

Insider Trading: Leveraging Inside Information

Insider trading is generally viewed through one of two lenses. The first is the classic model. There a company insider learns information which constitutes material non-public information about his or her employer and either uses it to trade or furnishes it to an outsider who trades. In the second, or misappropriation model, a person obtains inside information which is later misappropriated by another and used to trade.

The SEC's most recent insider trading case does not appear to be precisely either model. It involves a company insider and inside information about the company. The trading, however, is in the securities of another company in essentially the same line of business in advance of a corporate deal that impacts the insider's employer and its share price and also the share price of other issues in the same line of business. *SEC v. Panuwat*, Civil Action No. 4:21-cv-06322 (N.D. Cal. Filed August 17, 2021).

Defendant Matthew Panuwat was employed at pharmaceutical firm Medivation, a mid-cap oncology-focused biopharmaceutical firm. He was an expert in the biopharmaceutical industry with undergraduate and graduate degrees in biology and the pharmaceutical area. He also had worked in the securities industry, having been an associated person at a San Francisco investment bank and broker-dealer.

In 2016 Mr. Panuwat was the Senior Director of Business Development at the firm. He reported to the CFO. His role was essentially to find and pursue opportunities to expand the firm's drug products and development pipeline, primarily through acquisitions and licensing. Possessing confidential non-public information was part of the job for Mr. Panuwat. When he assumed his position Mr. Panuwat was required to sign the insider trading policy.

In April 2016 Medivation became an acquisition target. The company engaged investment banks to advise on strategic options in view of the recent sale of a French pharmaceutical company. The Senior Director reviewed various presentations and materials the bankers discussed with peer companies. He was also aware that large cap

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biopharmaceutical companies with commercial-state drugs were interested in acquiring firms in the oncology-focused mid-cap area.

As the search advanced, Mr. Panuwat was involved in the discussions with various bidders. He also suggested that the bankers consider certain firms. By early August 2016 he learned that the employer was going to be acquired at a significant premium to the then current stock price. By mid-August the bankers had sent him a summary of bids by potential acquirers. At least five potential bidders were considering all cash offers. Shortly after this, Mr. Panuwat attended a board meeting where letters were authorized to solicit final bids from interested firms. On Thursday, August 18, 2016, he was included in a group of executives that were told the CEO of Big Parma, a large pharmaceutical company, would call to finalize a bid.

Minutes after receiving the email Mr. Panuwat logged onto his computer. He knew that the information about his firm being acquired was material. He also thought it would impact shares of Incyte, another mid-cap pharmaceutical firm. Accordingly, he purchased 578 Incyte call options with strike prices that ranged from \$80 to \$85. Incyte's price was at about \$76 to \$77 per share. The options would expire on September 16, 2016. While Mr. Panuwat did not expect any announcement before the expiration date regarding Incyte, he did expected that the deal announcement for the transaction involving his employer would be announced before September 16th and would increase the price.

Two days later the Medivation-Large Pharma deal was announced on a Sunday. The price was \$81.50 per share, a significant premium. The next day Mr. Panuwat purchased additional Incyte options prior to the market open. Incyte's price jumped 8%. The executive had profits of \$10,086. The complaint alleges violations of Exchange Act Section 10(b). The case is pending. See Lit. Rel. No. 25170 (August 17, 2021).