

Insider Trading Update: Department of Justice Seeks Supreme Court Review of Second Circuit Case Deciding Reach of Insider Trading Law

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The United States Department of Justice has petitioned the United States Supreme Court to review a recent Second Circuit opinion that clarified what the Government must prove to establish an insider trading violation. Although the Second Circuit reaffirmed that the Government must prove that a corporate insider personally benefited from his disclosure, the court also held that inferring such a benefit from personal relationships is impermissible “in the absence of 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.” The Department of Justice argues that the Second Circuit’s definition of personal benefit unduly limits the reach of insider trading law, contravenes a prior Supreme Court decision, is in conflict with decisions by other courts of appeals, and will harm the securities markets. Importantly, the Department of Justice does not contest the Second Circuit’s other key ruling that required the Government to prove that a tippee knows of the personal benefit that the insider received in exchange for disclosure.

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