

## Circuit Court Decisions Addressing the Scope of Insider Trading Liability

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### First Circuit: Country Club Member Expected to Receive a “Personal Benefit” for Tipping a Fellow Club Member

On February 24, 2017, the First Circuit affirmed the insider trading conviction of a country club member (the “tippee”) who received a tip about an upcoming bank acquisition from a fellow country club member. *United States v. Bray*, 853 F.3d 18 (1st Cir. 2017). The court found that evidence of a friendship between the tipper and the tippee, together with the tipper’s testimony that he believed the tip would enhance his reputation with the tippee, provided a reasonable basis for the jury to conclude that the tipper expected to receive a “personal benefit” for his tip as required under the Supreme Court’s decision in *Dirks v. SEC*, 463 U.S. 646 (1983).

### Second Circuit: Supreme Court’s Decision in *Salman* Abrogated *Newman*’s “Meaningfully Close Personal Relationship” Test for Tipping Liability

On August 23, 2017, the Second Circuit held that the “meaningfully close personal relationship” test established in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014)[1] for the personal benefit requirement for tipping liability “is no longer good law” in view of the Supreme Court’s decision in *Salman v. United States*, 137 S. Ct. 420 (2016).[2] *United States v. Martoma*, 869 F.3d 58 (2d Cir. 2017).

“[I]n light of *Salman*,” the *Martoma* court held that “an insider or tipper personally benefits from a disclosure of inside information whenever the information was disclosed ‘with the expectation that the recipient’ would trade on it, and the disclosure resembles trading by the insider followed by a gift of the profits to the recipient, whether or not there was a ‘meaningfully close personal relationship’ between the tipper and the tippee.”

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[1] Please [click here](#) to read our prior discussion of the Second Circuit’s decision in *Newman*.

[2] Please [click here](#) to read our prior discussion of the Supreme Court’s decision in *Salman*.

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