

FINEX Alert

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Insider trading enforcement concerns rise on Supreme Court decision

By Chris LoRe and Rob Yellen

In a ruling on Tuesday, December 6, in *Salman v. United States*, the United States Supreme Court resolved a split among the circuit courts, essentially holding that if an individual gives confidential information to a “trading relative or friend,” it may be inferred that the tipper derived a sufficient benefit to potentially trigger securities fraud liability for the relative or friend.

The case centered on whether an individual who discloses insider information regarding material and non-public matters of a company must also tangibly benefit from such disclosure to be considered as having breached insider trading laws. The Court's decision was unanimous that Bassam Salman had violated such law by making over \$1 million through trading on information that had been provided by Maher Kara, his future brother-in-law.

In writing for the Court, Justice Samuel A. Alito Jr. opined, “By disclosing confidential information as a gift to his brother with the expectation that he would trade on it...Maher breached his duty of trust and confidence to Citigroup and its clients — a duty Salman acquired, and breached himself, by trading on the information with full knowledge that it had been improperly disclosed.”

“[T]he law absolutely prohibits insiders from advantaging their friends and relatives at the expense of the trading public. Today’s decision is a victory for fair markets and those who believe that the system should not be rigged.”

U.S. Attorney Preet Bharara on the Supreme Court's Decision in *Salman v. U.S.*, December 6, 2016

The ruling is expected to make insider trading cases easier to prosecute by regulators.

Action items:

- Directors & officers (D&O) liability underwriters may ask about whether 10b5-1 plans are utilized to mitigate risk. Such plans allow insiders to set up a trading plan that sells stock that they own at pre-determined dates and share amounts. This allows insiders to mitigate potential insider trading risk.
- Continue to monitor developments in securities enforcement with upcoming changes in regulatory leadership. D&O insurance coverage continues to evolve as insurers respond to the “Yates” Memorandum and evolving enforcement tactics.

Please let us know if you wish to discuss this recent decision and its potential implications on the D&O insurance market further.

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Sources

<https://www.justice.gov/dag/file/769036/download>

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