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SHADOW TRADING THEORY AND CONGRESS

In 2024, a jury found a corporate insider liable under a new theory pursued by the SEC: “shadow trading,” in which an insider acts on material nonpublic information learned at the insider’s workplace to make a trade in an “economically linked” company — that is to say, one in the same or a similar industry. While this case, SEC v. Panuwat, signals a significant expansion of what conduct might be termed “insider trading,” it raises questions about what may happen to those in the United States who are most likely to possess industry-moving MNPI: the members of the U.S. Congress. This article details the extension of insider trading law that Panuwat represents, contrasting it to the stagnation that has marked attempts to expand accountability for U.S. lawmakers who trade on inside information. Finally, this article explores the methods some retail investors have devised to track and copy Congressional trades by harvesting public data, and how Panuwat’s shadow-trading theory could be applied to public officials in the future.

By Brian A. Jacobs, Thomas A. McKay, and Jessica Salley *

How many investors can see returns of over 700 percent over 10 years without raising the eyebrows of the Securities and Exchange Commission or federal prosecutors?

About 535 — the members of the U.S. Congress. While 86 percent of U.S. voters believe that Congresspeople and their immediate families should not be able to trade stocks in individual companies,¹ news

¹ U. Md. Program for Public Consultation, *Ban on Stock Trading for Members of Congress Favored by Overwhelming Bipartisan*

* **BRIAN A. JACOBS** and **THOMAS A. MCKAY** are members of *Morvillo Abramowitz Grand Iason & Anello P.C.* Brian previously served as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney’s Office for the Southern District of New York, where he was Deputy Chief of Appeals. Tom also previously served as an Assistant U.S. Attorney in the U.S. Attorney’s Office for the Southern District of New York, where he was Co-Chief of the Public Corruption Unit. **JESSICA SALLEY** is an associate at *Morvillo Abramowitz*. Their e-mail addresses are bjacobs@maglaw.com, tmckay@maglaw.com, and jsalley@maglaw.com.

headlines continuously spotlight the huge gains made in the portfolios of Representatives and Senators across party lines. From former Speaker of the House Nancy Pelosi’s millions of dollars in trades in chipmaker Nvidia² to Senate Health, Education, Labor, and

footnote continued from previous column...

Majority, Jul. 13, 2023, <https://publicconsultation.org/united-states/stock-trading-by-members-of-congress/>.

² Niloy Chakrabarti, *Nancy Pelosi Discloses Buying 10,000 Nvidia Shares After Bipartisan Senators Introduce Bill to*

INSIDE THIS ISSUE

● **CLOSED-END FUND GOVERNING DOCUMENTS: THE DEFENSE AGAINST SHAREHOLDER ACTIVISM, Page 51**