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SALMAN V. UNITED STATES AND ITS IMPACT ON INSIDER-TRADING ENFORCEMENT

The Supreme Court's decision in the Salman *case restored the personal benefit test in insider-trading cases that had been upended by the Second Circuit's decision in the* Newman *case. The author discusses these cases, beginning with the basics of insider-trading law. He then turns to Newman's pre-*Salman *effect,* Salman's *impact on future enforcement, and remaining battleground issues.*

By Scott B. McBride *

On December 6, 2016, the U.S. Supreme Court ended two years of uncertainty surrounding what actually constituted illegal "insider-trading" for the "tippers" who pass on confidential information to others, and for the "tippees" who receive the information and trade on it. In *Salman v. United States*,[1] the Court restored the status quo ante (or most of it, anyway) that had been disrupted by the Second Circuit's landmark holding in *United States v. Newman*.[2] In *Newman*, the Second Circuit held that a gift of material non-public information for trading purposes among friends and family did not run afoul of the insider-trading laws unless there was a quid pro quo of a pecuniary nature. In its restoration, the Supreme Court likely unleashed federal enforcement authorities that were already aggressively pursuing these cases during the period of uncertainty.

This article first revisits the basics of insider-trading law; second, it describes the holdings in *Newman* and *Salman*; and third, it makes predictions about future enforcement efforts and legal battlegrounds.

I. INSIDER-TRADING LAW BASICS

A discussion of *Salman* requires a rehash of the insider-trading legal framework. There is no "insider-trading" statute, as such. Insider-trading law sprouted from the fraud provisions of Section 10(b) of the Exchange Act,[3] and from the SEC's Rule 10b-5

[1] 580 U.S. ___, 137 S. Ct. 420 (2016).

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

[3] 15 U.S.C. § 78j.

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