

Using Blue Sheet Data in Insider Trading Actions

The U.S. Securities and Exchange Commission (SEC) alleged that an individual Defendant had engaged in insider trading in the stock of Green Mountain Coffee Roasters, Inc.¹

The allegations were based on Defendant having access to—but no direct proof of his actually having accessed—material nonpublic information and the SEC’s observation that Defendant had executed profitable trades surrounding 12 out of 13 earnings announcements. The directors and officers (D&O) liability insurer retained FTI Consulting to examine transactional data and testify on behalf of the Defendant.

The transactions at issue in this case consisted of complex out-of-the-money stock option “strangles,” *i.e.*, the simultaneous, or near simultaneous, purchasing of call and put options, thereby taking an essentially neutral position that is profitable regardless of which direction the underlying stock price moves, so long as the price change is sufficiently large.

To prove that the Defendant improperly made use of material, non-public information, the SEC had to demonstrate that:

1. The Defendant breached a fiduciary duty or other relationship of trust and confidence;
2. The information was non-public and material; and,
3. That the Defendant entered into transactions based on this information.

¹ <https://www.sec.gov/litigation/litreleases/2013/lr22769.htm>

Using “Blue Sheet” data obtained from the SEC, FTI Consulting experts examined whether other market participants, *i.e.*, non-insiders, had engaged in similar transactions surrounding the relevant earnings announcements. Our analysis conclusively showed that thousands of non-insider investors were taking the same types of positions as the Defendant during the relevant time period. We showed that it was not possible to “infer” the use of material, non-public information simply by direct observation of the Defendant’s trades.

At trial, the jury relied on the testimony of FTI Consulting’s expert and ultimately found in favor of the Defendant on all charges.

To read the full case study published in Vol. 20 of the Florida State University Business Review (Spring 2021), click [here](#).

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