

US moves to dismiss insider trading charges in SAC Capital case

By Gabriel Black
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Manhattan US Attorney Preet Bharara last month moved to drop charges and reverse the convictions of seven people in connection with a high-profile insider trading case against SAC Capital Advisers, the hedge fund run by multi-billionaire Stephen A. Cohen.

Bharara's office filed motions with the clerk's office of the Federal District Court in Manhattan to dismiss the charges and convictions.

In November 2013, SAC Capital pled guilty to insider trading charges, agreed to stop managing the funds of people outside the firm, and paid a \$1.2 billion fine.

Cohen was never criminally prosecuted, but a top SAC Capital employee and Cohen confidante, Michael Steinberg, was found guilty in a jury trial in 2013 and sentenced to three-and-a-half years in prison in May of 2014. The six others who stand to be cleared by Bharara's action were cooperating witnesses who pled guilty. Some of these testified in the Steinberg trial.

All seven were free on bail pending the outcome of appeals.

Bharara's move was in response to a federal appeals court ruling in December overturning the insider trading convictions of Anthony Chiasson, founder of Level Global Investors, and Todd Newmann, a former trader at Diamondback Capital Management. They had received prison sentences of six-and-a-half years and four-and-a-half years, respectively, after having been found guilty of making \$72 million in profit by soliciting insider information about technology firms Dell and Nvidia.

The ruling by the Manhattan-based US Court of Appeals for the Second Circuit broke sharply with judicial precedent to impose a novel and highly restrictive standard for prosecuting and convicting financial criminals who use insider information not

available to the public to rig the markets for their personal gain. At the time, Bharara argued that the appeals court ruling "will dramatically limit the government's ability to prosecute some of the most common culpable and market-threatening forms of insider trading."

Last April, the Second Circuit appeals court turned down Bharara's motion requesting that the entire court review the December ruling, which had been issued by a three-judge panel. Early last month, the US Supreme Court rejected a request by the Justice Department that it review the appeals court ruling, effectively establishing the new restrictive standard on insider trading prosecutions as the law of the land.

This standard imposes huge legal hurdles all but blocking the successful prosecution of insider traders. It amounts to a legal green light for illegal financial manipulation. As such, it is an extension of the *carte blanche* given to the Wall Street bankers and speculators whose reckless and, in many cases, criminal activities triggered the financial collapse of 2008 and the ensuing slump, which has destroyed the livelihoods of countless millions in the US and around the world.

Not a single leading banker has been prosecuted, let alone jailed, for his actions. Instead, the power and wealth of Wall Street has been immensely increased by government policies such as bank bailouts, near-zero interest rates and central bank bond purchases ("quantitative easing").

In its December 2014 ruling, the Second Circuit found that to prove insider trading, one had to establish both that the person sharing confidential information obtained a concrete material benefit and that the person receiving the information knew he was breaking the law.

Prior to this, prosecutors could convict people for insider trading when there were non-material benefits gained from sharing information.

As Patrick Keefe wrote in the *New Yorker*, “Company insiders share tips for many reasons, not just financial compensation: the person they share the information with may be a friend or a family member, someone they want to impress, someone they owe a favor. And once they pass the tip along, it often circulates through a network of people in the investment community.”

In the case of SAC Capital, Steinberg obtained secret information about Dell’s poor performance in 2008. This information allowed him to place large bets against Dell before the company released its financial report that year. The new ruling effectively prevents Steinberg from being held accountable for using this tip because there were several intermediaries between himself and the proprietary information.

Hedge funds will have no difficulty evading prosecution under the new legal standard. As the *New Yorker* put it, “[I]nsider trading is now effectively legal in the United States.”

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