] was breaching his duty to the company, its shareholders, and the investing public by sharing this information."); United States v. Evans, 486 F.3d 315, 324–25 (7th Cir. 2007).

24 *See* United States v. Parigian, 824 F.3d 5, 16 (1st Cir. 2016) (finding itself bound by its own precedent and concluding that allegations of friendship between a first-level tippee and a remote tippee plus an expectation that the remote tippee would treat the first-level tippee to a golf outing and assorted luxury entertainment is enough to allege a "benefit"); United States v. Salman, 792 F.3d at 1087, 1092 (9th Cir. 2015) (finding that insider's "disclosure of confidential information to [his brother], knowing that he intended to trade on it, was precisely the 'gift of confidential information to a trading relative' that *Dirks* envisioned").

25 824 F.3d 5, 8–9 (1st Cir. 2016).

26 *Id.*

27 *Id.* at 9.

28 *Id.* at 14.

29 *Id.*

30 *Id.*

31 *See, e.g.*, SEC v. Payton, 155 F. Supp. 3d 428 (S.D.N.Y. 2015); SEC v. Conradt, 947 F. Supp. 2d 406 (S.D.N.Y. 2013).

32 Conradt, 947 F. Supp. 2d at 407.

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.* at 411.

37 *Id.* at 412 (observing that the short duration of their friendship "cuts against an inference that they had the requisite 'history, pattern, or practice of sharing confidences'" that is required to show a fiduciary duty (quoting United States v. Chestman, 947 F.2d 551, 569 (2d Cir. 1991) (en banc))).

38 *Id.* at 410.

39 SEC v. Payton, 155 F. Supp. 3d at 428 (summary judgment); SEC v. Payton, 97 F. Supp. 3d 558 (S.D.N.Y. 2015) (motion to dismiss).

40 Payton, 155 F. Supp. 3d at 430–31.

41 *Id.* at 431.

42 *Id.*

43 *Id.* at 432 (citing Gordon v. Sonar Capital Mgmt. LLC, 116 F. Supp. 3d 360, 363 (S.D.N.Y. July 30, 2015)).

44 Payton, 97 F. Supp. 3d at 565.

45 *See* SEC v. Payton, ___ F. Supp. 3d ___, 14 Civ. 4644, 2016 WL 1367237, at *1 (S.D.N.Y. Apr. 5, 2016).

46 Salman v. United States, 136 S. Ct. 899 (2016) (granting petition for a writ of certiorari in part).

47 In re the Matter of Artis Cap. Mgmt., L.P., File No. 3-17624, October 13, 2016.

48 In the Matter of Wells Fargo Advisors, LLC, File No. 3-16153, September 22, 2014.

49 In the Matter of Goldman Sachs, No. 3-14845, April 12, 2012.

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