



In the months leading up to President Trump's inauguration and even during his first 100 days in office, speculation has persisted on whether white-collar enforcement will continue to be robust and, if so, which areas will be targeted.

Although Attorney General Jeff Sessions recently reinforced a general commitment to continue pursuing white-collar criminals in his [remarks](#) at the Ethics and Compliance Initiative Annual Conference, details remain sketchy. In particular, it is unclear whether insider trading prosecutions will remain a priority given the current administration's pro-business leanings. Although insider trading is considered to be a "bread and butter" type of white-collar prosecution, there has been little guidance whether that will hold steady. Adding to this uncertainty, several key leadership positions are still vacant at two crucial enforcers: the Securities and Exchange Commission (SEC), which is supposed to ensure that material, non-public information is not used for trading;

and the U.S. Attorney's Office for the Southern District of New York (SDNY), which has traditionally acted as a key gatekeeper in deterring insider-trading activity in light of its proximity to the nation's financial markets. Specifically, the recently-confirmed Chairman of the SEC, Jay Clayton, has not yet appointed a new Enforcement Director, the majority of the SEC's Commissioners are not in place, and a new SDNY U.S. Attorney has not even been named. Despite this uncertainty, the SEC and SDNY federal prosecutor's office have stayed the course in pursuing insider trading cases in these first 100 days. ***Fewer SEC Actions Not Determinative*** Cornerstone Research [reported](#) that in the first half of FY 2017 (October 1, 2016 – March 31, 2017), the SEC brought 14 insider trading enforcement actions (with eight cases filed in federal court since February 2017), as opposed to 21 in the first half of FY 2016. That decline, however, may not necessarily be due to the administration change since these cases were likely being investigated before the election and initiated with the prior Commission's approval. Moreover, the number of insider-trading actions fluctuated even during the last few years of the Obama Administration, with the SEC bringing [52 actions in 2014](#), [39 in 2015](#), and [45 in 2016](#). What may be more revealing of the current administration's commitment to targeting insider trading is the total number of parties charged, which has largely remained the same in recent years with 88 parties charged in 2014, 87 in 2015, and 78 in 2016. The SEC also filed another insider trading action since the end of the first half of FY 2017. On April 24, 2017, the SEC [charged](#) defendant Avaneesh Krishnamoorthy, an investment bank vice president, with trading on confidential information he obtained in advance of a private equity firm's acquisition of a publicly-traded technology company. The SDNY [simultaneously brought](#) a criminal case against Krishnamoorthy. As a risk management specialist, Krishnamoorthy allegedly obtained material, nonpublic information about a transaction his investment bank was considering financing and, based on that information, purchased over several weeks shares of the soon-to-be acquired company. After the acquisition was announced, Krishnamoorthy closed out his positions and allegedly had \$48,000 in ill-gotten gains. This case may not be a harbinger of a particular focus on insider trading prosecutions since it is the type of straightforward insider trading case that many commentators have speculated enforcement agencies would continue to pursue under the new administration. Among other things, it does not raise complex issues implicating tipper/tippee liability or broader policy issues. ***SDNY Commitment Remains Firm*** With the [departure of Preet Bharara](#)—the former SDNY U.S. Attorney who aggressively pursued financial crimes, including insider trading—and his replacement yet to be nominated, it is not clear how prominent a role the SDNY will play in white-collar enforcement. Although line prosecutors and agents investigate cases, U.S. Attorneys still set enforcement priorities for their districts and shape how aggressively to prosecute certain misconduct. For now, though, the SDNY has clearly signaled that it has not shifted its focus. On March 15, 2017, just four days after Bharara's departure, acting U.S. Attorney Joon H. Kim [confirmed](#) that the "Office's commitment to investigating and prosecuting insider trading remains firm." The criminal charges against Krishnamoorthy discussed above may be indicative of this continuing commitment, as the SDNY could have just left the SEC to mete out justice. Moreover, the SDNY's recent messaging after its victory against William T. "Billy" Walters shows that, for now, prosecuting insider trading will not go away. The SDNY alleged that Walters was involved a multi-year scheme in which he executed trades based on material, nonpublic information from a member of Dean Foods' board of directors, resulting in approximately \$32 million in ill-gotten gains. After the jury found Walters guilty, acting U.S. Attorney Joon H. Kim [reiterated](#) on April 7, 2017 that "[t]he integrity of the American financial markets is a bedrock principle upon which our economy and justice system relies, and this Office and our partners at the FBI are as committed as ever to protecting it." As with much else that can be said about the Trump Administration's first 100 days, it is an open question where insider trading will fit in the priorities of the new enforcement regime. Although insider trading actions are still being brought, and victories touted, those were already in the pipeline. It may not be until next year that we can tell—based on enforcement numbers and the complexity of the actions being pursued—whether insider trading prosecutions will hold steady under the Trump Administration.

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