

# Client Alert

Special Matters & Government Investigations

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## When Mentors and Loved Ones Are Dangerous: Avoid Insider Trading Charges with a 2025 New Year's Resolution

It happens all the time: a public company employee seeks career advice from a mentor, spouse, or friend with whom they have a longstanding relationship of trust and confidence. It could be part of a regular check-in, or it may get more specific. The employee may confide a fear that their job may change or be eliminated if a big development that's currently underway at work ends up happening—maybe the employee works on a team that is analyzing a potential acquisition or testing a new product. The purpose of the conversation is career counseling, and the employee trusts that the underlying information about the employer will remain confidential. But the mentor, friend, or loved one then trades in the employer's (or the target company's) securities while in possession of the information.

Even if the employee never knew about the mentor's trading, the employee will come under an investigation spotlight after the news becomes public. The government analyzes traders when reviewing post-announcement securities trading, even when the trader's profits are relatively small, as they often are in these cases. Although ultimately the authorities may conclude that the employee ought not be charged with tipping material nonpublic information (MNPI), merely being under scrutiny is painful. The relationship of trust and confidence has been broken, and whatever job jeopardy the employee previously worried about can pale in comparison to the investigation trauma caused by the trader.

This factual scenario appeared several times in 2024 as we performed our annual review<sup>1</sup> of enforcement cases brought or resolved by the U.S. Securities and Exchange Commission (SEC) involving misappropriation of MNPI in a breach of a duty of trust and confidence the trader owed to a mentor, friend, or loved one. We look for cases where it appears the

government concluded that the source of the information never meant for illegal activity to occur but nevertheless was caught up in a messy investigation that everyone probably wishes had never been necessary. We hope that, in writing about these situations, we remind at least one reader somewhere to avoid a similarly painful circumstance in the future by making better decisions up front. It's a great time for a New Year's Resolution to talk about other topics and avoid confiding MNPI in 2025.

### ONE TOO MANY CONVERSATIONS

In one 2024 case, everything was going fine until one too many conversations occurred. According to the SEC, an employee at Zogenix Inc., a California pharmaceutical company, had a close personal relationship with a relative, Sanjay Bhandari, and “for many years sought confidential guidance from Bhandari regarding significant life decisions, both personal and professional.”<sup>2</sup> As a result, the SEC explained that “Bhandari agreed, expressly or by implication, to treat information related to Zogenix and the Zogenix Insider’s employment there as confidential.” These conversations continued through the late fall and early winter of 2022, as the Insider considered leaving Zogenix to work at another company.

On January 18, 2022, the Zogenix Insider emailed his resignation to his supervisor, who promptly held a video call with the Insider urging him to reconsider his resignation, revealing that Zogenix would be acquired by UCB S.A. and the announcement would occur the next day. The SEC’s complaint alleged that the supervisor “discussed with the Zogenix Insider the potential financial benefits of staying employed by Zogenix through the completion of the acquisition—including the vesting of the Zogenix Insider’s stock options,” which he would lose if he left before the acquisition was completed.

Shortly after this 20-minute call, the Zogenix Insider had one more conversation with Bhandari—a 54-minute call during which the Insider again sought confidential career advice. This time, though, the Insider also described what he learned from his supervisor including the imminent acquisition and announcement. While they were talking, but without telling the Insider, Bhandari began purchasing Zogenix stock, and he continued purchasing shares for himself and his wife that afternoon. He also tipped a friend, expecting that the friend would trade. The friend purchased Zogenix securities and tipped a different friend, who purchased shares plus out-of-the-money call options.

Together, the group made approximately \$70,000 in illegal profits, which were disgorged to the SEC as part of a settlement in April 2024 that also included pre-judgment interest and civil monetary penalties of more than \$170,000.<sup>3</sup> In the end, the SEC found that the Insider believed he was confiding in a trusted mentor who would not misuse the information, and unfortunately that belief was wrong.

### NO NEED FOR A COURTESY HEADS-UP

In another 2024 case, a friend’s excited update resulted in an SEC investigation. According to the SEC, in July 2021, an employee of Dover Motorsports, Inc. was in a meeting in which representatives of Speedway Motorsports, LLC made a tender offer to purchase Dover.<sup>4</sup> Dover’s board of directors considered this and another offer through an independent committee during August.

Then in September, the Dover employee went on an overseas vacation with his long-time friend Steven Masterson. They had previously discussed “the possibility of working together in the future” and on this trip, the Dover employee “indicated to Masterson that Dover’s acquisition may accelerate that timeline.” The SEC alleged that Masterson owed a duty of trust and confidence to his friend and “knew, consciously avoided knowing, or was reckless in not knowing that the information disclosed was confidential and he should not trade on the information.” Nevertheless, Masterson emailed his investment adviser directions to purchase Dover stock, resulting in illegal profits of \$50,031. A definitive agreement for Speedway to acquire Dover was announced in early November 2021. After a multi-year

investigation, the May 2024 settlement included disgorgement, pre-judgment interest, and a one-time penalty. Certainly Masterson should never have misappropriated the information and traded—and on reflection, that would never have happened if his friend had just waited to continue career planning until the news was public.

### SOMETIMES IT'S TOO MUCH PRESSURE

Those cases involved confidential information being shared with friends in the context of seeking career advice, with the friends then, according to the SEC, betraying the trust and confidence of those relationships and misappropriating MNPI to illegally trade. This next case involved information shared within a confidential discussion between a wife and her unemployed husband about her possible career crisis. The husband Brian Rubin not only settled with the SEC for breaching his wife's trust<sup>5</sup>—he also pled guilty to criminal charges.<sup>6</sup>

The wife worked at Array BioPharma Inc., a pharmaceutical developer that marketed and distributed pharmaceuticals to treat patients for cancer and other diseases. According to the SEC, she “provided her family with a stable income and health insurance benefits [and] was concerned that if another company acquired Array, she would lose her job.”<sup>7</sup> In late March and April 2019, Array entered into confidentiality agreements with another pharmaceutical company to exchange information relating to a potential tender offer that subsequently transpired and was announced on June 17, 2019. The SEC alleged that, at some point prior to May 6, the wife “told Rubin in confidence that she learned from work colleagues that Array was a likely acquisition target, and that her job would be eliminated if Array were acquired.”

Rubin was a former options trader, knew the information was confidential, and knew his wife expected him to keep it confidential and not trade. Nevertheless, he contacted his investment adviser and, without telling his wife, forged her signature on a joint options trading application to commence trading. The adviser knew that Rubin's wife worked for Array and expressly asked if Rubin was in possession of MNPI, which Rubin denied.

Ultimately, Rubin made \$90,458 in illegal profits, which he disgorged to the SEC along with pre-judgment interest. On January 24, 2024, Rubin pled guilty to Count 1 of the criminal information pending against him in the Northern District of Illinois.<sup>8</sup> In July 2024 he was sentenced to three years' probation and 100 days of home detention, and ordered to pay a criminal fine of \$90,458 (the amount of disgorgement).<sup>9</sup> While spouses should be able to trust each other, this case shows the devastating result when one betrays such trust.

### RISKS AND REWARDS OF ROMANTIC RELATIONSHIPS

In fact, every year's survey reveals additional cases involving betrayals within romantic relationships, where one partner had MNPI due to a work assignment and the other, despite their relationship of trust and confidence, took the information and traded. These situations are always tragic. We often feel most comfortable sharing our work secrets and concerns within romantic relationships, so if breaches of that trust occur it is devastating. And before the government concludes that the insider should not be charged, the insider is evaluated as if a crime may have been committed, resulting in a painful and intrusive investigation that is a life-changing experience for the innocent as well as the guilty who caused the investigation.

- Sometimes the insider loses their job, even when the insider is found to have done nothing wrong. That happened to Tyler Loudon's wife when he “wanted to make enough money so that she did not have to work long hours anymore,” so when he overheard her working on an acquisition for her employer, he figured out the target and traded.<sup>10</sup> Long story short, he went to prison, they divorced, and she was fired even though her employer found no evidence that she leaked MNPI or knew about the trades.<sup>11</sup>
- Unfortunately, it's not even foolproof to hear from a domestic partner that they understand information must remain confidential, or to be cautioned by them to be careful with it ourselves. The SEC alleges that Carlos

Sacanell received a text message from his partner expressing discomfort with having MNPI about a pending transaction, and Sacanell advised his partner about how to talk with inquiring coworkers who were not authorized to know the information.<sup>12</sup> Then Sacanell traded. The SEC's case is currently stayed pending the resolution of his criminal case, which is set to go to trial in April 2025. Sacanell is also being charged with making a false statement to a federal agency in the criminal matter after he falsely told the FBI that he did not obtain MNPI from his partner regarding the acquisition.<sup>13</sup>

- Sometimes, despite an extensive investigation and a determination not to charge the corporate insider (at least initially), the SEC alleges alternative facts, thereby both establishing a predicate for the misappropriation and preserving the possibility for fact development during litigation. For example, when charging Bryan McMillan on September 26, 2024, the SEC stated, "Either McMillan misappropriated this information from [his partner] in breach of his duty to her after she communicated this information to him in confidence or he overheard her confidential telephone conversation in their shared home," and noted that the insider may have tipped the MNPI to McMillan in breach of a duty to the employer and for personal benefit.<sup>14</sup> The risk continues as the litigation unfolds.
- Finally, although we typically see men being the traders,<sup>15</sup> that is not always the case. In 2024, the SEC settled with Teresa Perez de Madrid, finding that she obtained MNPI from her husband's laptop. He was an attorney, working remotely on vacation, counseling one of the companies regarding the acquisition, and she learned the information by looking at his laptop while he was away from his desk. Unlike most other situations, however, she did not withdraw her profits and instead informed her husband then self-reported to the SEC, which resulted in payment of disgorgement and pre-judgment interest, but no penalty and no charges against her husband.<sup>16</sup> This case demonstrates that sometimes acting quickly to address a mistake may shorten the investigation and reduce or eliminate the penalty.

## LOOKING AHEAD

The insider trading cases brought in 2024 show the wide range of circumstances under which inadvertent tipping can occur, but all highlight the risks of sharing MNPI with mentors, friends, and loved ones. Simple, quick fixes like always locking your computer when you step away from your desk, avoiding using company names during conversations whether you are in private or not, and keeping conversations about your job at a high level can save you from ruined relationships and reputational harm.

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<sup>1</sup> These articles have become a tradition spanning more than a decade. See Dixie L. Johnson & Lauren O. Konczos, [Working From Home? Beware Insider Trading, Tipping Risks](#), LAW360 (May 10, 2023); Dixie L. Johnson & Lauren O. Konczos, [Working From Home? Stay Alert to Avoid Insider Trading or Tipping Liability!](#), KING & SPALDING LLP CLIENT ALERT (Jan. 25, 2023); 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).

<sup>2</sup> Complaint, [SEC v. Bhandari](#), 1:24-cv-00710 (E.D. Va. Apr. 30, 2024).

<sup>3</sup> Litigation Release, Sec. and Exch. Comm'n, [SEC Charges Virginia Resident and Two Friends with Insider Trading](#) (Apr. 30, 2024). The settlements were approved by the Court on May 8, 2024. See Final Judgment as to Defendant Sanjay Bhandari, SEC v. Bhandari, 1:24-cv-00710 (E.D. Va. May 8, 2024); Final Judgment as to Defendant Rakesh Jain, SEC v. Bhandari, 1:24-cv-00710 (E.D. Va. May 8, 2024); Final Judgment as to Defendant Vinod Singhi, SEC v. Bhandari, 1:24-cv-00710 (E.D. Va. May 8, 2024).

<sup>4</sup> [In the Matter of Steven Masterson](#), Exchange Act Release No. 100064 (May 6, 2024).

<sup>5</sup> Litigation Release, Sec. and Exch. Comm'n, [SEC Charges Illinois Resident with Insider Trading](#) (Oct. 17, 2023). The settlement was approved by the Court on February 15, 2024. See Final Judgment as to Defendant Brian Marc Rubin, SEC v. Rubin, 1:23-cv-15013 (N.D. Ill. Feb. 15, 2024).

<sup>6</sup> Plea Agreement, United States v. Rubin, 1:23-cr-00552 (N.D. Ill. Jan. 29, 2024).

<sup>7</sup> Complaint, [SEC v. Rubin](#), 1:23-cv-15013 (N.D. Ill. Oct. 17, 2023).

<sup>8</sup> Information, [United States v. Rubin](#), 1:23-cr-00552 (N.D. Ill. Oct. 17, 2023).

<sup>9</sup> Amended Judgment, United States v. Rubin, 1:23-cr-00552 (N.D. Ill. Oct. 30, 2024).

<sup>10</sup> Complaint, [SEC v. Loudon](#), 4:24-cv-00622 (S.D. Tex. Feb. 22, 2024).

<sup>11</sup> Press Release, Dep't of Just., [Houstonian heads to prison in \\$1.7M insider trading scheme using wife's private company information](#) (May 21, 2024).

<sup>12</sup> Complaint, SEC v. Sacanell, 24-cv-5839 (E.D. Pa. Oct. 31, 2024).

<sup>13</sup> Press Release, Dep't of Just., [Montgomery County Man Charged With Insider Trading Linked to CVS's 2023 Acquisition of Oak Street Health](#) (Oct. 31, 2024).

<sup>14</sup> Complaint, [SEC v. McMillan](#), 4:24-cv-00919 (N.D. Tex. Sept. 26, 2024).

<sup>15</sup> Dixie was quoted in a Wall Street Journal article on this topic last year. See Corinne Ramey, [Love and Deceit: Work-From-Home Era Spawns 'Pillow Talk' Insider Trading](#), WALL ST. J. (Jan. 9, 2024).

<sup>16</sup> [In the Matter of Teresa Perez de Madrid](#), Exchange Act Release No. 100201 (May 21, 2024).

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