

INSIDER TRADING & DISCLOSURE UPDATE

DOJ and SEC Bring Four Insider Trading Cases in June 2023 Sweep

On June 29, 2023, the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC” or “Commission”) announced charges against a combined total of 12 individuals and one company in four insider trading cases.¹ Those charged included a CCO, a former Pfizer statistician, and a Massachusetts police chief, among others. Like the DOJ and SEC insider trading sweep conducted in July 2022,² several of the recent sweep cases originated from the data analytics capabilities of the SEC’s Market Abuse Unit. All four criminal cases were brought by the U.S. Attorney’s Office for the Southern District of New York, which collaborated with SEC headquarters and multiple regional offices.

Insider SPAC Information and Trump Media & Technology Group

In the first announced action, reiterating a “commitment to exposing insider trading wherever it occurs, including in SPAC mergers,” the Commission charged three individuals and a company solely owned by one of the individual defendants with insider trading in connection with the acquisition of the Trump Media & Technology Group Corporation (“TMTG”) by Digital World Acquisition Corporation (“DWAC”), a SPAC.³

According to the SEC’s complaint, in April and June 2021, Michael Shvartsman (“Michael”), Michael’s brother Gerald Shvartsman (“Gerald”), and Michael’s employee Bruce Garelick (“Garelick”) met with a DWAC executive to discuss a potential investment in the SPAC. During this process, Garelick and the Shvartsman brothers were provided with confidential information regarding DWAC’s potential targets and were required to sign confidentiality agreements limiting their potential investment to “locked up” founder shares issued as part of the IPO and prohibiting them from purchasing shares on the open market.⁴ The Shvartsman brothers subsequently made an initial, authorized investment in DWAC through Rocket One Capital LLC (“Rocket One”), a venture capital firm that Michael solely owned and controlled.

As a result of these investments, Garelick joined the DWAC Board of Directors in July 2021 and was provided with additional confidential information related to the potential merger with TMTG.⁵ On September 22, 2021, the DWAC Board approved the signing of a letter of intent for a prospective merger with TMTG. DWAC and TMTG signed a definitive merger agreement on October 20, 2021, which was announced on social media after markets closed that day.⁶

In September and October 2021, Garelick allegedly made multiple purchases of DWAC securities on the open market through his personal brokerage account and shared information that he learned as a DWAC board member with Michael. In multiple instances, the SEC argued that Michael called Gerald immediately after speaking with and obtaining non-public information from Garelick. Garelick also tipped off one of his colleagues, who later tipped his father and both subsequently purchased DWAC securities. Within two days after the TMTG merger announcement, Garelick, Michael, and Gerald sold their open market DWAC securities for purported net profits of \$49,702, \$18,269,043, and \$4,640,325, respectively.

The SEC charged the three individuals with violations of § 10(b) of the Exchange Act and Rule 10b-5. Notably, Rocket One was also charged under these provisions—a unique charging decision in insider trading cases—presumably driven by the fact that Michael was a sole and controlling owner of Rocket One, and placed the trades through Rocket One’s account, which were highlighted by the SEC in its discussion of imputing Michael’s scienter to the company.⁷ The SEC also brought charges against Garelick under § 16(a) of the Exchange Act and Rule 16a-3 thereunder, for failure to report his insider transactions as a DWAC director.⁸ Garelick, Michael, and Gerald were arrested and each charged by the DOJ with multiple counts of Title 15 (§ 78j(b)) and Title 18 (§ 1348) securities fraud—an increasingly common combination in the DOJ’s insider trading actions that we have written about in the ITDU previously⁹—as well as conspiracy to commit securities fraud.¹⁰

Downstream Tippees of Pharmaceutical Employee, Including a Police Chief

The second action concerns an alleged insider trading scheme that originated from an employee of a pharmaceutical company and resulted in a downstream tipping chain involving four other individuals, including a Dighton, MA police chief—who allegedly made \$2.3 million in combined gains—and extended further to relative and friend tippees. As one defendant allegedly described it to another over text, the source of the insider information was viewed as a “golden goose . . . laying golden eggs[.]”¹¹

According to the SEC’s complaint, in the spring of 2020, Alexion Pharmaceuticals, Inc. (“Alexion”) entered negotiations to acquire Portola Pharmaceuticals, Inc. (“Portola”).¹² Joseph Dupont, a Vice President at Alexion and a reserve officer with the Dighton Police Department, was heavily involved with due diligence related to the potential deal and received regular updates on the expected acquisition

date. Dupont was close personal friends with defendants Shawn Cronin, at the time a Sergeant in the Dighton Police Department who then became its Chief, and Jarett Mendoza, a sales director at a medical devices company. Cronin was friends with defendant Stanley Kaplan, a doctor who worked with defendant Paul Feldman.

On April 8, 2020, Dupont participated in a due diligence meeting with Alexion and Portola executives, after which he allegedly had a phone conversation with Cronin.¹³ That same evening, Cronin texted Kaplan that it would be a “[g]ood time to buy” the stock Cronin “told [Kaplan] about.”¹⁴ According to the SEC, Cronin then opened a new brokerage account and purchased 1,394 shares of Portola securities that same night. Approximately a week later—before the planned acquisition date of May 4—Kaplan also purchased Portola securities. Dupont and Cronin allegedly spoke again on April 22, and Cronin and Kaplan continued to purchase Portola stock on April 22-23.¹⁵

Approaching the planned acquisition date, Feldman—an experienced trader—allegedly began providing Kaplan with guidance on options contract trading. According to the SEC, Kaplan was in turn providing Feldman with information about the Portola deal.¹⁶ Kaplan subsequently advised Cronin on trading strategies, and Cronin, Kaplan, and Feldman each purchased Portola stock and call options in April and May 2020. Additionally, on May 4 Cronin allegedly provided Mendoza with inside information on the deal and Mendoza purchased Portola securities that same day.¹⁷

When the tender offer was publicly announced on May 5, Portola stock rose from approximately \$7.76 to \$17.91. Feldman, Kaplan, and Mendoza sold all of their Portola securities within two days of the announcement, and Cronin sold all of his Portola securities by the end of June 2020. According to the SEC, the defendants’ realized gains ranged from \$38,600 to \$1,730,800, and Kaplan’s rate of return amounted to almost 1,742%. Finally, the SEC alleged

that Kaplan and Feldman provided insider information to several of their relatives and colleagues, who profited approximately \$1.7 million.¹⁸

As a result of these actions, Dupont, Cronin, Kaplan, Mendoza, and Feldman were all charged by the Commission for violations of §§ 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. In its parallel action, the DOJ charged Dupont, Cronin, Kaplan, and Feldman with securities fraud in violation of 15 U.S.C. 78j(b), 17 C.F.R. 240.10b-5, 240.10b5-1, and 240.10b5-2; securities fraud in violation of 18 U.S.C. 1348; and tender offer fraud in violation of 15 U.S.C. 78n(e), 17 C.F.R. 240.14e-3(a), and 240.14e-3(d). Cronin, Kaplan, and Feldman were also charged with conspiracy to commit securities fraud and tender offer fraud in violation of 18 U.S.C. 371.¹⁹

In light of the downstream tipping chain involving several layers, the SEC and the DOJ's parallel actions will be closely watched by observers, as they have the potential to shed additional light on the contours of tipper-tippee liability in the Second Circuit. For the Title 15 securities fraud claims, the government will need to show that (1) the tipper, Dupont, breached a duty in exchange for a direct or indirect personal benefit,²⁰ and (2) the downstream tippees, including Feldman—who is three levels removed from the tipper, knew (or in the civil action at least should have known) that Dupont breached a duty for personal benefit. Although the criminal case requires a higher burden of proof for knowledge, the DOJ's Title 18 charges offer a viable alternative without the need to make a showing of personal benefit or tippee knowledge.

III-Gotten Gains from Covid Drug Study Success

In July 2021, amidst the global pandemic, Pfizer Inc. (“Pfizer”) launched a clinical trial of Paxlovid, an anti-viral medication for high-risk COVID patients.²¹ Unblinded results of the trial were released to a Pfizer

committee on November 1, 2021 along with a trading blackout notice. On the morning of November 4, 2021, Amit Dagar, a Senior Statistical Programming Lead at Pfizer, allegedly learned from his supervisor that the company was planning to file a new drug application for Paxlovid with the FDA.²²

During the afternoon of November 4, 2021, after learning of the positive study results, Dagar purchased Pfizer options. Dagar then allegedly tipped the study information to his friend, Atul Bhiwapurkar, who also purchased Pfizer options.²³ According to the SEC's complaint, Bhiwapurkar then passed the non-public Pfizer information to another friend, who traded on his tip.²⁴

Dagar allegedly realized approximately \$214,395 in net profit from his trades, while Bhiwapurkar realized approximately \$60,300. The SEC charged Dagar and Bhiwapurkar with violations of § 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, the DOJ charged the defendants with securities fraud in violation of 15 U.S.C. 78j(b), 17 C.F.R. 240.10b-5, and 18 U.S.C. 1348.

Misappropriation of Insider Information from Girlfriend's Laptop

In the fourth action of the June 2023 insider trading sweep, Steven Teixeira—a Chief Compliance Officer of an international payment processing company—allegedly misappropriated material nonpublic information between 2020 and 2022 from the laptop of his girlfriend, an executive assistant at an investment bank (“Executive Assistant”) who shared an apartment with Teixeira.²⁵ As part of her role at the bank, Executive Assistant was responsible for scheduling valuation and fairness committee meetings for potential transactions, including mergers and acquisitions. In late 2020, Teixeira began accessing Executive Assistant's laptop while she was out of their shared apartment, in order to obtain information on potential transactions involving the bank's clients.

The valuation and fairness committee meeting scheduling forms showed pertinent information about proposed deals, including the names of the participating companies and material terms such as offer value and expected deal announcement date.²⁶ Teixeira purportedly accessed and began using this information in late 2020 to trade in certain securities ahead of planned mergers and acquisitions, including transactions involving Domtar Corporation, Proofpoint, Inc., Score Media and Gaming, Inc., and VMWare, Inc. Teixeira allegedly shared the inside information with his friend, Jordan Meadow, a registered representative at a broker dealer in New York, in exchange for compensation in the form of a Rolex watch.²⁷ Meadow purportedly used Teixeira's tips to trade in his own account as well as to recommend trades to his brokerage customers. According to the government, Teixeira and Meadow's illicit profits from their trades exceeded \$28,000 and \$730,000, respectively.²⁸

As a result of this conduct, the SEC charged Meadow and Teixeira with violating § 10(b) of the Exchange Act and Rule 10b-5 thereunder. In its parallel action, the DOJ charged Meadow with securities fraud in violation of 15 U.S.C. 78j(b), 17 C.F.R. 240.10b-5, and 18 U.S.C. 1348.

Takeaways

The SEC and DOJ's recent sweep shows that the government remains focused on insider trading, including in connection with SPACs, downstream trading, and close family, friend, and partner relationships. The SEC, DOJ, and the Federal Bureau of Investigation continue to join forces in coordinated actions, as demonstrated by the volume of parallel actions. And finally, the SEC's Market Abuse Unit appears to be an indispensable part of such sweeps capturing a wide variety of actions.

Notes

- ¹ See DOJ Press Release No. 23-234, *U.S. Attorney Announces Charges In Four Separate Insider Trading Cases Against 10 Individuals, Including Drug Company Employees, Investment Firm Executive Director, And SPAC Investors* (June 29, 2023), <https://www.justice.gov/usao-sdny/pr/us-attorney-announces-charges-four-separate-insider-trading-cases-against-10>; SEC Press Release, *Statement on Insider Trading Enforcement Actions Announced on June 29, 2023* (June 29, 2023), <https://www.sec.gov/news/statement/20230629>.
- ² See SEC Press Release No. 2022-206, *SEC Announces Enforcement Results for FY22* (Nov. 15, 2022), <https://www.sec.gov/news/press-release/2022-206>.
- ³ See SEC Complaint, *SEC v. Garelick*, 23-cv-5567 (S.D.N.Y. June 29, 2023), <https://www.sec.gov/litigation/complaints/2023/comp-pr2023-121.pdf> [hereinafter “Garelick Complaint”]. DWAC is no stranger to SEC enforcement, having also settled fraud charges brought by the SEC relating to disclosures made in connection with the DWAC IPO. See SEC Press Release No. 2023-135, *SEC Charges Digital World SPAC for Material Misrepresentations to Investors* (July 20, 2023), <https://www.sec.gov/news/press-release/2023-135>.
- ⁴ Garelick Complaint at ¶ 38. As discussed in the DOJ’s Indictment, the DWAC executive also discussed with Garelick and the Shvartsman brothers a potential investment opportunity in another SPAC managed by the executive. However, the alleged insider trading activity only related to DWAC. See Indictment at ¶ 8, *United States v. Shvartsman*, 23-cr-307 (S.D.N.Y. June 26, 2023), <https://www.justice.gov/media/1303011/dl?inline>.
- ⁵ Garelick Complaint at ¶ 3.
- ⁶ *Id.* at ¶¶ 31-34.
- ⁷ *Id.* at ¶¶ 77-85.
- ⁸ *Id.* at ¶¶ 86-88.
- ⁹ See, e.g., Insider Trading & Disclosure Update, Vol. 9, No. 1 (May 2023), <https://www.debevoise.com/insights/publications/2023/05/insider-trading-disclosure-update-volume-9>.
- ¹⁰ On July 20, 2023 the defendants pleaded not guilty to the DOJ’s charges. See Jody Godoy, *Three plead not guilty to insider trades before Trump Media deal*, Reuters (July 20, 2023), <https://www.reuters.com/legal/three-plead-not-guilty-insider-trades-before-trump-media-deal-2023-07-20/>.
- ¹¹ SEC Complaint at ¶ 179, *SEC v. Dupont*, 23-cv-5565 (S.D.N.Y. June 29, 2023), <https://www.sec.gov/litigation/complaints/2023/comp-pr2023-122.pdf> [hereinafter “Dupont Complaint”].
- ¹² *Id.* at ¶¶ 42-45.
- ¹³ *Id.* at ¶¶ 63-64.
- ¹⁴ *Id.* at ¶ 65.
- ¹⁵ *Id.* at ¶¶ 74-79.
- ¹⁶ *Id.* at ¶ 86.
- ¹⁷ *Id.* at ¶¶ 169-171.
- ¹⁸ *Id.* at ¶ 7.
- ¹⁹ See Indictment, *United States v. Dupont*, 23-cr-320 (S.D.N.Y. June 28, 2023), <https://www.justice.gov/media/1303026/dl?inline> [hereinafter “Dupont Indictment”].
- ²⁰ The SEC’s Complaint alleges that Dupont received a personal benefit from tipping Cronin by providing a gift, while the DOJ’s Indictment charges that Dupont tipped Cronin “in anticipation that” Cronin would trade on that information. See Dupont Complaint at ¶ 198; Dupont Indictment at ¶ 29.
- ²¹ See SEC Complaint, *SEC v. Dagar*, 23-cv-5564 (S.D.N.Y. June 29, 2023), <https://www.sec.gov/litigation/complaints/2023/comp-pr2023-123.pdf> [hereinafter “Dagar Complaint”]; Indictment, *United States v. Dagar*, 23-cr-319 (S.D.N.Y. June 28, 2023), <https://www.justice.gov/media/1303016/dl?inline>.
- ²² Dagar Complaint at ¶ 34.
- ²³ *Id.* at ¶¶ 49-50.
- ²⁴ *Id.* at ¶¶ 57-63.
- ²⁵ See SEC Complaint, *SEC v. Meadow*, 23-cv-05573 (S.D.N.Y. June 29, 2023), <https://www.sec.gov/litigation/complaints/2023/comp-pr2023-124.pdf> [hereinafter “Meadow Complaint”]; Indictment, *United States v. Meadow*, 23-cr-313 (S.D.N.Y. June 27, 2023), <https://www.justice.gov/media/1303021/dl?inline>.

- ²⁶ Meadow Complaint at ¶ 29.
²⁷ *Id.* at ¶ 51.
²⁸ *Id.* at ¶¶ 4, 7.

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