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Out of the Shadows: SEC Shines a Light on Insider Trading

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The traditional understanding of how the government charges insider trading is evolving, as the Securities and Exchange Commission (SEC) pushes to expand the scope of what constitutes misappropriation of material non-public information (MNPI) under Rule 10b-5.

On 26 March 2024, the SEC charged Andreas Bechtolsheim, a Silicon Valley founder and executive, with insider trading based on allegations that he misappropriated MNPI. The SEC alleged Bechtolsheim purchased a company's options – through relatives – after learning of the company's impending acquisition through his confidential relationship with another firm. After announcement of the deal, the target company's stock price increased by 35.1%, generating $415,726 in profits for Bechtolsheim.

In a break from the conventional understanding of insider trading, the SEC did not allege that Bechtolsheim received information improperly, either from someone with a duty not to disclose or someone at the target entity. Instead, the SEC alleged Bechtolsheim breached his own duty of trust and confidence. Without admitting or denying the charges, Bechtolsheim agreed to a settlement, including a nearly $1 million civil penalty.

The SEC announced the settlement the same week as opening arguments in *SEC v. Panuwat*, the SEC's first test of the "shadow trading" theory, where an insider relies on one company's MNPI to trade securities in another company, where the two companies have a significant "market connection."

The SEC alleges that Matthew Panuwat purchased options in a competitor biotech company just before his company's acquisition was announced. According to the SEC, Panuwat's trades were based on confidential information material to the price of the competitor's stock, and he breached both his duty of confidentiality and the insider trading policies of his own company.

The outcome of *Panuwat* could have a lasting impact on how companies treat material non-public information. Regardless, the *Bechtolsheim* resolution demonstrates that the SEC will continue to push the boundaries for the foreseeable future.

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