

JANUARY 25, 2023

For more information,
contact:

Dixie Johnson
+1 202 626 8984
djohnson@kslaw.com

Lauren Konczos
+1 202 626 9546
lkonczos@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Ave., NW
Suite 900
Washington, D.C. 20006
Tel: +1 202 737 0500

Working From Home? Stay Alert to Avoid Insider Trading or Tipping Liability!

Even when surrounded by the ones we love, it is important to keep confidential information away from them. Others may not realize that they should not trade after overhearing interesting comments—or worse, they may try to listen, intending to trade if they learn something exciting. Working from home increases the threat of “inadvertent tipping,” especially for those who find themselves prone to discussing business within earshot of others. Please renew your confidentiality practices to protect your loved ones, and yourself.

For over a decade now, we have combed through the SEC’s insider trading cases each year to collect cautionary tales on the hurt and reputational damage that those close to us can cause when we do not take proper precautions.¹ While others may not be aware of, or intend to cause, such harm, any involvement in an insider trading investigation, even if charges are never brought, can result in a ruined career, damaged relationships, and mounting legal bills. This year, we highlight additional scenarios demonstrating the risks that come with working from home, involving family, friends, and partners—romantic and business alike—that we hope will serve you well as you deal with snow days, family get-togethers, and shared workspaces.

FAMILY GATHERINGS CAN GET A LITTLE TOO COZY

On August 17, 2022, the SEC charged Nicholas Daniel with insider trading after he traded on information obtained during a telephone call with his mother.² A close family member was a senior employee of Cypress, and Daniel was aware of that fact. The SEC emphasized the closeness of the relationship between Daniel, his mother, and the family member, noting that they “communicated regularly over the telephone with each other, shared confidential details about their lives, and relied on each other for both emotional and financial support.” Neither his mother nor the other family member was charged, but imagine the intrusiveness of the investigation necessary to conclude that their tips were inadvertent.



Crucially, Daniel's insider trading occurred while his mother was staying with the family member. During that time, Daniel visited with his mother and the family member and attended a party that the family member hosted. At that party, Cypress employees were present, and Daniel saw his family member "leave the party for an unusual private meeting with these senior Cypress employees in the family member's home office." About a month later, Daniel received a phone call from his mother, during which he learned that the family member was working on urgent issues involving a likely acquisition of Cypress.

Three minutes after speaking with his mother, Daniel contacted his brokerage firm. The SEC emphasized that "Daniel was an inexperienced trader and had not made any trades in securities for approximately 10 years." His broker required him to submit an application to purchase options contracts because he had never done so before. Adding insult to injury, Daniel then asked his mother to lend him \$50,000 for a real estate transaction, when he really intended to use the funds to purchase call option contracts. Once the necessary funds were in his account, Daniel bought 1,366 Cypress call option contracts. The SEC uses unusual trading like this to demonstrate that the trading resulted from the tip, not from normal trading activity.

After Daniel sold the contracts, he realized a net profit of \$349,588. The SEC required him to pay double that amount to cover disgorgement and a penalty, plus almost \$40,000 in prejudgment interest, to resolve this matter. It seems likely that the family member also faced scrutiny by Cypress, which undoubtedly had to answer a post-acquisition FINRA request for a list of who was aware of the acquisition before it was announced, and whether those individuals recognized names on a list of traders.

INSIDER TRADING IS NOT ROMANTIC

Two cases brought by the SEC this year demonstrate that, while we would hope our romantic relationships are safe from insider trading, that is sometimes not the case.

In one "working from home" case, the SEC alleged that, due to the global pandemic, a law firm associate's boyfriend "often stayed for multiple days at a time" at her apartment, where she worked for her firm's client Merck in connection with its tender offer to acquire Pandion.³ The SEC alleged that she "engaged in frequent telephone calls regarding the deal" and had a binder of documents for the acquisition at home. On July 25, 2022, the SEC charged her then-boyfriend, Seth Markin, and his friend Brandon Wong, with insider trading after they misappropriated material nonpublic information from her.

The SEC alleged that Markin first began to purchase shares of Pandion stock only one day after his girlfriend was assigned to work on the transaction. While the girlfriend was ultimately not charged, we can only begin to imagine the embarrassment and potential fallout for her with the firm, and with Merck as a client. Interestingly enough, Markin himself was in new agent training for the FBI and worked as a compliance analyst during the relevant period, so his career was probably also derailed.

When investigating insider trading cases, the SEC asks very intrusive questions about relationships, and this situation is no exception. The SEC alleged that Markin and his girlfriend were only in a relationship for approximately seven months (during which Markin stayed at her apartment for an extended time from January to February 2021). Although they broke up for a few days during the course of their relationship, the SEC also alleged that they "shared confidences, including discussions about each other's families and plans of marriage." The SEC used these facts to demonstrate that the relationship imbued Markin with a duty not to trade, which he breached. Breach of a duty is one of the elements of an insider trading violation.



In total, Markin purchased 2,270 shares of Pandion stock, obtaining gains of over \$82,000. Markin also tipped his friend, Wong, about the upcoming acquisition, and both went on to tip, directly or indirectly, more than twenty people to trade in Pandion stock. Wong purchased 35,382 shares in total and obtained ill-gotten gains of over \$1.3 million. The complaint explained that the friends had known each other for approximately four years, and sometimes traveled together. Markin also disclosed to Wong that he had reviewed his girlfriend's work binder. The complaint noted the quid pro quo of the exchange, in that, in return for Markin's gift of material nonpublic information to Wong, Markin expected a "lavish thank-you gift," which he received in the form of a Rolex watch, paid expenses for a joint vacation to Hawaii, and a meal at a three-Michelin-starred restaurant that cost over \$1,000. Wong also used his proceeds to purchase a home in Florida.

Given these facts, it is not surprising that both were also criminally charged.⁴ The indictment alleged that Markin lied to his girlfriend to conceal his illegal trades after they had ended their relationship and while he was preparing to go to Quantico, Virginia for training at the FBI Academy.⁵ Prosecutors also alleged that Markin received a call from his former girlfriend asking him why his name had appeared in a FINRA inquiry into Pandion stock trading, and he falsely told her he had not traded in Pandion stock. Markin then went on to make another false statement to the FBI that he had purchased the stock due to a recent earnings report and new board member addition, asserting that he did not know his former girlfriend had worked on the transaction. Markin clearly did not follow the first rule of holes: when you are in one, stop digging.

In another "working from home" case, on June 29, 2022, the SEC charged Daniel Moscatiello with insider trading after he misappropriated material nonpublic information from his domestic partner regarding the acquisition of Virtusa by Baring Private Equity Asia ("BPEA").⁶ The complaint highlighted Moscatiello's breach of trust and confidence that he owed his partner, with whom he "had been in a committed relationship for approximately four years and had lived together for approximately two years."

The SEC alleged that his domestic partner was a marketing department employee of Virtusa, an information technology company. According to the SEC, she learned on September 8, 2020, that Virtusa was likely to be acquired and that she would be working on the public announcement of the impending acquisition. She was working from home full time at that point, like many of us were during the pandemic. Moscatiello lived with her and also worked from home much of the time. So, when the marketing employee spent the rest of September 8 on the phone and told Moscatiello she needed to work through the evening, he apparently took note. She then participated in a video call from 11:30 p.m. to 12:16 a.m. in her home office, adjacent to the bedroom they shared. Again, imagine the intrusiveness of the investigation necessary to support these SEC allegations.

When the market opened the morning of September 9, Moscatiello purchased 250 Virtusa call options for \$27,621. (He did this from his office, not from home, allegedly to conceal the trades from his partner.) BPEA and Virtusa announced the acquisition on September 10, and Moscatiello immediately sold the options, realizing \$89,904 in illicit profits. The complaint flagged that (1) it was the first time Moscatiello had ever purchased Virtusa securities even though he was an active trader with multiple brokerage accounts; (2) his purchase consisted of 100% of the total volume of Virtusa options trading purchases on September 9; (3) his trade was an outlier because he typically held investments for longer periods of time; (4) he typically discussed his trading with his partner but kept this trade a secret; and (5) it was his most profitable trade of 2020. He settled with the SEC, and the marketing employee was not charged.

MIXING BUSINESS AND FAMILY REQUIRES A LOT OF TRUST, AND SOMETIMES THERE IS A BREACH

On April 4, 2022, the SEC issued a cease-and-desist order against Lloyd Reed for trading on material, nonpublic information in breach of his duty of trust and confidence owed to his business partner, who was also a family member.⁷ The partner was not charged, which probably means the partner successfully demonstrated to the SEC that the tipping was inadvertent.



As described in the order, “Reed and Business Partner were close family members and friends who lived in the same community. They also co-owned multiple businesses together. . . . In their business and personal relationship, Reed and Business Partner had a history, pattern, and practice of sharing confidences.” One of the companies they owned together provided consulting in the aerospace industry, among other services. After the business partner was retained by Torotel in connection with this company’s services, Reed was provided a copy of a confidential, nonpublic report that outlined a possible sale of Torotel. Further, Reed noted that his business partner had become busier than normal with his ongoing work for Torotel.

As a result, Reed purchased Torotel shares on twelve separate trading days, for a total of 17,950 shares, without notifying his business partner. Only once Reed received an email regarding a potential Torotel merger did he inform his business partner that he had purchased Torotel stock and asked his business partner to withhold additional information about Torotel due to such holdings. After Reed sold his shares, he realized a net profit of \$116,295.69, which the SEC required him to disgorge, and paid a penalty of the same amount. The SEC’s complaint does not explain what happened to the businesses or the family relationship after the partner learned about Reed’s trades.

LOOKING AHEAD

Although many of us are working in the office more now that the pandemic (hopefully) is waning, it is hard to resist the flexibility that working remotely allows. We encourage you to take precautions and safeguard your confidential information to avoid the intrusive, embarrassing, and expensive result that being investigated, or worse, held liable, can bring. While most of us could never imagine our loved ones using our confidential information for their own gain, these examples, and our decade of tracking cases like them, demonstrate that it is better to be safe than sorry.

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ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
ATLANTA	CHICAGO	GENEVA	MIAMI	RIYADH	TOKYO
AUSTIN	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
BRUSSELS	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	



- ¹ See Dixie L. Johnson, Matthew B. Hanson & Lauren O. Konczos, [Reviving the Holiday Gathering This Year? Avoid Adding Insider Trading Liability to the Mix.](#) KING & SPALDING LLP CLIENT ALERT (Dec. 20, 2021); Dixie L. Johnson, Matthew B. Hanson & Kelli Gulite, [Quarantine Your Sensitive Business Information to Avoid Inadvertent Tipping Liability.](#) KING & SPALDING LLP CLIENT ALERT (Apr. 10, 2020); Dixie L. Johnson, Aaron W. Lipson & Matthew B. Hanson, [Stay Vigilant: The Government Shutdown Didn't Shut Down Insider Trading Enforcement.](#) KING & SPALDING LLP CLIENT ALERT (Mar. 20, 2019); Dixie L. Johnson, Richard H. Walker & Matthew B. Hanson, [Loose Lips Still Sink Ships: Inadvertent Tipping in 2017.](#) LAW360 (Dec. 21, 2017); Dixie L. Johnson, Alana L. Griffin & Matthew B. Hanson, [Avoid Inadvertent Tipping This Holiday Season.](#) LAW360 (Dec. 21, 2016); Dixie L. Johnson & Matthew B. Hanson, [Post-Newman Reality: Investigations Involving Unwitting "Tips" to Close Friends and Relatives Will Continue.](#) KING & SPALDING LLP CLIENT ALERT (Oct. 8, 2015); Dixie L. Johnson & Matthew B. Hanson, [Friends and Family: Keeping Loved Ones Safe from Insider Trading Temptations.](#) KING & SPALDING LLP CLIENT ALERT (Dec. 8, 2014); Dixie L. Johnson, [Maintaining Client Confidences During the Holidays: Avoid Accidental Tipping.](#) FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP (Dec. 23, 2013); Dixie L. Johnson & Matthew B. Hanson, [Accidental Tipping: The Wrong Kind of Holiday Present for Family and Friends.](#) FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP (Dec. 14, 2012); Dixie L. Johnson & Robert Greffenius, [Topics to Avoid in Holiday Conversation: Religion? Politics? Work!](#) FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP (Nov. 30, 2011); Dixie L. Johnson & Robert Greffenius, [Insider Trading by Friends and Family: When the SEC Alleges Tipping.](#) BUS. LAW TODAY (Aug. 18, 2011).
- ² Complaint, [SEC v. Daniel](#), 3:22-cv-04711 (N.D. Cal. Aug. 17, 2022).
- ³ Complaint, [SEC v. Markin](#), 1:22-cv-06276 (S.D.N.Y. July 25, 2022).
- ⁴ Press Release, Dep't of Just., [U.S. Attorney Announces Charges in Four Separate Insider Trading Cases Against Nine Individuals, Including Former U.S. Congressman, Former FBI Agent Trainee, Tech Company Executives, and Former Investment Banker](#) (July 25, 2022).
- ⁵ Indictment, [United States v. Markin](#), 22-cr-00395 (S.D.N.Y. July 25, 2022).
- ⁶ Complaint, [SEC v. Moscatiello](#), 1:22-cv-04323 (D.N.J. June 29, 2022).
- ⁷ [In the Matter of Lloyd Reed](#), Exchange Act Release No. 94591 (Apr. 4, 2022).