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THE RISE OF INSIDER TRADING AS A TITLE 18 OFFENSE

In this article, the authors introduce their subject by first tracing the evolution of the tangled 10b-5 insider trading law in the courts. They then turn to the growing practice of prosecutors to add the securities fraud provision in 18 U.S.C. §1348 to their charging instruments in insider trading cases. They close with the recent Blaszczak *case in which the Second Circuit declined to apply the "personal benefit" test to a Title 18 prosecution for insider trading.*

By Tom Hanusik, Rebecca Monck Ricigliano, and Nimi Aviad *

What is insider trading and when is it prohibited? A series of pivotal cases in the last six years, and scores of commentary, demonstrate that this seemingly straightforward concept, rooted in notions of fraud, is difficult to grasp. The culprit is the element of "personal benefit," which was grafted onto the crime by the Supreme Court almost 40 years ago, and has escaped clear definition since. Below we argue that the debates over the "personal benefit" standard, interesting as they are, may be sidelined by a prosecutorial trend which seeks to avoid the complicated Rule 10b-5 jurisprudence, and charges insider trading as securities fraud under Section 1348 of Title 18. A recent Second Circuit decision will no doubt propel this trend further, holding that the jurisprudential scaffolding added over the years to the crime of insider trading under Rule 10b-5 does not apply to Section 1348 cases.

INSIDER TRADING LAW: A WORK IN PROGRESS

The Origins Story: Chiarella, Dirks, *and* O'Hagan

The current law of insider trading traces its origins to Section 10(b) of the 1934 Securities and Exchange Act, which broadly bans the use of any "manipulative or deceptive device" in connection with the purchase or sale of any security.[1] Section 10(b)'s purpose was clear: to promote the notion of market parity and allow parties to trade on the basis of the same publicly available information. However, congressional silence created a vacuum of interpretation with respect to specific

[1] 15 U.S.C. § 78j(b) (2012).

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