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## DUTY BOUND: A COMPARISON OF INSIDER TRADING LAW IN THE UNITED STATES AND THE EUROPEAN UNION

*The SEC's victory in SEC v. Panuwat, its first-ever enforcement action for "shadow trading" — a novel theory of insider trading liability premised on an individual's use of material non-public information about one company to trade in the stock of a separate company — highlights the reach and unpredictability of insider trading law in the United States. While ostensibly grounded in Section 10(b) of the Securities and Exchange Act of 1934, insider trading law has been established and developed by courts, leaving a body of law both very expansive and uncertain. In sharp contrast to this common-law approach to insider trading, the European Union has adopted comprehensive legislation that defines and prohibits insider trading and the disclosure of material non-public information. In this article, the authors compare insider trading regimes in the U.S. and the EU and discuss how the EU's approach may serve as a model for federal legislation in the U.S.*

By Jonathan S. Sack and Christian B. Ronald \*

On April 5, 2024, a jury found that Matthew Panuwat had engaged in illegal insider trading. Panuwat was accused of using highly confidential information about an impending acquisition of his company, Medivation, Inc., not to trade in securities of Medivation, but to trade in the securities of a *different* company in the same sector of the biopharmaceutical industry. *Panuwat* was the SEC's first-ever enforcement action for "shadow trading," a novel theory of insider trading liability premised on an individual's use of material non-public information ("MNPI") about one company to trade in the stock of a separate company.<sup>1</sup> The SEC has maintained

that "there was nothing novel" about *Panuwat*, and that the case involved "insider trading, pure and simple."<sup>2</sup> But practitioners and commentators generally disagree, arguing that the case represents an unprecedented

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*footnote continued from previous column...*

has long been used by company insiders to avoid regulatory scrutiny. Mihir N. Mehta et al., *Shadow Trading*, 96 *Acct. Rev.* 367, 367 (July 2021).

<sup>2</sup> Statement of Gurbir S. Grewal, Director, Division of Enforcement, Sec. Exch. Comm'n (Apr. 5, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-statement-040524>.

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<sup>1</sup> The term "shadow trading" was coined in a July 2021 paper in *The Accounting Review*, which argued that this type of trading

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