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Shadow Trading: The SEC's Latest Insider Trading Theory Takes Further Shape



Here's the conclusion from this ["White Collar Briefly" blog](#) penned by Ben Estes:

"The court's summary judgment decision in *Panuwat* sends conflicting messages about the breadth of insider trading liability under the SEC's shadow trading theory. Several aspects of the decision indicate that the shadow trading theory can only apply to a narrow set of factual circumstances. For example, under the "market connection" test for materiality, the court expressly rejected the broad premise that a market connection would exist between two companies in the same industrial sector that are "allegedly similar." Instead, the court emphasized the scarcity of companies in Medivation and Incyte's niche section of the biopharmaceutical market.

On the other hand, other aspects of the court's decision indicate that the shadow trading theory can apply to a broader set of circumstances. For example, the court found the materiality element satisfied even though Medivation and Incyte were not direct competitors.

And the court's acceptance of two additional grounds for breach of duty that were absent from the motion to dismiss decision means that the shadow trading theory is not limited to companies with far-reaching insider trading policies like Medivation's. Trial is scheduled to begin on March 25, 2024, and companies and traders would be well-advised to follow along—how a jury reacts to the SEC's case should help crystallize any further shadow trading lessons."

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