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THE IMPACT OF *SALMAN V. UNITED STATES* ON DOWNSTREAM TIPPEE PROSECUTIONS

In Salman v. United States*, the Supreme Court held that a tipper receives a personal benefit sufficient to establish illegal insider trading when the tipper makes a gift of confidential information to a trading relative or friend.* Salman *did not address, however, the question of what level of knowledge a downstream tippee must possess of the personal benefit the tipper received in order to be held liable for insider trading. The authors address how district courts have analyzed the question of what downstream tippees must know to be held liable for insider trading after* Salman *and* Salman*'s continued impact on this question going forward.*

By Brian A. Jacobs and Priya Raghavan *

In *Salman v. United States*,[1] the Supreme Court held that a tipper receives a "personal benefit" sufficient to be guilty of illegal insider trading when the tipper makes a gift of confidential information to a trading relative or friend. *Salman* explained that "[i]n such situations, the tipper benefits personally because giving a gift of trading information is the same thing as trading by the tipper followed by a gift of the proceeds."[2] *Salman* thus abrogated the Second Circuit's holding in *United States v. Newman*[3] that a personal benefit can be found only where the relationship between the tipper and tippee is "meaningfully close," and the exchange generates potential pecuniary or similar gain for the tipper. Following *Salman*, numerous commentators analyzed open questions that remained, including the extent to which *Newman*'s requirement that tippers and tippees have a "meaningfully close personal relationship" survived *Salman*, if at all.[4] Then, in *United States v.*

[1] 137 S. Ct. 420 (2016).

[2] *Id.* at 428.

[3] 773 F.3d 438, 452 (2d Cir. 2014).

[4] McBride, Scott B., Salman v. United States *and its Impact on Insider Trading Enforcement*, The Review of Securities and

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