

國立交通大學

科技法律研究所

碩士論文

美國內線交易執法實證研究：以 SEC 2009 至 2012

年之個案為核心

A Survey of U.S. Insider Trading Law Enforcement:

SEC Cases from 2009 to 2012

研究生：洪碩甫

指導教授：林建中 博士

中華民國一〇三年八月

美國內線交易執法實證研究：以 SEC 2009 至 2012 年之個案為核心

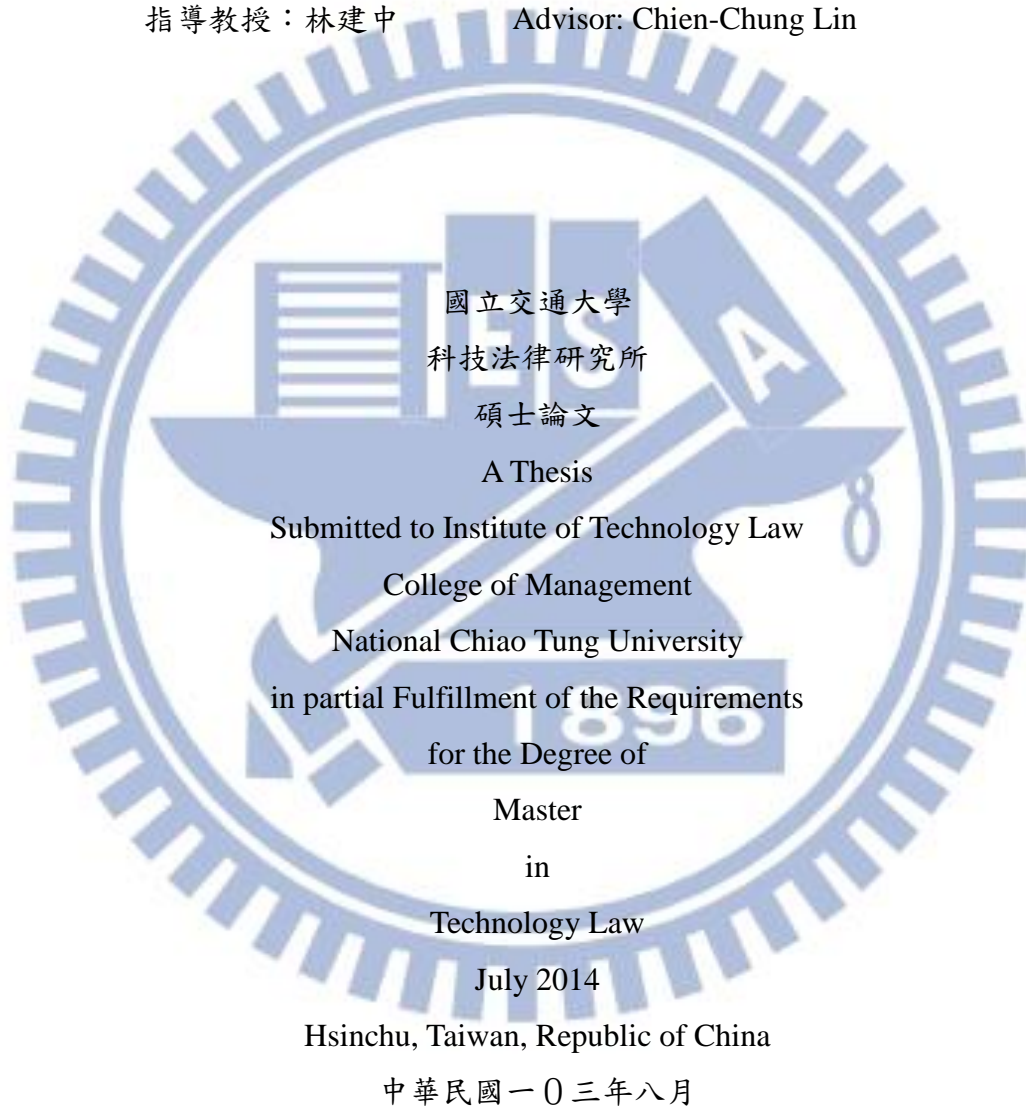
A Survey of U.S. Insider Trading Law Enforcement: SEC Cases from 2009 to 2012

研究生：洪碩甫

Student: Eric Hung

指導教授：林建中

Advisor: Chien-Chung Lin



國立交通大學
科技法律研究所
碩士論文

A Thesis

Submitted to Institute of Technology Law

College of Management

National Chiao Tung University

in partial Fulfillment of the Requirements

for the Degree of

Master

in

Technology Law

July 2014

Hsinchu, Taiwan, Republic of China

中華民國一〇三年八月

美國內線交易執法實證研究：以 SEC 2009 至 2012 年之個案為核心

研究生：洪碩甫

指導教授：林建中 博士

國立交通大學科技法律研究所碩士班

摘要

實務上，內線交易行為之禁止已成為趨勢，各國紛紛訂定相關之法規以打擊內線交易，以確保該國證券市場之安全與秩序，希望藉此吸引各方投資人投資。因此，本文目的希望在目前的法律框架底下，觀察證券主管機關對於內線交易之執法現況，特別是針對美國聯邦證券管理委員會之執法進行了解，進而探討何種方法最為理想。

各國對於打擊內線交易之做法不盡相同，美國執法之特色在於其採行多重管道，包括民事、刑事及私人訴訟。此外，聯邦證券管理委員會主導內線交易案件之調查，並掌有民事權力，可與掌管刑事權力之美國司法部合作。最後，聯邦證管會大量地與被告和解，亦為一大特色。然，多重管道執法與大量使用和解不免會產生許多問題，故本文亦會針對可能產生的問題做出說明。

本文首先就美國聯邦證管會之執法權限與架構做概略介紹，接著透過研究 2009 至 2012 年間聯邦證管會內線交易之執法案件內容，整理出相關數據，提供讀者美國內線交易違反案件執法的完整樣貌。最後再針對美國現行之多重管道執法與大量和解所可能產生的問題進行討論，進而探究美國之做法，是否為處理內線交易案件最理想之方式。

關鍵字：內線交易執法、美國聯邦證管會、實證研究、和解、美國證券法

A Survey of U.S. Insider Trading Law Enforcement: SEC Cases from 2009 to 2012

Student: Eric Hung

Advisor: Chien-Chung Lin

Institute of Technology Law
National Chiao Tung University

Abstract

Whether or not insider trading should be subject to regulation is still debatable, however, countries around the world have been leaning toward prohibiting insider trading in order to maintain a fair and orderly market. Therefore, this Article does not argue the appropriateness of prohibiting insider trading, but rather accepting the fact that insider trading is made illegal in major securities markets. And under this premise, this Article aims at observing how the securities agency, especially the U.S. Securities and Exchange Commission, enforces its law as well as what constitutes an ideal way of enforcement.

Every country has its own way of combating insider trading, and the United States adopted a two-layered structure which allows government intervention (includes civil and criminal) and private litigation at the same time. It nonetheless involves cooperation among multiple agencies with the Securities and Exchange Commission leading the direction of both policy-making and actual enforcement. Moreover, excessive use of settlement is also a unique characteristic of U.S. securities law enforcement.

This Article proceeds first with introducing the overall enforcement structure of the U.S. Securities and Exchange Commission, and then attempting to understand the real picture by surveying every insider trading enforcement case from 2009 to 2012. Lastly, this Article will briefly discuss the merit and limits of current U.S. approach.

Keywords: insider trading enforcement, SEC, survey, settlement, securities law

誌謝

三年前的這個時候，甫從美國完成大學學業的我，回到台灣準備迎接另一階段的挑戰，拾起多年未曾翻閱過的中文教科書，細細讀過艱澀難懂的法條，並執筆回答法律問題，三段論法，按…、惟…、查…，一字一句斟酌，這對已經用英文回答問題將近六年的我產生不少挑戰，更別提以中文撰寫一篇法學論文了。因此，本篇論文得以順利完成，實非僅靠我一己之力，而是在研究所學習生涯中，遇到許多貴人、朋友、恩師以及親人，靠著他們的幫助、鼓勵與扶持，才得以順利完成研究所學業。

完成這篇論文後第一個最要感謝的人，那當然就非我的指導教授林建中博士莫屬了。由於我大學在美國念的是財務金融，因此在研究所階段選擇念法律，主要就是希望將過去在商學院所學的東西與法律互相結合，學以致用。因此，在科法所的第一年就毫無考慮的選了建中老師的美國公司法。在課堂上老師蘇格拉底式的教學法大大地激發了我的思考，不管是在發現問題上面，抑或發現問題後以各種不同的角度去分析，上過老師的課之後都非常有收獲。因此不意外地，往後幾個學期都一定會選擇建中老師開的課，套一句學妹的話，這學期又是點「建中套餐」了！碩二下決定選擇建中老師當論文指導教授之後，老師鼓勵我在上課的過程中去找尋論文的題目，除了讓我能自由地思考論文題目外，老師亦提供我一些想法，這對於必須在如此廣大的法律領域中去找尋一個適合自己的論文題目的我真的有如雪中送炭！到了碩三，論文緊鑼密鼓的進行，而老師雖然自己也有許多事要忙，但是依舊每週撥出三小時的時間緊盯我們的論文進度，每當遇到瓶頸時，常常和老師談一談便能豁然開朗，這對於當時深陷論文泥沼的我幫助非常的大。而在學業之外，對於生涯的規劃老師也不吝提出各種建議，每當煩惱未來的路途茫茫渺渺時，與老師交談過後心情便覺得比較篤定，又有動力繼續往下走並面對未來的挑戰了！在此由衷地感謝老師辛苦的指導與照顧，很榮幸能夠成為老師的指導生！

除了建中老師之外，必須要感謝的是成功大學法律系的陳俊仁教授，也是論文的口試召集人，以及科法所的陳俊元老師。陳俊仁老師在論文口試時對我的論文提出許多建議與不足之處，老師認真細心的程度著實讓我非常佩服，提供的意見也使這篇論文得以更加完善。而俊元老師亦提出許多寶貴的意見，對於我往後研究的方向也提出許多建議，十分感激老師們的幫忙。

說到研究所的貴人，就一定得感謝科法所各位擁有十八般武藝的老師們，不僅在學業上提供我們豐富的學識，生活上的關懷也不曾缺少。志潔老師、誌雄老師協助我們度過碩一時從其他領域轉入法律領域所遇到的種種困難。欣柔老師、敏銓老師與三元老師不辭辛勞地帶我們去美國參訪，除了照護我們的安全外，也確保我們這趟旅程學到需多

寶貴的東西。而在方老師也對我未來的規劃提供許多意見，在我煩惱如何在國考、論文、就業、moot court 之間做選擇時，老師提供了寶貴的建議，非常感激老師的幫助。劉老師、倪老師、立達老師、浣翠老師、景文老師均在我科法所求學階段提供學業上與心靈上必要的協助、照顧與鼓勵，在此特別感謝老師們的用心。而除了老師們的指導與照顧外，這三年也多虧了所辦助理給我們的種種幫助，玉佩、珮瑜、以欣、嫚君、慧茹、莉雯、昀媛等等，即使所上事務繁忙，仍總是不遺餘力地幫助我們處理各種疑難雜症。

當口試結束，論文定稿之後，代表著研究所生涯也將告一個段落。不禁回首這三年經歷過大大小小的事，從最初忙著準備科法所面試，一臉惶恐樣，到碩一修習基礎法學時被埋在堆疊如山的教科書裡，民法、刑法、刑訴、民訴…的轟炸，禮拜五晚上其他人都回家休息看電視，我們還坐在綜合大樓 104 教室裡奮鬥，隔天禮拜六早上依然早起上債總，過程雖然辛苦但是也相當踏實。而每年的全國科法研討會，從碩一傻傻的不知道該做什麼，碩二成為學長要教導學弟妹，到碩三時輪到自己發表文章上台報告，這一切的一切彷彿只是昨天，三年匆匆而逝，留下的是我對於科法所道不盡的感謝。

非常感謝科法所讓我遇到這麼一群好夥伴、好同學。在這裡首推吳奐廷，三年之中，無論是修課、寫論文、寫報告、打球、聊天…等大大小小的事，我們都像「換帖」兄弟一樣，一同經歷、砥礪、努力，活像個生命共同體，也因為有這麼一個好朋友互相扶持，論文才得以適時完成。芷微、耕文、李玄、家齊、紹庭、思伶、采容、灝凌、威克、捷如、右螢，我們碩一時辛苦地熬過一堂堂的基礎法學，一起經歷過許多事情，有歡笑、有淚水，有數不完的回憶，這些點點滴滴我會一直記得的。承瑄、瑋庭學長、兩青，謝謝你們以過來人的身分提供我一些學習法律的心得與資料。此外，羅傑、李琦總是在建中老師的課上扮演救火隊的角色，而且提供許多無論是論文、學業、抑或生涯規劃上寶貴的經驗分享與意見，使我獲益良多，在此由衷的說聲感謝！

最後必須感謝我的父母與家人在研究所期間讓我無後顧之憂地追求學業，時時不停地給予我關心與照顧，家是最好的避風港，這句話一點都沒錯！而在這裡也要特別感謝我的女朋友汪星諭，謝謝你在我煩惱的時候聽我吐苦水，也謝謝你這幾年的陪伴與鼓勵！

2014.8.6 台北

目錄

中文摘要.....	i
英文摘要.....	ii
誌謝.....	iii
目錄.....	v
表格目錄.....	vii
圖片目錄.....	viii
第一章 緒論	1
第一節 研究動機與目的.....	1
第二節 問題意識.....	3
第一項 美國內線交易執法之特色.....	3
第二項 問題之提出.....	3
第三節 研究方法與限制.....	4
第二章 美國聯邦證券管理委員會的執法權限	7
第一節 美國聯邦證管會的組織架構及其職責.....	7
第一項 聯邦證管會各部門之介紹.....	8
第二項 其他自律機構.....	11
第三項 聯邦證管會所扮演之角色與其所面臨之問題.....	13
第二節 聯邦證管會之執法架構.....	16
第一項 調查程序.....	16
第二項 執法手段.....	34
第三項 私人團體訴訟.....	41
第四項 小結.....	44
第三章 美國聯邦證管會內線交易案件執法實證研究：2009 至 2012	45
第一節 實證研究結果.....	45
第一項 執法案件總覽.....	45
第二項 執法案件分析.....	53
第三項 被告之身分背景與消息種類.....	55
第四項 案件結果與不法所得之統計.....	57
第五項 民事救濟與和解金額之統計.....	58

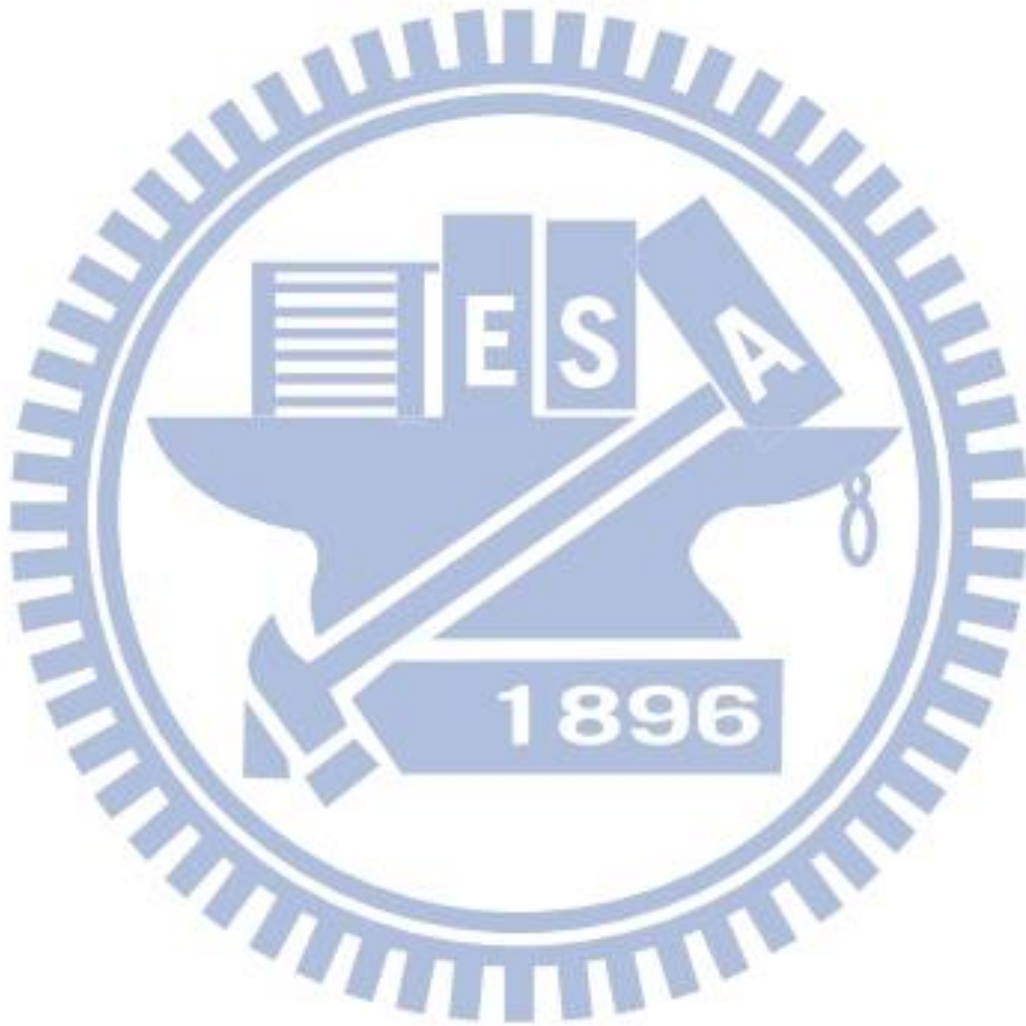
第六項	平行刑事起訴案件.....	61
第七項	作業時間.....	65
第八項	其他統計數據.....	66
第四章	實證研究結果分析與討論.....	69
第一節	和解於內線交易案件中所扮演之角色.....	69
第一項	為何進行和解?.....	69
第二項	聯邦證管會於和解時所考量之因素.....	70
第三項	評論.....	71
第四項	反思.....	72
第二節	平行刑事程序相關問題之探討.....	73
第一項	證券法規架構下之理想懲罰.....	73
第二項	民事與刑事程序並行所可能產生之問題.....	74
第五章	結論.....	78
	參考文獻.....	80
	附錄一 2009 至 2012 年 SEC 內線交易執法案件總覽.....	83
	附錄二 平行刑事起訴案件總覽.....	114

表格目錄

表 1	2009 至 2012 年 SEC 內線交易執法案件簡表	53
表 2	2009 年至 2012 年間 SEC 提起之「內線交易」執法案件數量表	54
表 3	2009 年至 2012 年間 SEC 「總執法案件」種類與數量表	55
表 4	被告身分背景 (單位：案件)	56
表 5	內線消息種類 (單位：案件)	56
表 6	內線交易執法案件之結果 (單位：案件)	57
表 7	和解被告之人數與比例.....	57
表 8	內線交易案件之不法所得 (單位：案件)	58
表 9	內線交易案件之民事罰金 (單位：案件)	59
表 10	民事罰金與不法所得之關係 (單位：被告)	59
表 11	非金錢上救濟 (單位：次數)	60
表 12	和解金額之統計 (單位：案件)	60
表 13	平行刑事起訴 (單位：被告數/案件)	61
表 14	平行刑事起訴案件簡表.....	65
表 15	平行刑事起訴案件之刑度表.....	65
表 16	被告行為發生日至 SEC 起訴之日所需時間 (單位：被告)	65
表 17	SEC 起訴之日至案件終結日所需時間 (單位：被告)	66
表 18	平均花費時間 (單位：月)	66
表 19	2005 年至 2008 年間 SEC 內線交易執法案件佔總案件數之比例表 ...	67
表 20	內線交易案件和解被告數量統計(by NERA Economic Consulting)	67
表 21	本研究與 NERA 數據之比較 (2009 年至 2012 年內線交易案件和解被告數量)	67

圖片目錄

圖 1	20 世紀—世界各國內線交易規範與執法概況.....	1
圖 2	案件搜尋頁面.....	4
圖 3	執法案件新聞稿.....	5
圖 4	SEC 調查程序示意圖	28



第一章 緒論

第一節 研究動機與目的

內線交易 (Insider Trading, Insider Dealing)，又可譯為內部人交易¹，其一般被定義為「任何握有重大非公開消息之人所做的非法交易」²。惟對於內線交易所應規範對象之範圍，亦即「內部人」之範圍，則未有定論。美國在實務上係透過一系列之法院判決，逐漸形塑出內線交易規範之射程範圍，確保勿枉勿縱。然而，對於內線交易是否適合立法禁止之，學理上容有爭議³。惟各國實務上仍採取較為保守之態度，傾向以立法規範內線交易之行為。下圖為二十世紀，世界各國內線交易規範與執法之概況：

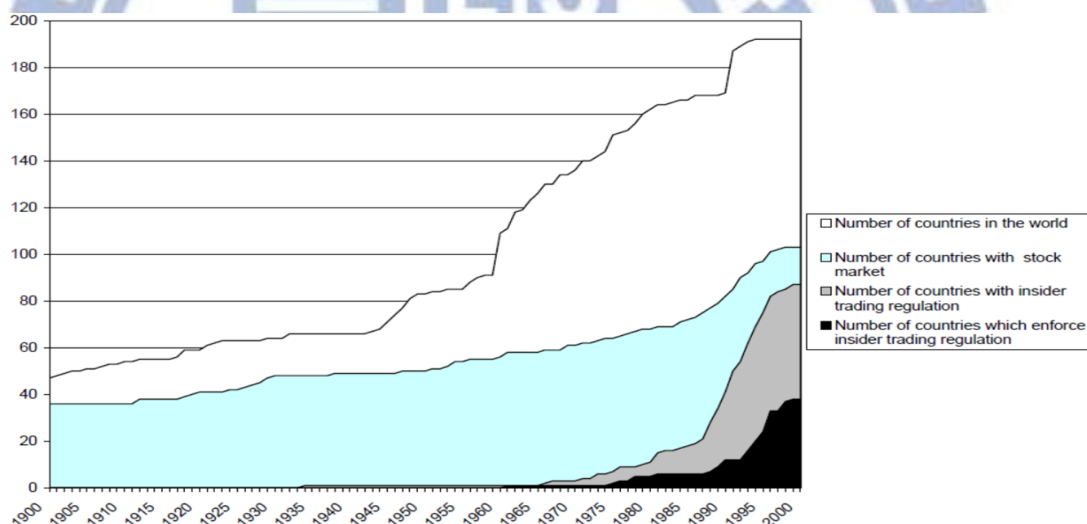


圖 1 20 世紀—世界各國內線交易規範與執法概況

圖片來源：Utpal Bhattacharya & Hazem Daouk, *The World Price of Insider Trading*, 52 J.

FIN. 75 (2002).

¹ 譯為內線交易者如賴英照，《股市遊戲規則：最新證券交易法解析》，頁 445（2011）；劉連煜，《新證券交易法實例研習》，頁 435（2012）；曾宛如，《證券交易法原理》，頁 257（2012）。譯為內部人交易者如余雪明、余慕德，〈證券交易法近年修法之回顧與前瞻〉，《月旦法學雜誌》，200 期，頁 176（2012）。

² JAMES D. COX ET AL., *SECURITIES REGULATION: CASES AND MATERIALS* 879 (5th ed. 2006).

³ 正反雙方之詳細理由請參見賴英照，前揭註 1，頁 445-449。

由上圖可知，證券市場的發展已有數百年歷史，惟對於內線交易之規範直到 1960 年代後期才逐漸被各國之證券市場所採納，而於 1990 年代之後已普遍被擁有證券市場之國家所接受，顯示內線交易之禁止已經成為一種趨勢。而觀察內線交易實際執法的情形，可發現雖然 1960 年代已有國家立法禁止內線交易，惟直至 1980 年左右才真正漸漸落實內線交易之執法，表示內線交易之禁止與執行之間似乎並不具有邏輯上與現實上之必然性。

此外，各國對於內線交易之執法方式亦存有許多不同之處，例如我國主要係以刑法規範內線交易之責任⁴，由檢察官代表國家追訴內線交易行為。另輔以民事責任⁵，使「善意從事相反買賣之人」得以請求被告賠償其損害。反觀美國主要是由其證券主管機關—聯邦證券管理委員會（Securities and Exchange Commission）⁶—主導內線交易之規範與執行事項，另輔以刑事及私人訴訟等其他管道，方式實與我國有異。綜上，由於內線交易執法之歷史發展較晚，而各國之操作亦不盡相同，因此具有研究比較之實益。

美國證券市場發展之歷史遠較我國長久，規模亦較大且複雜，因此對於證券相關法規之發展與執行自然較我國完備，故本研究之目的係：（一）藉由觀察美國對於違反證券法案件之執法，特別是內線交易案件，試圖去理解對於此類案件較為理想之處理方式為何，及美國是否有發展出一套更為完整之執法技巧與方法。（二）由於我國尚未有類似文獻討論美國內線交易執法案件之內容，因此本研究希望藉由介紹美國內線交易之整體執法架構，並閱讀詳細案件資料及整理出相關執法數據，提供未來進一步研

⁴ 參見我國證券交易法第一百七十一條。

⁵ 參見我國證券交易法第一百五十七條之一第三項。

⁶ 此翻譯是參照我國證券法權威學者賴英照教授之譯法，以下將簡稱美國聯邦證管會，或聯邦證管會。

究之基礎。

第二節 問題意識

第一項 美國內線交易執法之特色

整體而言，美國對於內線交易案件之執法，具有以下幾項特色。首先，對於證券法之犯罪，特別是證券詐欺案件，美國採行雙層架構，一方面由政府介入執法，另一方面則允許私人提起損害賠償訴訟。在政府端，透過聯邦證管會、司法部以及證交所或美國金融業監督管理機構（Financial Industry Regulatory Authority, 下簡稱 FINRA）等各個角色發揮其職責，並加以互助協調，進而達到監測與調查內線交易案件之目的。此多重管道之執法模式堪稱美國證券執法上之一大特色。

其次，在諸多政府機構之中，聯邦證管會無論在證券法規之制定或者執行上，均扮演領頭羊之角色。透過制定相關規則，以及主導對於案件之調查執法，聯邦證管會形塑出一套標準，供證券市場之參與者遵循，避免違法，藉此達到維護證券市場完整性之最終目的。

最後，由於政府之資源與層出不窮之證券詐欺案件相比之下顯得匱乏，因此如何有效率之運用有限之資源即成為重要之課題。為此，聯邦證管會在案件執法上大量利用與被告和解之方式解決案件，以避免資源的浪費，此亦為美國執法之一大特色。

第二項 問題之提出

針對前項對於美國證券執法特色之觀察，有幾個問題值得去思考。首先，美國學界對於證券法採行多重管道之執法方式，其效率與合適性均提出許多不同的看法。主要的爭論點在於不同執法方式之間如何互相溝通協助，以及可能因此而產生之相關問

題。其次，美國聯邦證管會主導了證券執法，並且大量使用和解來解決案件，此舉是否為適當之方式，有無可能帶來負面的影響呢？最後，藉由觀察聯邦證管會整體執法之架構與成果後，我們可以去思考美國這樣的制度是否值得學習與仿效（或效法）。

第三節 研究方法與限制

為了探究美國聯邦證管會對於內線交易案件實際的執法情形，本研究將針對 2009 至 2012 年⁷間聯邦證管會公布的所有內線交易執法案件進行調查，利用敘述統計之方式記錄並整理各項執法數據。此外，本研究亦透過閱讀官方就執法案件所公布之新聞稿與相對應之起訴書一窺執法的內容。下圖二為聯邦證管會官方網站中搜尋執法案件之資料庫頁面，只要鍵入執法案件的訴訟新聞稿編號（Litigation Release Number），即可查詢該案件之內容。搜尋頁面與新聞稿內容之例示如下二圖：



圖 2 案件搜尋頁面

圖片來源: Litigation Releases, U.S. Securities and Exchange Commission,

<http://www.sec.gov/litigation/litreleases.shtml>.

⁷ 本研究所使用之年度單為會計年度，亦即由前一年之 10 月 1 日至基準年之 9 月 30 日為一會計年（例如 2009 會計年度即為 2008 年 10 月 1 日至 2009 年 9 月 30 日）。



U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 20789 / October 23, 2008

Securities and Exchange Commission v. Brett C. Maas, United States District Court for the District of Arizona, Civil Action No. 2:08-cv-01947-MHM

SEC Charges Owner of Hayden Communications, Inc. With Insider Trading

The Securities and Exchange Commission today charged Brett C. Maas with insider trading in the stock of Michigan-based Manatron, Inc., prior to the announcement of its pending acquisition by Chicago-based Thoma Cressey Bravo.

At the time of his trading, Maas was the owner of Hayden Communications, Manatron's investor relations firm. Maas has agreed to the entry of a final judgment that will enjoin him from violating certain provisions of the federal securities laws and will require him to pay a total of \$88,615.

The SEC's complaint, filed in U.S. District Court for the District of Arizona, alleges that on Jan. 14, 2008, through his position as owner of Hayden Communications, Maas learned of Thoma Cressey Bravo's pending acquisition of Manatron. Shortly thereafter and in contravention of a confidentiality agreement with Manatron, Maas purchased 20,000 shares of Manatron stock. Prior to the market opening on Jan. 15, 2008, Manatron issued a press release announcing the pending acquisition and the closing price of Manatron's stock increased 32 percent on the day of the announcement. Maas sold all 20,000 of his Manatron shares that same day, realizing a profit of \$59,077.31.

The SEC's complaint charges Maas with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. To settle the SEC's charges, Maas has consented, without admitting or denying the allegations in the complaint, to the entry of a final judgment permanently enjoining him from committing future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Maas has also agreed to pay \$59,077, representing the disgorgement of his illegal trading profits and prejudgment interest, and a financial penalty of \$29,538, for a total payment of \$88,615. The Commission took into consideration Maas's cooperation during the staff's investigation.

The Commission acknowledges the assistance and cooperation of the Financial Industry Regulatory Authority (FINRA) in this matter.

► [SEC Complaint in this matter](#)

圖 3 執法案件新聞稿

圖片來源: Litigation Releases, U.S. Securities and Exchange Commission,

<http://www.sec.gov/litigation/litreleases.shtml>.

除了使用聯邦證管會的官方資料庫外，本研究亦使用 LexisNexis、Westlaw 以及 JUSTIA Dockets & Filings 來追蹤案件訴訟之結果以求更精確地掌握執法之成效。藉由

追蹤每一個內線交易執法行動以及成果，本研究試圖呈現聯邦證管會實際上面對內線交易案件時所採取之態度與方法，並提供一個完整的圖像與比較，供日後進一步研究之學習與參考。

由於某些案件於本研究所挑選之資料庫內並無法取得完整之資料，或資料並無法即時更新至最新狀況，例如法院時常將酌定不法所得之歸入金額之判決日訂於本案判決後一定時日，故資料庫之資料並不全然將更新到最新判決，因此部分案件之和解金額與民事罰金之資料並非完整，合先敘明。



第二章 美國聯邦證券管理委員會的執法 權限

第一節 美國聯邦證管會的組織架構及其職責

美國聯邦證券管理委員會是依據 1934 年美國證券交易法 (Securities and Exchange Act of 1934) 之規定設立⁸，其設立之背景係美國政府為了挽救 1929 年的美國經濟大蕭條所導致的證券市場崩壞，因此，為了使投資人對市場重拾信心，美國國會先後於 1933 年以及 1934 年通過了證券法 (Securities Act of 1933) 與證券交易法 (Securities and Exchange Act of 1934)，並於後者明定聯邦證管會成立之法源依據及其組織架構⁹。美國政府希望藉由這二部法律之運作使得市場上流通之資訊更值得信賴，交易規範更為明確，好使投資人恢復對於證券市場的信心¹⁰。簡單地來說，這二部法律所欲達成之目的為¹¹：

- (一) 要求公開發行股票之公司必須誠實地告訴大眾關於該公司的營運的資訊、所賣股票之資訊、以及投資所隱含的風險。
- (二) 要求買賣股票的人士，不管是證券仲介商、自營商或交易所，必須公平且誠實地對待投資人，並以投資人之利益為優先。

⁸ STEPHEN J. CHOI & A.C. PRITCHARD, SECURITIES REGULATION: CASES AND ANALYSIS 39 (Foundation Press, 2d ed. 2008).

⁹ 於 1934 年美國證券交易法第四條中，較為重要的有：第 (a) 項明定聯邦證管會成立之法源與委員會之組織架構；第 (b) 項規範成員薪資與進入權限等事。See 15 U.S.C. § 78d.

¹⁰ 欲詳細了解此二部法律之立法歷史背景與更多聯邦證管會之發展歷史，請參見賴英照，「美國聯邦證券管理委員會之研究」，中興法學，第 19 期，頁 2-17 (1983)。

¹¹ *The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation*, U.S. SECURITIES AND EXCHANGE COMMISSION, <http://www.sec.gov/about/whatwedo.shtml> (Last visited Apr. 11, 2014) [hereinafter *The Investor's Advocate*].

美國 1934 年證券交易法於第四條第 (a) 項中明定聯邦證管會設委員五人，其均由總統提名，經參議院同意後任命。此外，五位委員中隸屬同一政黨的委員不得超過三人，且委員不得兼任其他職務，亦不得從事任何受聯邦證管會規範之證券市場營運及交易行為¹²。聯邦證管會性質上屬獨立機關，雖然總統有權提名委員及主任委員，但並無權指揮聯邦證管會的運作。聯邦證管會在法律規定之範圍內，可獨自行使行政權、準立法權及準司法權而不受總統、國會、最高法院或任何一個行政部門的指揮¹³。惟其於人事任命、預算與裁決等方面，仍分別受到總統、國會及法院一定程度之監督¹⁴。截至目前為止，聯邦證管會除了位於華盛頓 D.C. 的總部底下設有五個部門及二十三個辦公室之外，尚有十一個區域辦公室分布於其他各州，總計約三千五百多位員工¹⁵。因此，欲清楚了解聯邦證管會之運作以及執法的權限，則需先就其部門間之分工著手去觀察。

第一項 聯邦證管會各部門之介紹

聯邦證管會作為證券事業首要的主管機關，其職責主要可歸納為以下四個領域：(一) 法規制定、(二) 證券法規之執法、(三) 監督管理市場以及 (四) 與其他政府機關相互協助¹⁶。而聯邦證管會底下五個部門的運作均以達成這些職責為目標，這五個部門分別為：企業金融部門 (Division of Corporation Finance)、交易暨市場部門 (Division of Trading and Markets)、投資管理部門 (Division of Investment Management)、執法部門 (Division of Enforcement) 與經濟暨風險分析部門 (Division of Economic and

¹² 15 U.S.C. § 78d(a).

¹³ 賴英照，前揭註 1，頁 18。

¹⁴ 同前註。

¹⁵ *The Investor's Advocate*, *supra* note 11.

¹⁶ *See id.*

Risk Analysis)。雖然部門間各自有不同的工作，但其欲達到的最終目的還是為了維護整個資本市場的完整性。

企業金融部門主要的工作在於審閱受聯邦證管會規範之公司對於投資大眾的揭露事項以及相關文件，其中包含有新上市股票公司的註冊登記（Registration of Newly-offered Securities）、公司的定期申報文件（Periodic Filings）、股東會委託書（Proxy Materials）、年度報表（Annual Reports）以及併購相關之申請文件等等。企業金融部門與企業間互動關係密切，而由企業申請核發「無異議函」（No-Action Letter）可說是其中相對重要的一項。透過向企業金融部門申請此函，企業可將其新定的商業決定、交易或計畫交由部門人員審查，藉以確定其中並無任何違法行為。而當部門人員完成審查，並核發無異議函後，即表示聯邦證管會將不會針對該企業於申請書中所載之行為事實提起任何事後的執法行動¹⁷。事實上，此種制度在某種程度上可以減輕執法部門的負擔。透過企業自行向聯邦證管會揭露其欲進行的商業決策，並由企業金融部門把關，審查其適法性，將可避免往後若對該商業決策有疑慮時，才由執法部門投入調查，造成不必要的資源浪費。

交易暨市場部門主要扮演著市場監督的角色，其主要負責監督的對象為證券市場的參與者，如證券交易所、證券商、自律機構等等。除了扮演監督之角色外，此部門亦負責審核自律機構所擬定的內部規則，或者協助聯邦證管會制定與證券市場相關的規則與標準¹⁸。

投資管理部門主要規範對象為投資公司與投資相關顧問人員。在美國的資本市場

¹⁷ CHOI & PRITCHARD, *supra* note 8, at 41.

¹⁸ See *The Investor's Advocate*, *supra* note 11.

中，共同基金、專業基金經理人與分析師等等以投資為主要業務的人士與投資人之間的互動關係密切。正因如此，如何有效地降低這兩者之間的代理成本即成為主管機關進行規範的目的之一。由於共同基金的投資人以個別（散戶）投資人為大宗，因此投資管理部門主要目的是希望透過監督以及規則制定的方式，確保從事投資相關業務的人士對於散戶投資人所揭露的投資資訊盡可能有用且確實，並同時致力於降低個別投資人所需負擔的管制成本。除此之外，此部門亦負責對於其所管制產業核發無異議函以及協助執法部門人員進行調查¹⁹。

執法部門可說是聯邦證管會底下相當重要的一個機關，其負責各種不同證券法規的執法，並於必要時行使民事權力（Civil Power），選擇適當的場域進行訴訟。一般來說，聯邦證管會可於聯邦地方法院提起民事訴訟（Civil Action）²⁰以及於聯邦證管會內提起行政訴訟（Administrative Action），兩種程序之性質稍微有別，可請求之內容亦不盡相同。執法部門人員會針對調查所得之事實進行評估，再決定透過何種程序進行追訴。聯邦證管會可藉由執法部門制裁違反證券法規之人，同時亦可對於潛在違法者產生警惕作用²¹。

執法部門人員可由許多管道接收行為人可能違反證券法規之消息，而消息通常來自投資人的投訴（Investor's Complaint）或者聯邦證管會其他部門、自律機構與其他證券產業的轉介（Referrals）。當調查人員獲得這些消息後，將會啟動一連串的調查程序，以評估是否對行為人進行追訴。在評估的過程中，難免涉及不同價值間的衡量，本文之後會對此問題做更深入之探討。

¹⁹ *Id.*

²⁰ 此處之所指之民事訴訟是相對於刑事訴訟而言的訴訟，因此又可稱「非刑」訴訟。

²¹ *See The Investor's Advocate, supra note 11.*

除了民事訴訟以及行政訴訟之外，對於較為嚴重之證券犯罪，聯邦證管會有權移送美國司法部，由檢察官進行刑事追訴。惟事實上對於犯罪事證的調查是由聯邦證管會的執法人員主導，因此司法部與聯邦證管會之間互助關係所可能產生之問題亦值得詳加探究。

最後，經濟暨風險分析部門成立於 2009 年，其成立的主要目的是將經濟及數據分析整合進聯邦證管會的運作當中。由於聯邦證管會可支配的資源有限，因此亟需建立一個有效率的方式來統籌分配會內的資源。此部門正可提供聯邦證管會於法規制定、政策形成、訴訟進行、文件審查以及案件執法等領域必要的協助，利用經濟分析與研究、風險評估、數據分析等方法，找到最適當的處理方式，以確保有限資源能妥善利用²²。

除了上述的五個部門外，聯邦證管會內尚有許多辦公室以及區域辦公室負責執行聯邦證管會的職責，提供投資人一個公平、有秩序及有效率的市場。而近年來聯邦證管會亦致力於加強與資本市場參與者間的溝通關係，藉以確保其理念與觀點有效傳達出去，進而落實證券法規所欲達到的規範目的。

第二項 其他自律機構

在美國，證券市場的管制者除了聯邦證管會之外，仍存在許多其他執行類似功能的機構，這些機構又可稱作自律機構（Self-Regulatory Organizations）。美國 1934 年證券交易法的第 19 條即明定其他管制機構成立的法源依據，如證券交易所、註冊的證券同業公會以及註冊的清算機構等等²³，然而，這些機構仍會受到聯邦證管會的監督。

²² *Id.*

²³ 15 U.S.C. § 78s(a)(1).

聯邦證管會有權通過、否決或調整自律機構的內部規則，以確保這些機構的運作符合證券交易法第 19 條規範之意旨²⁴。目前在美國與證券業相關的自律機構有：FINRA、美國公開發行公司會計監督委員會（Public Company Accounting Oversight Board, 以下簡稱 PCAOB）以及全國性的證券交易所，例如紐約證交所（New York Stock Exchange, 以下簡稱 NYSE）。除了以上各個自律機構外，全美證券商自動報價系統協會（National Association of Securities Dealers Automated Quotations, 以下簡稱 NASDAQ）亦對於在其市場登記上市的公司設有相關規範。

FINRA 為一經國會授權成立、非官方，並具有獨立性、非營利性的自律組織，其成立的主要目的在於透過建立特定規則來約束其會員，藉以保護證券市場中的投資人。其會員組成以證券經紀/自營商（Broker-Dealers）為主，幾乎全美的證券/自營商均有註冊成為會員。美國證券交易法中要求 FINRA 此類的自律機構，制定相關規則來防止詐欺與操縱等等有害於證券市場秩序之行為，並同時促進交易的公平性，進而保護投資人以及公共利益²⁵。FINRA 為達保護投資人以及維持市場完整性的目的，其執行之業務主要可分以下五大類：（一）落實法規執行以嚇阻不法行為、（二）懲戒違法者、（三）偵測及防止不法行為、（四）教育投資人以及告知必要資訊、（五）解決與證券事項相關的爭端²⁶。在 2012 年度，FINRA 總共對於違反其規則之公司與個人做成了 1,541 件懲戒處分（Disciplinary Actions）、祭出了 6,800 萬美元的罰金並且協助受害投資人追回 3,400 萬美元的賠償金。此外，FINRA 亦轉介了 692 件詐欺與內線交易案件

²⁴ CHOI & PRITCHARD, *supra* note 8, at 42

²⁵ *Id.*

²⁶ *What We Do*, FINRA, <http://www.finra.org/AboutFINRA/WhatWeDo/>.

予聯邦證管會或其他專責機構，以進行後續的進一步調查與追訴²⁷。

事實上，除了 FINRA 之外，NYSE 與 NASDAQ 均有建立各自的規範來約束於該市場登記上市的公司。而這些規範的主旨在於確保這些上市公司的財務狀況良好，以及擁有理想的公司管理結構，使投資人對該市場有信心，進而放膽投資，常見的例子如要求公司設立獨立董事。無論是 NYSE 或者 NASDAQ，均要求登記上市的公司設置多數的獨立董事，並且成立審計、薪酬與董事提名委員會。

最後，美國國會於 2002 年依據沙賓法案（Sarbanes-Oxley Act）成立的 PCAOB，亦負責監督公開發行公司與證券經紀/自營商審計方面的事項。此外，替公開公司處理會計業務的會計事務所亦須向 PCAOB 登記。總之，PCAOB 係藉由審查向其登記的公開公司的審計報告，確保其具資訊有效性、準確性以及獨立性，來保護投資大眾的利益²⁸。

第三項 聯邦證管會所扮演之角色與其所面臨之問題

在今天，聯邦證管會可說是美國聯邦政府對於整個證券市場為調查、規範以及執法的首要主管機關。其職責在於維持整體證券市場的健全，並且同時作為監管者，負責確保市場的參與者安守本分。正因如此，聯邦證管會常需平衡資本市場中各個成員可能互相衝突的利益，例如由 2012 年度證管會所公布之報告中所載之成立宗旨「保護投資人、維護公平、有秩序且有效率之市場、以及協助資本形成²⁹。」即可觀察出其實聯邦證管會肩負著數項任務，而在不同任務之間難免會有利益衝突的情形，如何

²⁷ *About FINRA*, FINRA, <http://www.finra.org/AboutFINRA/>.

²⁸ CHOI & PRITCHARD, *supra* note 8, at 43. See also *About the PCAOB*, PCAOB, <http://pcaobus.org/about/pages/default.aspx>.

²⁹ 原文為：“to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.”

有效地掌握並緩和衝突利益間的拉扯，即為一重要課題。

傳統以來，聯邦證管會是以「投資者保護」為首要宗旨，畢竟當初成立之理由是因投資人喪失信心使得證券市場崩壞所致，因此不難理解其為何會將投資者保護列為優先考量。惟近年來金融服務市場成長快速，高度國際化，加上市場結構日益複雜，導致原本清楚簡單的「投資者保護」之宗旨亦變得更加多元複雜³⁰。舉例來說，現今證券市場的投資人可分數種，有傳統的散戶與機構投資者，更有想要投資美國證券市場的國外交易者與投資機構等等。各種投資人在經驗、大小與投資目的等等均不盡相同，因此聯邦證管會很難訂出一個通盤適用的規範。當一項規範對某些特定投資人帶來利益，無可避免的也可能對其他進行不同投資策略的投資人造成傷害。因此，聯邦證管會需要去思考如何在這其中取得一個平衡³¹。同樣的問題不僅止於規範層面，亦存在於執法層面。聯邦證管會所進行的任何執法，不可諱言地，仍存有對於各個互相衝突利益之間的衡量判斷。例如當聯邦證管會對於破產公司進行執法後，欲派發該公司的騰餘財產給普通股股東或債券持有人時，可能選擇只派發給前者，此時後者的利益就被犧牲掉了。由此可看出，當聯邦證管會於進行執法時，關於資源分配、欲提起訴追之罪以及尋求之救濟等等價值之判斷衡量後，不免會發生其結果有利於一組人，但同時亦對他組人的權益造成傷害的情形³²。有鑑於此，美國國會修改了聯邦證管會的法定授權，明確要求聯邦證管會「從公共利益的角度去思考或決定一項執法行動是否必要或者合適；另外，除了投資人保護之外，尚需考量執法行動對於效率、競爭與

³⁰ Paul S. Atkins & Bradley J. Bondi, *Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program*, 13 FORDHAM J. CORP. & FIN. L. 367, 368 (2008).

³¹ *Id.*

³² *Id.* at 369.

資本形成是否有助益³³。」

由於利益衡量事實上有其困難性，因此有學者認為應將重點放在聯邦證管會如何進行衡量上面，或者說從利益衡量的程序去著手解決問題。意即制定一套具有可預測性、公平性、透明性的審查或者作業規則，使利害關係人能明確了解聯邦證管會所做的任何決定的基礎。而當這些前提規則被明確遵守時，聯邦證管會於其後所做出的決定不管結果如何，即應認其具有正當性³⁴。



³³ 15 U.S.C. § 78c(f) (“Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”).

³⁴ See Atkins & Bondi, *supra* note 30, at 369.

第二節 聯邦證管會之執法架構

不同於我國，美國聯邦證管會所掌握的民事權力相當大，其不只具有獨立裁罰的權力，且亦可作為原告向聯邦地方法院起訴，或者利用會內行政爭訟之機制進行追訴。然而，無論是向法院起訴或者於會內爭訟，執法人員均需透過相關機制篩選出具有爭訟實益的案件，希望在有效嚇阻潛在違法者之外同時避免浪費有限的資源。於篩選過後，執法人員會進行一連串的調查，蒐集行為人違法的事證，最後向委員會³⁵陳明並建議提起執法行動。聯邦證管會希望透過建立一套完整且明確的調查程序，並且保留與受調查人一定的協調空間，藉此保障受調查人本身應有的權利，並且同時維護公眾之利益。

本節將著重於討論聯邦證管會的執法部門對於違反證券法的案件如何進行調查，以及調查完成之後可進行追訴的手段。此外，聯邦證管會除了透過行使民事權力外，亦可將案件移送至美國司法部，藉由檢察官來行使刑事權力，對於違法者進行更為嚴厲的懲罰。最後，因證券不法案件而受害之人亦可透過團體訴訟（Class Action）的方式向違法之人求償，而原告律師於此類訴訟通常會依據聯邦證管會民事訴訟之結果，向法院主張禁反言，進而獲取勝訴判決。因此，本節亦會就兩種程序間的互動關係進行討論。

第一項 調查程序

執法部門在聯邦證管會行使執法權限上面扮演了一個極為重要角色，其負責的事項主要在於主導案件的調查以及指揮訴訟程序的進行。一般來說，執法人員追訴案件的過程大致上可分為三個階段。首先，執法人員會由許多不同的消息來源獲得各個潛

³⁵ 以下稱委員會者，係針對委員五人所組成之會議體而言。而稱聯邦證管會，則係指整個部會而言。

在違法者的行為事實，並由這些行為事實中去初步判斷哪些可能有違反證券法規之虞，並值得立案調查的。接著，執法人員會針對這些案件進行一連串的調查，並在最後做出兩個決定：(一)是否向委員會建議提起執法行動，以及(二)使用何種程序追訴³⁶。最後，執法部門會代表聯邦證管會進行這些訴訟，好幫助投資人回復損害，抑或對違法者施加懲罰³⁷。

事實上，不同的案件其重要性亦不盡相同，例如有些案件受矚目之程度較他案件為高，或者某些案件所牽涉到的不法所得金額較多、案情較為複雜等等。因此，執法部門需著手研究如何根據案件的本質去分配調查的人力或者先後順序，以達到最有效率的資源分配。針對前述的問題，執法部門的主任通常會利用將某些特定案件歸類為「全國性優先案件」(National Priority Matter)的方式，對於調查的資源做適度的分配，以達到最有效率的運用。在聯邦證管會公布的執法手冊(Enforcement Manual)內，列出了數項判斷是否為「全國優先案件」的標準，其主要有³⁸：

- (一) 該案件是否有機會對於正在發展中的市場、產品及交易傳達強而有力的嚇阻作用；抑或對於已發展完全的市場、商品、及交易但由於其本質的緣故難以偵測不法，可藉由此案件的調查與執法傳達一定的嚇阻作用。
- (二) 該案件是否涉及非常嚴重或大規模的不法行為。
- (三) 該案件是否可能存在對於投資人廣泛且大規模的傷害。

³⁶ 可能採取之途徑有民事程序(向聯邦地方法院起訴)，或者行政程序(向委員會內的行政法官提起)。

³⁷ *How Investigations Work*, U.S. SECURITIES AND EXCHANGE COMMISSION, <http://www.sec.gov/News/Article/Detail/Article/1356125787012#.UfRvr41pn4v> (Last visited Apr. 11, 2014).

³⁸ SEC ENFORCEMENT MANUAL § 2.1.1.

(四) 該案件是否涉及位居重要地位或掌有相當權力之人士；抑或對於投資人負有忠實義務等重要責任之人士。

(五) 該案件是否涉及違反新制定法規之不法行為。

(六) 潛在的不法行為是否與特定商品、市場、交易與業務執行有關而可能對投資人以及相對應的市場區段帶來顯著的風險。

(七) 該案件是否會涉及大量潛在的受害人，抑或涉及特別弱勢的受害人。

(八) 該案件是否涉及已被執法部門視為優先調查領域的市場、商品、交易以及業務執行。

(九) 該案件是否提供一個機會，讓聯邦證管會得以追求與其他執法機構因合作所共同享有之優先利益 (Priority Interests)。

仔細觀察上述標準，會發現其實執法人員主要的目的是希望透過對於某些特定案件的調查，對於某些聯邦證管會所關心的人、事、物，產生一定的嚇阻作用，以避免類似的違法事件再度發生。但除了這些標準之外，其他事實的因素與狀況仍然會列入執法人員判斷案件優先性的考量。換句話說，聯邦證管會可能會針對目前整個證券市場的情況與多數投資人的期待做調整，做出符合公眾看法與政治氛圍的決定。

惟需注意的是，如此操作之下可能會造成某些不被執法部門關心的案件得不到妥善的處理，而這些案件的受害者便無法適時獲得補償。此亦驗證了前節所提及的利益衡量問題，當某些受害者的利益被照顧到的同時，亦有其他受害者的利益被犧牲掉。因此，執法部門必須針對為何某些利益更值得被照顧提出合理的說明，並明確化這樣的標準藉以取得選擇性執法的正當性。

第一款 初步（非正式）調查階段

執法人員展開調查的初始階段其行動通常是保密的，受調查對象亦時常不會被告知其正被調查中。執法人員著手調查的第一步驟就是透過許多的消息來源蒐集行為人可能違法的證據事實。公司定期的申報文件或聯邦證管會與其他自律機構所做成的市場監督報告等等，均為可能的消息來源。除此之外，市場投資人的投訴或吹哨者（Whistleblower）的密報抑是重要的消息來源之一。執法人員甚至可由報章雜誌的報導或者一些媒體報告中去發掘是否有違反證券法規之情事發生。其他自律機構如 PCAOB、FINRA、NYSE 與 NASDAQ 的轉介案件也佔了相當大的比例³⁹。

在收受消息之後，執法人員必須快速的判斷其事實是否有涉及違反證券法規的疑慮，並同時辨認「待調查案件」（Matter Under Inquiry, MUI）。當執法人員初步分析一個案件是否被歸入 MUI 時，應考量兩點：（一）該案件所涉及之行為事實是否有違反證券法的可能性，並且可以藉由調查執法來平反。（二）將 MUI 指派給特定辦公室承辦，此舉是否為部門資源的最好分配⁴⁰。事實上，辨認 MUI 只是作為一個初步守門的功能（Gate-keeping Function），其用途在於確保資源可以有效地投入值得追訴的案件當中。

當辨認出 MUI 之後，執法人員便會決定是否將這些 MUI 轉換成調查案件⁴¹，以便針對這些案件進行初步、非正式的面談，或者向與案件有關的人士索取相關證據文件。此階段的調查通常是不會對外公開的，而執法人員亦會確保其所調查事證的機密性。由於在初步調查階段執法人員並沒有強制他人提供事證的權力，因此需要仰賴受

³⁹ SEC ENFORCEMENT MANUAL § 2.2.2.

⁴⁰ SEC ENFORCEMENT MANUAL § 2.3.1.

⁴¹ SEC ENFORCEMENT MANUAL § 2.3.2.

調查對象自身的合作與配合⁴²。

當執法人員完成了初步調查後，如果認為一個案件的事證已臻明確，則可逕行向委員會做出提起執法行動的建議，選擇是在聯邦地方法院起訴請求禁制令、民事罰金等等之類的救濟，抑或提請聯邦證管會內之行政法官進行聽證，以對違法者施以適當的懲處。此外，若執法人員認為一個案件之行為事實已足構成刑事不法，則此時亦可將案件移送司法部，交由檢察官對於行為人刑事不法部份的事實進行平行的刑事追訴程序。反之，倘若經過初步的調查之後，執法人員認為事證仍未調查明確，例如受調查對象或關係人不配合提供證據，導致無法搜集到完整的資訊等等的原因，此時不適合逕行建議提起執法行動，則執法人員會選擇向委員會申請核發正式的調查命令 (Formal Order of Investigation)，藉以取得更多的調查權限⁴³。

事實上，有學者指出，多數的調查僅止於初步調查階段，並不會繼續往下走。理由在於可能執法人員認為其所調查的案件並沒有違反證券法規之虞，因而結束調查，或者多數受調查對象傾向配合調查，並同意與執法人員合作，以和解的方式解決⁴⁴。

第二款 正式調查階段

由於在初步調查階段執法人員並沒有權力對於不配合調查的對象施以強制手段，因此很有可能無法對該案件的事實完全掌握，造成難以判斷是否需要提起執法行動。故，執法人員會向執法部門的主任申請核可正式調查命令⁴⁵，藉此取得命令宣誓

⁴² See COX ET AL., *supra* note 2, at 800.

⁴³ William R. McLucas et al., *A Practitioner's Guide to the SEC Investigative and Enforcement Process*, 70 TEMPLE L. REV. 53,57 (1997).

⁴⁴ CHOI & PRITCHARD, *supra* note 8, at 190-91.

⁴⁵ 在 2009 年以前，核發正式調查命令或傳票的工作是透過五人制的委員會來決議執行的。但由於當年聯邦證管會因無法即時偵測 Bernard Madoff 的龐氏騙局，而遭受到空前的挫敗，故當年聯邦證管會暫時增訂新的規則授權執法部門主任自行決定核發傳票或者正式調查命令，以增進效率。而後於 2010 年，此臨時規定即轉變為永久規定。17 C.F.R. § 200.30-4 (a)(13).

(Administer Oath) 以及強制提供證言與證據資料的權力。此外，正式調查階段通常亦不對外公開⁴⁶。

雖然執法人員於取得正式調查命令後即有權核發傳票予受調查對象或關係人士，惟若當事人仍不配合，執法人員尚需至聯邦地方法院聲請強制配合的命令，以強制執行傳票的內容。當事人若違背此命令，則會被判以藐視法庭，並科予相當之處罰。通常聯邦地方法院於審查傳票是否可被強制執行係採取相當寬鬆的態度，執法人員甚至不需證明證券法規有被違反的相當理由 (Probable Cause)⁴⁷。惟以下幾種情形可能會導致傳票無法被執行⁴⁸：一、該調查並無正當目的。二、欲利用傳票獲取之資訊與調查目的並無關連性。三、聯邦證管會已擁有該資訊。四、執法人員並未遵守核發傳票應踐行的行政程序。總而言之，聯邦地方法院基本上對於善意 (Good Faith) 的執法人員要傳喚誰、向誰要求觀文件等等的調查行為會予以尊重，並不會進行事後審查 (Second Guess)⁴⁹。

雖然透過正式調查程序的方式，執法人員得以藉由公權力傳喚當事人配合調查，進而獲取更多資訊以利於日後的執法行動，惟此舉仍會產生一定之成本。舉例來說，雖然正式調查程序之內容亦不對外公開，但執法人員常會傳喚受調查對象的商業夥伴、客戶、會計師或其他具有類似關係的人士來作證，故難免會傷害到受調查對象與這些人士之間的信賴關係。儘管可能後來事實證明受調查對象並未違法，仍然還是會有一定的影響。因此，執法人員於傳票的使用上仍需謹慎為之⁵⁰。

⁴⁶ 17 C.F.R. § 203.5.

⁴⁷ See SEC v. Brigadoon Scotch Distributing Co., 480 F.2d 1047 (2d Cir. 1973).

⁴⁸ See SEC v. Blackfoot Bituminous, Inc., 622 F.2d 512, 514 (1980).

⁴⁹ COX ET AL., *supra* note 2, at 802.

⁵⁰ See John H. Sturc et al., *SEC Investigations and Enforcement Actions*, in SECURITIES LITIGATION: A

第三款 威爾斯程序 (Wells Process)

承前述，執法人員可於初步調查程序中，藉由受調查人自發性的配合來蒐集相關事證，抑或當受調查人不配合時，向委員會聲請進行正式調查程序，利用強制手段要求受調查人配合。然而，無論是利用何種調查程序，當執法人員蒐集到完整的事證，足認受調查人有違反證券法規之虞，而欲向委員會建議提起執法行動時，通常會先透過「威爾斯程序」(Wells Process)的方式給予受調查對象通知，故其亦稱作「威爾斯通知」(Wells Notice)⁵¹。執法人員對於是否給予受調查人此通知具有裁量權，通常他們會判斷對於受通知對象的調查是否已趨完整，或者該案件是否屬於緊急案件。換言之，若該案件需適時地提起執法行動⁵²以資救濟，否則投資人之權益有可能受損，此時若仍給予受調查對象通知並等待其回覆，即已緩不濟急。又，若受調查對象有脫產或湮滅證據之虞，亦不適合給予通知，以防投資人無法獲得適當的賠償或者增添日後訴訟的困難性⁵³。

「威爾斯通知」的主要目的在於告知受調查對象執法人員目前所掌有的證據資料，並且提供受調查對象一個為自己辯駁或者陳述意見的機會。執法人員於發出此通知之前需先經執法部門的副主任 (Associate Director) 或者地區主任 (Regional Director) 的核可⁵⁴。而通知的內容主旨是告知受調查對象：(一) 執法部門正考慮向委員會建議對其提起執法行動、(二) 執法部門所在意的潛在違法行為為何、(三) 對於執法部門

PRACTITIONER'S GUIDE 15-11 (Jonathan C. Dickey ed., 2006).

⁵¹ 威爾斯通知 (Wells Notice) 源自於諮詢委員會 (Advisory Committee) 主席 John Wells 所給之建議。See Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations, Securities Act, Release No. 5310.

⁵² 例如暫時處分 (假處分、假扣押等等)。

⁵³ See SEC ENFORCEMENT MANUAL § 2.4.

⁵⁴ *Id.*

的決定可提出相關事證以資辯駁。至於通知的形式原則上以書面為主，若執法人員欲以口頭先行告知，則需事後再以書面方式進行確認。聯邦證管會的執法手冊中明列威爾斯通知應包含之內容⁵⁵：

- (一) 具體地註明執法人員欲向委員會建議提起的控訴 (Charges)
- (二) 給予受通知人機會提供自願性的陳述 (書面或錄音帶皆可)，說明為何其不應被起訴，或者舉出額外的事實讓執法人員一同列入考量。
- (三) 對於受通知人回覆的長度與時限給予合理的限制，例如書面回覆不得超過 40 頁，而錄影不得超過 12 分鐘。
- (四) 建議受通知人應向適當的執法部門助理主任 (Assistant Director) 提出回覆。
- (五) 告知受通知人其回覆的內容在日後訴訟時均會被作為呈堂證供，另外，亦可能被第三人當做證據開示的客體。
- (六) 附上一份威爾斯聲明稿⁵⁶ (Wells Release)。
- (七) 附上聯邦證管會的 1662 號表格⁵⁷。

受通知人於收受威爾斯通知後，可選擇是否對通知信中所載之內容提出反駁，並利用「威爾斯遞呈」(Wells Submission) 的方式回覆給執法人員。而回覆的內容主要在於提供事實以及法律上的抗辯，以說服執法人員不要對其提起執法行動⁵⁸。惟需注

⁵⁵ *Id.*

⁵⁶ 即 Securities Act of 1933, Release No. 5310.

⁵⁷ 主要是提供受通知人書寫其回覆內容的表格。

⁵⁸ Sturc et al., *supra* note 50.

意的是，受通知人的律師應審慎回覆此通知，因為回覆的內容除了可能在日後訴訟時被作為彈劾證據或自認的依據外，亦可能被當作日後訴訟攻防中被告抗辯的指標。尤有甚者，若受通知人的案件亦涉及刑事程序，則檢察官亦可能將威爾斯遞呈之內容列入其偵查的範圍內。因此，律師必須審慎的評估什麼樣的資訊應該放在此遞呈中，但更重要的是什麼不應該放⁵⁹。即便如此，威爾斯遞呈仍舊可以帶給受通知人正面的幫助。如受通知人可透過與執法人員之間的溝通，進一步了解執法人員的想法，並藉機說明其中可能的誤會，或者針對一些執法人員質疑的事項進行更詳細的說明。當受通知人向執法人員展現合作的誠意，並積極協助釐清事實，有時候會有一定的機會使執法人員改變心意，促使其撤銷向委員會建議提起執法行動的念頭⁶⁰。

第四款 建議及提起執法行動

當執法人員依法進行完調查程序，蒐集到完整的事證，並且依據案件的性質選擇給予威爾斯通知後⁶¹，仍未被受通知人所做的回覆說服而結束調查，依然持續認為受調查人確有違反證券法規之行為，則此時執法人員應向委員會建議提起執法行動（Enforcement Recommendation）。

執法人員於向委員會提出執法行動的建議之前，須先擬定一份執法備忘錄（Action Memorandum）並上呈委員會。備忘錄的內容主要針對執法部門欲對之提起執法行動的案件，清楚並完整地說明其事實與法律上之根據。而此執法備忘錄的提出，原則上須先經過執法部門的主任或者副主任的授權方可為之⁶²。

⁵⁹ *Id.* at 15-12.

⁶⁰ *McLucas*, *supra* note 43, at 113.

⁶¹ 由於威爾斯程序之踐行並非必要，因此若執法人員認為某些特定案件不宜給予威爾斯通知，則應逕行向委員會提出進行執法行動之建議。

⁶² SEC ENFORCEMENT MANUAL § 2.5.1.

委員會於收受執法部門提出之執法備忘錄後，便會召開會議討論並且表決是否通過執法部門所提出之建議。而委員會表決的方式主要有三種⁶³：

(一) 閉門會議 (Closed Meeting)

(二) 委員逐一考量 (Seriatim Consideration)

(三) 執勤官之考量 (Duty Officer Consideration)

而法定最低表決人數 (Quorum) 至少需有三位委員，並以多數決的方式通過。然而，若遇到目前在任的委員少於三位之情形⁶⁴，則以實際在任委員之人數作為法定最低表決人數。此外，某些委員有可能因其過去所擔任之職務，抑或其他特殊事由而無法公正地進行表決，此時應當聲請迴避。若委員們當中有人聲請迴避，則法定最低表決人數為二人。若發生只剩下一位委員不需聲請迴避之情形，則除非該案件非常緊急以致於構成可由執勤官決定之狀況⁶⁵，否則此時案件必須擱置並延後表決。

首先，委員會原則上會以「閉門會議」之方式表決是否採納執法人員所提出之執法建議。惟需注意的是，美國於 1976 年通過實施的陽光法案 (Sunshine Act)⁶⁶要求政府部門將其會議公開於眾，以達到透明化之要求。然，此陽光法案仍保留一定之豁免條款⁶⁷，使政府部門於符合豁免條款所列之要件後，得選擇不對外公開會議之內容。執是，當執法人員欲請求委員會以閉門會議方式表決通過其執法建議時，需先備妥陽光法案之證明書 (Sunshine Act Certification)，確定該案件符合豁免條款所列之情形之

⁶³ SEC ENFORCEMENT MANUAL § 2.5.2.

⁶⁴ 由於聯邦證管會委員之任期是採交錯任期制，因此可能會發生某些委員之任期屆滿，新委員尚未就職之情形，此時便由仍然在任之委員進行表決。

⁶⁵ SEC ENFORCEMENT MANUAL § 2.5.2. *See Also* 17 C.F.R. § 200.41 (1995).

⁶⁶ Government in the Sunshine Act, 5 U.S.C. § 552b.

⁶⁷ 5 U.S.C. § 552b(b) (ten exceptions are set forth in (c)). *See Also* 17 C.F.R. § 200.402.

一，並經由聯邦證管會的總法律顧問簽核之後，方可為之⁶⁸。

於閉門會議中，執法人員會先行以口頭的方式向委員會報告建議之內容，並回答委員們的相關問題。當釐清所有可能的疑問之後，委員們會以多數決的方式決定是否採納這樣的建議。

而當聯邦證管會的主席或者指定之執勤官認為某些需要表決的執法建議不適合以閉門會議之方式進行，但又需要讓全體委員表示意見並參與表決，此時便會將待表決議案之文件分送個別委員審查，並投票，亦即透過「委員逐一考量」之方式進行表決⁶⁹。「委員逐一考量」的表決方式常用於當一個特定的案件具有時間上的急迫性，需要及時進行審查，但因「閉門會議」所排定之日期尚久，故透過此一替代方案來因應這樣的情況。另外，例如某些案件之情況並未符合任一陽光法案之豁免條款，此時「委員逐一考量」的表決方式亦有適用⁷⁰。

最後，聯邦證管會會委派一位除了主席以外的委員擔任執勤官，執行委員會的職務。惟其權限並不包括法規制定以及聽證⁷¹。當執法人員提交一項緊急執法行動的建議予委員會時，執勤官有權決定此案件是否應交由「閉門會議」或者「委員逐一審查」之方式表決，抑或自行判斷應否提起執法行動。而執勤官所做之決定，事後均會交付其他委員進行確認。一般來說，執勤官以單方之決定來核准一項執法行動，應於極端

⁶⁸ SEC ENFORCEMENT MANUAL § 2.5.2.1.

⁶⁹ See 17 C.F.R. § 200.42. “Whenever the Commission's Chairman, or the Commission member designated as duty officer pursuant to § 200.43, is of the opinion that joint deliberation among the members of the Commission upon any matter is unnecessary in light of the nature of the matter, impracticable, or contrary to the requirements of agency business, but is of the view that such matter should be the subject of a vote of the Commission, such matter may be disposed of by circulation of any relevant materials concerning the matter among all Commission members.”

⁷⁰ SEC ENFORCEMENT MANUAL § 2.5.2.2.

⁷¹ 17 C.F.R. § 200.43 (a)(1).

緊急之情形，例如該不法行為對於投資人的威脅迫在眉睫時，始可為之。因畢竟聯邦證管會原則上是以合議制之方式運作，若准許單一委員有過多權力，易流於專斷。因此，假如一個案件具有高度法律上之爭議時，應避免使用此方式，而應交由全體委員審慎表決為妥⁷²。

在委員會表決通過執法人員所建議的執法行動後，依據當初執法人員於調查程序中所評估之適當追訴管道，可能於聯邦地方法院提起民事訴訟，抑或透過聯邦證管會內之訴追程序，以行政訴訟方式向行政法官提起之。



⁷² SEC ENFORCEMENT MANUAL § 2.5.2.3.

Steps in an SEC Action

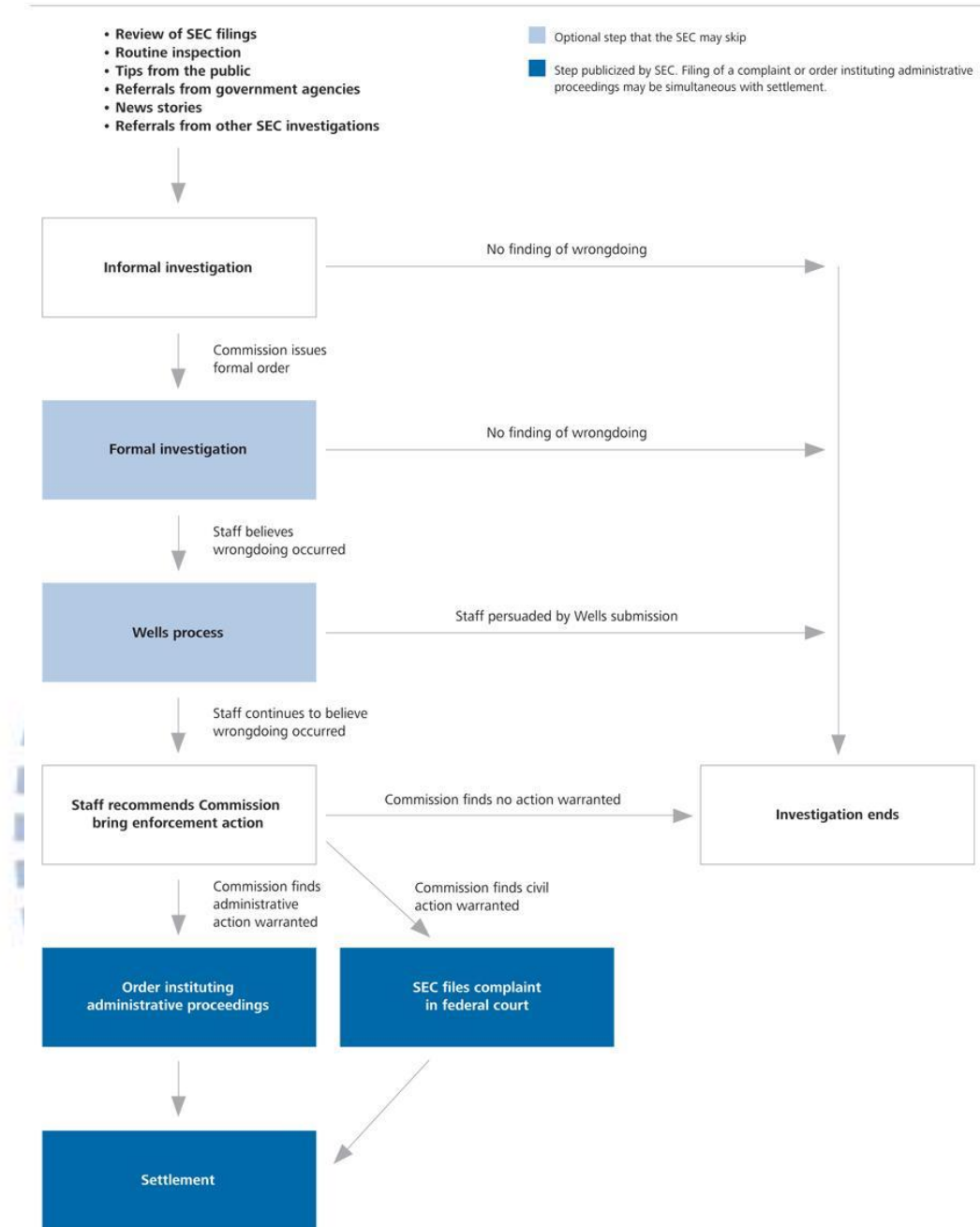


圖 4 SEC 調查程序示意圖

圖片來源： NERA Economic Consulting, *SEC Investigation Process*,
<http://www.securitieslitigationtrends.com/investigation-process.asp>

第五款 內線交易案件調查程序

在許多不同的證券犯罪當中，內線交易無疑是美國聯邦證管會執法重點之一。內線交易普遍被定義為「握有重大、非公開之消息，進而買入或賣出股票或類似性質之股權證券，抑或將此消息透漏給第三人之行為⁷³」。而在探討內線交易案件之執法與調查程序之前，應先對於美國禁止內線交易之理論上有基本之認識。

第一目 美國內線交易法制的發展

事實上，美國並未如我國對於內線交易有明文禁止之規定。而是美國法院依據判決實務所得之見解，將內線交易視為一種詐欺行為（**Fraud**），而其處罰最主要之法源依據有二⁷⁴：

（一）1934年證券交易法§10(b)

（二）聯邦證管會 Rule 10b-5。

前者為一空白授權條文，規定任何直接或間接利用州際商務工具、郵件或全國性證券交易所設備之人，於買賣任何上市或未上市之證券或從事相關活動時，不得違反聯邦證管會為了維護公共利益或保護投資人之必要所訂定之規則⁷⁵。而後者係聯邦證管會針對§10(b)之授權而訂立更為詳盡之行政規則。該條文規定任何人直接或間接利用州際商務工具、郵件或全國性證券交易所之設備買賣有價證券，不得 (a) 使用任何

⁷³ *Spotlight on Insider Trading*, U.S. SECURITIES AND EXCHANGE COMMISSION, <http://www.sec.gov/spotlight/insidertrading.shtml> (Nov. 23, 2012).

⁷⁴ 賴英照，前揭註 1，頁 452。

⁷⁵ §10(b)之原文如下：“It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, ... (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”.

方法、計畫或技巧進行詐欺。(b) 對於重大事實做出不實陳述或隱匿陳述，而在當時情況下造成誤導。(c) 從事任何行為、營業或商務活動，對他人產生或將產生詐欺或欺騙之情事⁷⁶。

然而，美國法院之實務見解經長期運作下來，對於違反證券交易法§10(b)及 Rule 10b-5 之規範對象的範圍認定並不一致，關鍵在於其背後所採取理論之不同，而有不同的結果。早期法院傾向採取市場論⁷⁷，其認定範圍較大，任何人只要擁有內線消息，即會被認為具有「揭露消息否則禁止買賣」(Disclose or Abstain) 之義務⁷⁸。後來聯邦最高法院於 *Chiarella* 案⁷⁹中進一步限縮規範對象之範圍，改採關係論，將內部人之範圍限縮於對公司或股東（交易相對人）負有信賴義務（Fiduciary Duty）之人。因此，並非任何擁有內線消息之人買賣股票均會成為被處罰的對象，而是當買賣有價證券之一方對他方負有信賴關係，並且於交易時未揭露與交易相關之重大未公開消息，才會成為相關證券法規欲處罰之對象⁸⁰。惟由於關係論有涵蓋範圍不足之疑慮⁸¹，因此近年來美國法院便將私取理論⁸²一同納入考量，透過兩個理論交互運用之下以擴大適用範

⁷⁶ Rule 10b-5 之原文如下：“It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security”.

⁷⁷ 又可稱作「資訊平等理論」，主要是以維護證券市場上公平交易，促進資訊流通，保護投資人為原則出發之理論。

⁷⁸ 賴英照，前揭註 1，頁 454。

⁷⁹ *Chiarella v. United States*, 445 U.S. 222 (1980).

⁸⁰ 賴英照，前揭註 1，頁 454。

⁸¹ 例如無法處罰到公司之董事與他公司股東為交易之情形。

⁸² 此理論最早出現於 *Chiarella* 案（1980）中首席大法官 Burger 的不同意見書中，惟因私取理論並未

圍，從而保護交易之公平性與市場之健全發展⁸³。在私取理論之適用下，縱使握有內線消息之人對交易相對人不負有信賴關係，惟其若對於從之獲取消息之人有不當使用（misappropriation）之情事者，則亦會被認為違反§10(b)及 Rule 10b-5 之規定而受罰。

第二目 內線交易之調查

正由於內線交易為聯邦證管會執法之重點，代表其資源之投入應較為充足，而其針對此犯罪所建立之調查制度亦值得探討與研究。

內線交易調查的發動經常起因於當一間公司對外公布某件重大之消息，而該消息對公司之股價造成重大的影響的時候。例如當一間公司宣布進行併購或者宣布調降財測時，對於該公司之股價必然產生影響，此時執法人員便會發起調查，確認是否有內線交易之存在。一般而言，執法人員獲得消息之管道有三種⁸⁴：

- （一）情報提供者
- （二）市場監督
- （三）聯邦證管會對於市場之監測。

首先，情報提供者常包括了匿名電話、市場上的專業交易者、不滿的員工與競爭者。上述之人以向聯邦證管會投訴之方式揭發可能違反內線交易法制之情事⁸⁵。而市場監督通常是透過自律機構的幫助，每年由他們提供可疑交易的調查報告，或甚至透過電話方式向聯邦證管會之負責人員稟報相關違法消息。因此，透過與自律機構中負

於下級法院提交陪審團審酌，故多數意見未採納之。而後於 *United States v. O'Hagan* 案（1997）中聯邦最高法院方採納私取理論之見解。參見賴英照，前揭註 1，頁 462-464。

⁸³ 賴英照，前揭註 1，頁 454。

⁸⁴ L. HILTON FOSTER, *INSIDER TRADING INVESTIGATIONS 3*, available at http://www.sec.gov/about/offices/oia/oia_enforce/foster.pdf.

⁸⁵ *Id.*

責調查之人員溝通，釐清調查的事證，亦為聯邦證管會執法人員重要的工作之一⁸⁶。最後，聯邦證管會的執法人員亦可透過網路數據服務監測市場交易，找出可疑的交易，並發動調查。

依據聯邦證管會執法部門的資深律師所提出之調查綱要，內線交易之調查主要欲達成之目標有七項⁸⁷：

- 
- (一) 確認「重大性」。
 - (二) 辨認可疑之交易。
 - (三) 辨認內部人與交易者的關係。
 - (四) 確認「持有內線消息」之事實，用以建立內部人與交易人之連結。
 - (五) 確認行為人之「故意」。
 - (六) 不法所得之歸入。
 - (七) 確認行為人之義務。

而執法人員可透過種種手段調查嫌疑人，包括使用電話面談、要求相關文件等等。而在各式各樣的調查手段中，有一些值得注意的地方。首先，辨認可疑之交易並未如想像中簡單。一般來說，大規模之交易固然常被認為是可疑的，但是小量的交易亦不能被輕易忽略，因為某些特定的小量交易或許可以連結至其他可疑之交易。其次，透過電話面談方式向交易者尋求對某特定行為事實之否認或自認，通常可以收到不錯的效果⁸⁸。因嫌疑人所做的任何虛偽陳述均可能於往後的訴訟中被當作偽證罪之證據使

⁸⁶ *Id.* at 3-4.

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* at 6.

用。最後，執法人員可以向案件關係人士要求提供許多不同的文件，例如通聯記錄、保密協議、分析報告…等等，因此如何妥善利用所蒐集到的證據以建構一個完整的執法案件是很重要的。

另外值得一提的是，在內線交易之犯罪行為人方面，由於美國法院對於行為主體之範圍認定隨著時間的演進而有不同的發展，連帶使聯邦證管會之執法人員於進行執法時傾向朝法院見解之方向進行調查，以求獲得最理想的執法結果。聯邦證管會提起之執法行動經常涉及公司董事或者高階經理人之不法行為，而這些人士被認為是傳統的公司內部人。此外，經常獲取機密資訊的專業人士如律師、會計師、分析師及投資銀行家等等，亦是調查人員經常鎖定之對象，而這些人傳統上則被認為是準內部人或者外部人⁸⁹。聯邦證管會一直以來將內線交易視為執法重點的原因，除了有不法行為人常為高階白領人士之特色外，案件通常牽涉到龐大的不法所得數額與廣大的受害投資者群，亦為其中主要的因素。

第三目 小結

建構一件內線交易執法案件是個漫長的程序，其需倚賴執法人員投入大量的心力與時間，從監測市場動向，辨認可疑交易，以至於後來與嫌疑人的面談、要求相關文件證據等等，經由層層抽絲剝繭來確認嫌疑人之犯行。聯邦證管會亦透過制定相關的手冊與準則來協助執法人員更精確、更有效率地執行其職責，進而提高內線交易執法之精確性，落實證券法規，以達保護資本市場之最終目的。

⁸⁹ CHOI & PRITCHARD, *supra* note 8, at 352.

第二項 執法手段

第一款 案件關係人⁹⁰與聯邦證管會之合作機制 (Cooperation with the SEC)

首先，在介紹聯邦證管會之執法手段前，必須承認的一點是，違反證券法案件之調查實為一冗長且複雜的程序，執法人員不僅需重複調閱與分析許多事證，更時常可能面對許多不願積極配合調查之嫌疑人，導致調查資源的虛耗，且可能導致無法即時給予受害人救濟。因此，為了提供適當的誘因使公司或者個人得以積極地與執法人員合作，共同釐清違法事實的真相，或者能更進一步地防範未來同樣的事情再度發生，聯邦證管會於 2001 年公布的 *Seaboard Report*⁹¹ 中提供了一個互助的機制，利用取消執法行動或減輕裁罰為誘因，鼓勵公司或個人進行自我約束 (Self-Policing)、自行稟報 (Self-Reporting)、合作 (Cooperation) 及矯正 (Remediation)，減少調查資源的浪費，並且增進執法的效率。惟前述公司或個人之配合舉動僅供執法人員於決定是否追訴一違法案件時當作參考，執法人員仍須就個案判斷適當的執法手段。換言之，公司或個人若於事前建立良好的防範機制，事後亦積極地配合調查，固然有很高的機率使執法人員打消追訴的念頭，或者減輕裁罰，惟若執法人員仍舊認為有追訴之必要，則不會因當事人已積極配合而受拘束，執法人員可逕行向權責機關提起訴訟⁹²。此外，執法人員可依據執法案件所涉及之不法行為的本質、背後的原因、造成的損害，或不法行為發生後，應負責公司所採取之後續動作等等之因素，來綜合評價公司或個人的合作行為所帶來之助益，藉以考慮是否取消執法行動或減輕裁罰⁹³。

⁹⁰ 可能包含了相關證人、不法行為人，或者其所任職之公司。

⁹¹ Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Exchange Act Release No. 44,969, 76 SEC Docket 220 (Oct. 23, 2001), available at <http://www.sec.gov/litigation/investreport/34-44969.htm>.

⁹² See *id.*

⁹³ See *id.*

而根據執法手冊所列，用來鼓勵案件關係人積極協助執法的工具主要有五種⁹⁴：

（一）Proffer Agreements

當案件關係人在考慮是否與執法人員合作之前，通常會希望與執法人員先進行初步的討論，交換彼此意見，而此時之言談內容稱為 **Proffer**。而執法人員將審酌 **Proffer** 的內容，藉以評估案件關係人之合作對執法所帶來之助益程度。而為了使案件關係人於進行言談時盡可能提供真實且有用之資訊，執法人員常會與之簽署 **Proffer Agreements**，目的在於確保案件關係人之言談內容不會於往後訴訟產生對其不利之效果，惟該言談內容仍可能被當作發掘其他證據之線索，抑或被作為彈劾證據，用以推翻日後訴訟中該案件關係人之相反證言。

與 **Proffer Agreements** 相類似的工具還有「口頭上保證」(**Oral Assurances**)。而此口頭保證通常會在 **Proffer** 結束之後為之，其用意在於告知公司或個人，就目前所掌有之事實證據，並未發現有任何違反證券法之情事，因此不會採取執法行動。惟若日後執法人員發現新的證據，仍舊可能改變其決定，評估是否提起執法行動。

（二）合作協議 (Cooperation Agreements)

當案件關係人決定與執法部門合作，對於案件調查以及執法行動提供實質的協助時，執法人員會透過簽署合作協議，向案件關係人承諾如果其均按照協議內容忠實履行必要之協助，且放棄相關追訴時效之權利，則執法部門會向聯邦證管會呈報案件關係人之功勞，或做出對其有利之建議。

（三）緩起訴協議 (Deferred Prosecution Agreements)

緩起訴協議存在於聯邦證管會與公司或個人之間，內容主要約定聯邦證管會將停

⁹⁴ SEC ENFORCEMENT MANUAL § 6.2.

止對該公司或個人進行執法行動，前提是其必須：一、忠實地協助調查與其他相關案件之執法。二、放棄主張追訴時效之權利。三、繳還不法所得或罰金。四、同意於緩起訴期間禁止為某種行為。四、在特殊情況下，同意對於聯邦證管會所提出之事實進行自認，或者不為抗辯。此外，緩起訴之期間不得超過五年。

（四）不起訴協議（Non-Prosecution Agreements）

不起訴協議之內容基本上與緩起訴協議大致相同，主要是約定當公司或個人承諾並遵守履行一定之條件時，聯邦證管會將放棄對其採取執法行動。惟執法手冊中明確指出，不起訴協議之使用須於少數、合適的狀況方可為之，亦即如可用其他方法替代，則不應使用此方法。

（五）刑事豁免請求（Immunity Requests）

有時候證人為避免自己所提供之證言於日後被使用於刑事程序，而入自己於罪，常會主張美國憲法第五修正案關於不自證己罪之規定，行使拒絕證言權。有鑑於此，當執法人員認為該證人之證言對於調查或者執法案件有實質重大的幫助，而有必要取得時，可藉由向有關機關請求刑事豁免之文件，促使該證人放心地提供證言。

而刑事豁免之請求主要有兩種方式：一、法定豁免（Statutory Immunity）。二、文書豁免（Letter Immunity）。法定豁免主要是依據 18 U.S.C § 6001~6004 刑事訴訟程序之規定，執法部門主管可向美國司法部聲請，並取得檢察總長同意後，再經由法院下裁定強制證人提供對於增進公共利益有幫助之證言或相關資訊⁹⁵。而文書豁免則僅為該證人與檢察官間之協議。此二種方式均可防止證人所提供之證言被用於日後可能發

⁹⁵ 此處之刑事訴訟程序規定適用於美國聯邦證管會，因其符合 18 U.S.C. § 6002 中「agency」之定義，See 18 U.S.C. § 6001.

生之刑事程序，惟豁免之效力不及於偽證罪、不實陳述與妨礙司法罪之違反⁹⁶。此外，由於法定豁免係透過法院下裁定來強制證人作證，因此對於證人之自由意志影響較大，故須符合一定之前提要件。換言之，執法人員於決定是否向司法部聲請法定豁免時，除須判斷欲取得之證言或資訊是否為為維護公共利益所必要者外，尚須視該證人是否已曾拒絕證言或可能拒絕證言⁹⁷。

第二款 行政程序

聯邦證管會對於違反證券法之執法係行使民事上之權力（Civil Authority），而追訴的管道除了透過民事程序向聯邦地方法院起訴外，尚可於證管會內利用行政程序起訴⁹⁸。聯邦證管會擔任行政程序中之原告，而證管會內之行政法官（Administrative Law Judge）則擔任審判者之角色⁹⁹。相較於傳統於聯邦地方法院內進行之民事程序，行政程序較為省時方便，且聯邦證管會仍可藉由行政程序施加處罰於違反證券法之人。而目前可於行政程序求處之裁罰主要有以下幾種：（一）禁止命令（Cease-and-Desist Order）、（二）暫時命令（Temporary Order）、（三）不法所得之歸入命令（Disgorgement Order）、（四）禁止擔任董事、經理人。另外職業懲戒以及禁止從事證券相關事業亦是聯邦證管會常用之手段¹⁰⁰。

行政程序中的禁止程序（Cease-and-Desist Proceeding）係違反證券法案件之執法

⁹⁶ See 18 U.S.C. § 6002. (“...no testimony or other information compelled under the order ... may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.”)

⁹⁷ See 18 U.S.C. § 6003(b).

⁹⁸ CHOI & PRITCHARD, *supra* note 8, at 186.

⁹⁹ THOMAS LEE HAZEN, TREATISE ON THE LAW OF SECURITIES REGULATION, § 16.2[13].

¹⁰⁰ SEC has power to suspend, limit, or bar “any person” from practicing before it “in any way.” 17 C.F.R. § 201.102(e)(3). Rule 102(e) has been used by the SEC to discipline professionals, mostly against accountants and lawyers. More detail in SEC’s power in disciplining professionals, *see id.* .

中較常利用之程序之一¹⁰¹。聯邦證管會可利用此程序請求對於不法行為人施加前述四種裁罰。首先，聯邦證管會於行政法官為初步聽證之後，若認為被告之作為或不作為「是、曾是或將是」該不法行為之肇因的話，除了可請求禁止令禁止該被告停止該違法行為，亦可請求該被告遵循聯邦證管會所要求之特定規範¹⁰²。此外，若於禁止程序完成前，被告之違法行為可能導致其出脫重大財產或導致投資者或公眾利益受到嚴重損害的話，亦可請求對被告發佈暫時命令¹⁰³，要求被告停止該違法行為，或為一定之行為以避免對投資人或公眾利益產生損害¹⁰⁴。另外，聯邦證管會亦可利用禁止程序請求被告返還不法所得，以及禁止擔任董事或經理人¹⁰⁵。

除了前述之裁罰外，對於符合特定條件之被告¹⁰⁶，聯邦證管會亦可藉由行政程序，依據違法行為嚴重性之不同而科以三個不同層級之罰金。舉例而言，例如內線交易此

¹⁰¹ 15 U.S.C. § 78u-3.

¹⁰² 15 U.S.C. § 78u-3(a).

¹⁰³ 效果類似於我國之假處分。

¹⁰⁴ 15 U.S.C. § 78u-3(c)(1).

¹⁰⁵ 15 U.S.C. § 78u-3(e),(f).

¹⁰⁶ 15 U.S.C. § 78u-2(a). (“... , the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

(1) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], or this chapter, or the rules or regulations thereunder, or the rules of the Municipal Securities Rulemaking Board;

(2) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(3) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or

(4) has failed reasonably to supervise, within the meaning of section 78o (b)(4)(E) of this title, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision;

and that such penalty is in the public interest.”)

類之證券詐欺行為，若對於他人造成重大損害，或對他人產生重大損害之風險，或行為人因該行為而獲得相對豐富之不法利得者，應科以第三層級之罰金，亦即對於自然人以十萬美元罰金為上限，而對於其他種人，例如法人，則以五十萬美元罰金為上限¹⁰⁷。

行政程序首先係由聯邦證管會內之行政法官進行聽證，之後行政法官會做出一個初步裁定（Initial Decision），若執法人員對於此初步裁定之內容不服，則可繼續上訴至委員會，對於案件進行第二次的審查，最後由委員會做出最終裁定（Final Decision）。由於行政程序係於聯邦證管會內進行，故為確保程序之公平性，避免球員兼裁判所造成之疑慮，法律仍保留一定司法審查之管道。被告若不服聯邦證管會之最終裁定，可於收受裁定起六十日內向居住地、主要營業地或華盛頓特區之聯邦上訴巡迴法院提出審查該最終裁定之聲請¹⁰⁸。惟需注意者是，學者指出，法院於審查聯邦證管會之裁定時，會傾向尊重其對於事實之認定以及法律之解釋，因此，被告於法院挑戰聯邦證管會之裁定並不容易成功¹⁰⁹。

第三款 民事程序

行政程序之特色在於省時方便，然其可提供之救濟亦有限，因此聯邦證管會通常僅於嚴重性較低之證券不法案件才會訴諸行政程序。而對於較為嚴重之證券不法案件，聯邦證管會則傾向利用民事程序追訴，理由在於民事程序所可請求之裁罰與救濟種類遠較行政程序豐富，除了可以聲請禁制令禁止被告再度為違法行為外，公司治理結構之改革、不法所得之歸入、民事罰金…等等亦為選項之一¹¹⁰。甚至在某些極端的案例，

¹⁰⁷ 15 U.S.C. § 78u-2(b)(3).

¹⁰⁸ 15 U.S.C. § 78y(a)(1).

¹⁰⁹ CHOI & PRITCHARD, *supra* note 8, at 208.

¹¹⁰ 15 U.S.C. § 78u, 78u-1. *See also id.* at 216.

聯邦證管會亦曾成功訴請法院替換整個公司的董事會¹¹¹。

在禁制令程序（**Injunction Proceeding**）中聯邦證管會可請求之裁罰範圍較行政程序之禁止程序（**Cease-and-Desist Proceeding**）為廣，其可請求法院禁止被告未來再度對於特定證券法規之違反外¹¹²，禁止其擔任董事或經理人¹¹³（或可稱為公司治理結構之改革）或其他衡平法上之救濟。此外，不法所得之歸入，亦為經常使用之重要制裁手段¹¹⁴。

此外，聯邦證管會若欲針對內線交易案件之被告請求民事罰金，須向聯邦法院起訴以估算罰金之數額，惟此罰金以被告不法利得或規避損失之三倍為上限¹¹⁵。對於操控他人為內線交易之人，聯邦證管會亦可對其請求民事罰金¹¹⁶。另外需注意者是，聯邦證管會對於是否請求民事罰金具有裁量權，其常會考量被告是否積極配合執法人員調查而選擇不對其請求民事罰金。最後，民事罰金之請求並不會與其他救濟手段互相排斥，換言之，聯邦證管會可綜合考量適當之執法手段，透過請求禁制令與民事罰金雙管齊下，以達最大之功效。

第四款 平行刑事程序

聯邦證管會所行使之民事權力可藉由行政程序與民事程序之運用獲得實現。然針

¹¹¹ See *International Controls Corp. v. Vesco*, 490 F.2d 1334 (2d Cir. 1974).

¹¹² 15 U.S.C. § 78u(d)(1).

¹¹³ 15 U.S.C. § 78u(d)(2).

¹¹⁴ 15 U.S.C. § 78u(d)(5). See also *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998) (“The district court has broad equity powers to order the disgorgement of “ill-gotten gains” obtained through the violation of the securities laws”).

¹¹⁵ 15 U.S.C. § 78u-1(a)(2) (“The amount of the penalty which may be imposed on the person who committed such violation shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication.”)

¹¹⁶ 15 U.S.C. § 78u-1(a) (1)(B), (3).

對涉及刑事不法之證券犯罪，聯邦證管會並無執法之管轄權，因此需透過將案件移送美國司法部之方式，由檢察官起訴，以對犯罪行為人進行制裁。

對於內線交易之明知故犯，無可避免地，將觸發嚴重之刑事責任¹¹⁷。聯邦證管會與美國司法部本於法律所賦予之權力，固然可以對於一個違反證券法之行為各自獨立進行追訴調查¹¹⁸，前者係行使民事管轄權，後者則行使刑事管轄權。然，兩個平行之調查程序間若沒有適當之溝通與交流，容易產生許多問題。例如調查案件所需之資源與人力有限，若無適度的配合溝通，容易發生重複調查的情形，進而浪費珍貴之調查資源。此外，機關與機關間可能會對於同一個行為之解讀產生歧異見解，因此需要透過不斷的協調與交流以達成共識。有鑑於此，司法部與聯邦證管會為了避免前述之問題，時常互相合作，由具專業知識的聯邦證管會主導違反證券法規案件之調查，去發掘與分析證券市場上之不尋常事件，以及偵測潛在之違法行為。

第三項 私人團體訴訟

第一款 Rule 10b-5 的私人訴權 (Private Rights of Action)

證券詐欺行為若不受適當制裁，對於整體證券市場運作之影響不言而喻，最顯著者莫過於投資人將因此而改變其投資計畫，要求更多回報以補償其所承擔之風險，進而將公司募集資金之成本大幅提高，實非資本市場之福¹¹⁹。因此證券法規提供許多不

¹¹⁷ 15 U.S.C. § 78ff(a) (“Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, ..., shall upon conviction be fined not more than \$5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding \$25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.”)

¹¹⁸ 15 U.S.C. § 78u(d)(1) (the SEC may “transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.”)

¹¹⁹ CHOI & PRITCHARD, *supra* note 8, at 239.

同之機制來防止證券詐欺行為的發生，如要求公司製作財務報告，並由會計事務所以自身信譽為保進行簽證。另外，由外部董事所組成之審計委員會亦負責監督會計師之工作，據此提供另一管道監督公司揭露之事項，防範詐欺行為的發生¹²⁰。而市場上如信評機構、證券分析師等等，亦會對公司揭露資訊之完整度與信用度進行評價，透過市場機制來遏止詐欺行為之產生¹²¹。除了事前防治之外，聯邦證管會與美國司法部亦會分別透過民事、行政與刑事程序，利用事後的追訴機制，懲罰證券詐欺之行為人，進一步加強規範之有效性。

而私人訴權亦扮演一個補充的角色，透過私人向法院起訴請求賠償損害，來制裁證券詐欺行為。事實上，**Rule 10b-5** 並未明文規定私人有向法院起訴請求賠償之權利，而是透過法院判例法之方式來承認該條文所隱含之私人訴權¹²²。此外，因證券詐欺而受害之投資人通常會透過團體訴訟之方式向為詐欺行為之公司或個人提起訴訟，集合眾人之力來降低訴訟成本，並增加談判力量。尤其當面對到大公司時，透過團體訴訟可集結各個投資人之小額損害，進而對大公司請求大數額的賠償¹²³。1995年私人證券訴訟改革法（**The Private Securities Litigation Reform Act of 1995**）¹²⁴之通過亦加強了私人訴訟制度的完整性，將團體訴訟之代表與成員間的利益歸於一致¹²⁵。

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See *Kardon v. National Gypsum Co.*, 69 F. Supp. 512 (E.D. Pa. 1946). See also *Blue Chip Stamps, et al. v. Manor Drug Stores*, 421 U.S. 723 (1975) (“We deal with a judicial oak which has grown from little more than a legislative acorn.”); *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983).

¹²³ *CHOI & PRITCHARD*, *supra* note 8, at 245-46.

¹²⁴ 美國國會之協商委員會所做出的聯合說明報告書（**The Joint Explanatory Statement of the Committee of Conference**）中重申私人訴訟之目的係為了促進公眾與國際對於美國證券市場之信心、幫助嚇阻不法行為與確保公司高階經理人、會計師、董事與律師等專業人士得以善盡其職責。See *Amanda M. Rose, Reforming Securities Litigation Reform: Restructuring the Relationship Between Public and Private Enforcement of Rule 10B-5*, 108 COLUM. L. REV. 1301, 1318 (2008).

¹²⁵ See *id.* at 1318-19.

第二款 私人訴訟與公權力訴訟之互動關係

誠如本節第一項及第二項所介紹之內容，聯邦證管會握有之執法公權力相當大，對於違反證券法之人亦有一套完善之追訴與裁罰機制，因此有學者質疑，既然公權力執法已可相當程度地遏止不法行為之發生，是否真的有需要再給予私人訴訟之權力呢¹²⁶？

該質疑之論點主要有二：即私人訴訟終將影響執法的穩定性及靈活性。在穩定性方面，任何法律的規範或執法，目的均在於達到最適嚇阻效果（Optimal Deterrence），過度或不足之嚇阻效果均係社會所不樂見的。而可達最適嚇阻效果之裁罰的計算方式為：對不法行為之最適裁罰 = 不法行為造成之社會淨成本 x 制裁機率之倒數¹²⁷。因此若不法行為造成之社會淨成本為 100，而制裁機率为 50%，則最適裁罰為 $100 \times (1/0.5)$ ，即 200¹²⁸。據此而言，理論上若公權力執法者是處於獨占地位，而其想透過降低制裁犯罪行為人之機率來減少執法成本，只需藉由提高裁罰來避免不足嚇阻的結果產生¹²⁹。但是允許私人訴訟之情形下，不僅無法達成前述節省執法成本之效果，甚至難以達成執法均衡（Enforcement Equilibrium），理由可歸因於私人訴訟之本質即為「違法情節越重，所可能獲得的賠償越多，因此投入調查與追訴的資源越多」，各因素間具有相互影響的關係。反之，「可尋求之賠償或救濟」與「違法情節的輕重」之間在公權力執法獨占之情況下，並不當然會相互影響。換言之，執法機關並不全然會因為可以尋求之賠償或救濟少，又或者違法情節太輕而不積極執法，另一方面亦不必然會因可尋求之賠償救濟多或者違法情節重而投入過量的資源進行執法，其考慮的面

¹²⁶ See *id.* at 1325-26.

¹²⁷ STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW 483 (2004).

¹²⁸ 預期之裁罰應為 100，因為不法行為所造成之社會成本為 100。

¹²⁹ See Rose, *supra* note 124, at 1326.

向實際上遠多於私人訴訟。因此，在前述之誘因結構下，允許私人訴訟可能會造成過多的執法，進而產生過度嚇阻的效果¹³⁰。此外，在靈活性方面，公權力執法機關可評估當前之執法是否具最適嚇阻效果，據以調整執法的強度，避免過度或不足的嚇阻。反觀私人訴訟多由律師主導，而其所關注的常為律師費之多寡，因此對於嚇阻效果之影響並非其所考慮之主要因素，因而無法靈活調整其執法強度¹³¹。

第四項 小結

本節介紹了美國聯邦證管會對於違反證券法案件之執法架構，包括執法人員對案件之調查程序，以及最後利用行政程序與民事程序向不法行為人進行追訴，均可看出聯邦證管會在證券執法上的專業性。總體而言，在美國，聯邦證管會對於打擊證券市場上的不法行為佔有舉足輕重的地位。另外本節亦介紹了美國司法部所主導的刑事訴訟以及私人團體訴訟對於聯邦證管會所主導之民事訴訟的影響，並藉由三者的互動關係，試圖勾勒出美國對於違反證券法案件執法之總體架構。

¹³⁰ *Id.* at 1326-27.

¹³¹ *Id.* at 1328-29.

第三章 美國聯邦證管會內線交易案件執

法實證研究：2009 至 2012

第一節 實證研究結果

第一項 執法案件總覽

在 2009 至 2012 年間，聯邦證管會所提起之內線交易執法案件之數量處於穩定但逐年攀升的狀況。2009 年有 37 件，2010 年則攀升至 53 件，2011 與 2012 年則分別有 57 與 58 件。而被告方面，2009 年時有 85 位被告，2010 則增加至 138 位，2011 年稍微減少至 126 位，2012 年則回到 131 位被告。下表為 2009 至 2012 年間聯邦證管會提起之執法案件簡表¹³²：

Fiscal Year 2009		
FY 2009 Civil Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
LR20774	SEC v. Francis Elias Axiaq, et al.	S
LR20784	SEC v. Brian D. Ladin, et al.	S
LR20789	SEC v. Brett C. Maas	S
LR20805A	SEC v. Jonathan Wilson	S
LR20810	SEC v. Mark Cuban	L (Jury found not liable)
LR20831/ LR21854/ LR22700/ LR22734	SEC v. Matthew C. Devlin, et al.	S
LR20863A	SEC v. Aaron S. Cooksey	S
LR20884	SEC v. Ramesh Chakrapani	-
LR20884	SEC v. Nicos Achilleas Stephanou, et al.	S/L
LR20953A	SEC v. Michael Biello	S
LR21005	SEC v. William M. Gallahair	S

¹³² 較為詳細案件內容請參見附錄一。

LR21015	SEC v. Matthew J. Browne	S
LR21020	SEC v. Maher F. Kara, et al.	L
LR21020	SEC v. Joseph Azar	S
LR21020	SEC v. Nasser Mardini	S
LR21023	SEC v. Jon-Paul Rorech, et al.	L
LR21069	SEC v. Tajyar, et al.	S
LR21072	SEC v. Robert L. Hollier, et al.	S
LR21079/ LR21376/ LR21807	SEC v. Phillip MacDonald, et al.	S
LR21132/ LR22282a	SEC v. Kevan D. Acord, et al.	S/L
LR21133	SEC v. Anthony Perez and et al.	S
LR21133	SEC v. Math J. Hipp, Jr.	S
LR21133/ LR21698/ LR22029	SEC v. Carl E. Binette, et al.	S
LR21140	SEC v. Andres Leyva	S
LR21154/ LR21559	SEC v. Khaled Mohammed Sharif Al Sayed Al Hashemi	S
LR21183	SEC v. Nancy Jewell, et al.	S
LR21192	SEC v. Sarath B. Gangavarapu	S
LR21201	SEC v. Jeff L. Soisson, et al.	S
LR21209	SEC v. Allen W. Moss	S
LR21221/ LR21360	SEC v. Reza Saleh, et al.	S
None	SEC v. Melissa A. Mahler	S
FY2009 Administrative Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
34-59240	In the Matter of Kevin J. Heron	S
34-59367	In the Matter of Hafiz Naseem	S
34-59568	In the Matter of Matthew E. Kopsky	S
34-59960	In the Matter of Matthew J. Browne, Attorney	S
3-13481	In the Matter of David G. Ghysels, et al.	L
34-60119	In the Matter of Mitchel S. Guttenberg	S
Fiscal Year 2010		

FY 2010 Civil Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
LR21240	SEC v. Feng "Frank" Xie	S
LR-21249	SEC v. Benjamin P. Jones, et al.	S
LR21249/ LR22284	SEC v. Alissa Joelle Kueng	S
LR21526/ LR21732/ LR21740/ LR21802/ LR21827/ LR21834/ LR21839/ LR22010/ LR22021/ LR22042/ LR22071/ LR22114/ LR22185	SEC v. Galleon Management, LP, et al.	S/L(dismiss claims or obtain final judgment)
LR21260	SEC v. Don N. Spaugy	S
LR21263	SEC v. Stanko J. Grmovsek	S
LR21267	SEC v. J. Bennett Grocock	S
LR21271	SEC v. King Chuen Tang, et al.	S
LR21283	SEC v. Arthur J. Cutillo, et al.	S
LR21308	SEC v. R. Brooke Dunn, et al.	S
LR21332/ LR21587	SEC v. Brien P. Santarlas	S
LR21339/ LR21838/ LR22039	SEC v. Vinayak S. Gowrish, et al.	S/L
LR21370	SEC v. Brooke D. Wagner	S
LR21383	SEC v. Charles J. Marquardt	S
LR21392	SEC v. Avi Fogel	S
LR21404	SEC v. Bruce A. MacDonald, et al.	S
LR21403	SEC v. David R. Slaine	S
LR21405	SEC v. Joshua Z. Levinberg	S
LR21414	SEC v. Gerald D. Horn	L(summary judgment in favor of Dr. Horn)
LR21415	SEC v. Steven Scoppetuolo, et al.	S
LR21425	SEC v. John A. Foley, et al.	S
LR21460/ LR21681/	SEC v. Igor Poteroba, et al.	S/L(default judgment)

LR21730/ LR22617/ LR22851		
LR21469	SEC v. Gary Navarro	S
LR21472	SEC v. Morando Berrettini, et al.	L(set date for jury trial)
LR21536	SEC v. Yonni Sebbag, et al.	S
LR21540	SEC v. Pequot Capital Management, Inc., et al.	S
AAER3164	SEC v. Thomas P. Flanagan, et al.	S
LR21631	SEC v. Juan Jose Fernandez Garcia, et al.	S/L
LR21638	SEC v. James W. Self, Jr., et al.	S
LR21644	SEC v. Dr. Bobby V. Khan	-
LR21665	SEC v. Michael Jobe, et al.	S
LR21667/ LR22112	SEC v. Richard A. Hansen, et al.	S
LR21678	SEC v. Rex C. Steffes, et al.	S/L
FY2010 Administrative Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
34-60802	In the Matter of Samuel W. Childs, Jr.	S
34-60803	In the Matter of Erik R. Franklin	S
34-60804	In the Matter of David M. Tavdy	S
34-60892	In the Matter of Anthony Perez	S
34-60998	In the Matter of William T. Dailey, III	S
34-61288	In the Matter of Ken Okada	S
34-61362	In the Matter of Adnan S. Zaman	S
34-61511	In the Matter of J. Bennett Grocock, Esq.	S
34-61586	In the Matter of Tara R. Eisler	S
IA2997	In the Matter of Steven E. Nothern	S
33-9124	In the Matter of David W. Baldt	L
34-62186	In the Matter of David E. Zilkha	L
IA3035	In the Matter of Pequot Capital Management, Inc., et al.	S
34-62267	In the Matter of Melissa A. Mahler	S
34-62460	In the Matter of Brien Santarlas, Esq.	S

34-62769	In the Matter of James E. Gansman	S
34-62770	In the Matter of Donna B. Murdoch	S
IA3084	In the Matter of David R. Slaine	S
34-62999	In the Matter of Igor Poteroba	S
Fiscal Year 2011		
FY2011 Civil Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
LR21685/ LR22273	SEC v. Marleen Jantzen, et al.	L(summary judgment)
LR21928/ LR22158	SEC v. Dr. Yves M. Benhamou, et al.	L(final judgment)
LR21741/ LR22056	SEC v. Franz N. Tudor	S
LR21741/ LR21999/ LR22297	SEC v. Lanexa Management LLC, et al.	S
LR21740/ LR22000	SEC v. Thomas C. Hardin	S
LR21758/ LR22139	SEC v. Arnold McClellan, et al.	S
LR21765	SEC v. Jeffery J Temple, et al.	-
LR21767	SEC v. Brett A. Cohen, et al.	S
LR21766/ LR21993	SEC v. One or More Unknown Purchasers of Securities of Wimm-Bill-Dann Foods	S
AAER3219	SEC v. Joseph M. Elles	-
LR21792/ LR21980	SEC v. One or More Unknown Purchasers of Securities of Martek Biosciences Corporation	S
LR21794/ LR22312	SEC v. One or More Unknown Purchasers of Options of Intermune, Inc.	S
LR21802/ LR22085/ LR22100/LR22005	SEC v. Robert Feinblatt, et al.	S/L
LR21811/ LR22260	SEC v. CytoCore, Inc., et al.	S/L(default judgment)
LR21815	SEC v. George H. Holley, et al.	S/L
LR21820	SEC v. Zizhong Fan, et al.	L
LR21827/ LR22004	SEC v. Adam Smith	S
LR21826/ LR22051	SEC v. Michael Cardillo	S
LR21844/ LR22044	SEC v. Mark Anthony Longoria, et al.	S
LR21859	SEC v. Zhenyn Ni	S

LR21871/ LR21978	SEC v. Gregory A. Seib	S
LR21877/ LR22251	SEC v. Todd Leslie Treadway	S
LR21878	SEC v. Joseph A. Dawson	S
LR21890	SEC v. Kim Ann Deskovick, et al.	S
LR21954/ LR22610	SEC v. Patrick M. Carroll, et al.	S/L
LR21896	SEC v. Daniel F. Wiener, II	S
LR21899	SEC v. Mark A. Duffell	S
LR21987	SEC v. Cheng Yi Liang, et al.	S
LR21917	SEC v. Matthew H. Kluger, et al.	S
LR21950	SEC v. Jonathan Hollander	S
None	SEC v. Bruce Hvidsten, et al.	-
LR21972	SEC v. Mary Beth Knight, et al.	S
LR21977	SEC v. Abraham Haim	S
LR21981	SEC v. Donald L. Johnson, et al.	L
LR21990	SEC v. Dean A. Goetz	S
LR-21991	SEC v. One or More Unknown Purchasers of Securities of Telvent GIT S.A.	-
LR21996	SEC v. Phillip E. Powell	L(Granting D's motion to dismiss)
LR22055	SEC v. Compania International Financiera S.A., et al.	L(motion to dismiss granted)
LR22048	SEC v. Howard B. Wildstein	S
LR22050	SEC v. Robert Doyle	S
LR22059	SEC v. William A. Marovitz	S
LR22062	SEC v. Douglas V. DeCinces, et al.	S
LR22063/ LR22404	SEC v. H. Clayton Peterson, et al.	S
LR22066/ LR22838	SEC v. Toby G. Scammell	S
LR22078	SEC v. Anthony Scolaro	S
LR22080/ LR22404	SEC v. Clay Capital Management, LLC, et al.	S/L
LR22093	SEC v. Scott Allen, et al.	L(motion to stay granted)
LR22099	SEC v. One or More Unknown Purchasers of Securities of Global Industries	-

FY2011 Administrative Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
34-63114	In the Matter of Gregory C. Gunn	S
AAER3239	In the Matter of Eric A. Holzer, CPA	L
34-63901	In the Matter of Frederick E. Bowers	S
34-63903	In the Matter of Jeffrey R. Glover	S
34-63902	In the Matter of Thomas Faulhaber	S
33-9192	In the Matter of Rajat K. Gupta	L(proceedings dismissed)
34-64126	In the Matter of Joseph A. Dawson	S
AAER3312	In the Matter of Steven Scoppetuolo, CPA	S
33-9261/ 33-9296	In the Matter of Spencer D. Mindlin, et al.	S
Fiscal Year 2012		
FY2012 Civil Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
LR22118	SEC v. M. Jason Hanold	S
LR22140	SEC v. Rajat Gupta, et al.	L
LR22161	SEC v. Mark Konyndyk	S
LR22169	SEC v. Jeffrey S. Richardson	S
None	SEC v. One or More Unknown Purchasers of Common Stock of Jaguar Mining, Inc.	-
LR22180/ LR22194/ LR22508/ LR22897	SEC v. All Know Holdings Ltd., et al.	S/L(Ds moved for summary judgment)
LR22205	SEC v. John R. Easom, et al.	S
LR22223	SEC v. Earl C. Arrowood, et al.	L(parties are ordered to submit a consolidated proposed pretrial order)
LR22221	SEC v. Todd Farha, et al.	L
LR22227	SEC v. Farzin Bazshushtari	S
LR22325/ LR22691	SEC v. Spyridon Adondakis, et al.	S/L
LR22233	SEC v. Dale Shafer, et al.	S
LR22234	SEC v. Robert Ward, et. al.	S
LR22255	SEC v. Brent C. Bankosky	S

LR22257/ LR22653	SEC v. Douglas F. Whitman, et al.	S
LR22261	SEC v. John Kinnucan, et al.	L(Motion for summary judgment)
LR22274	SEC v. William F. Duncan	S
LR22274	SEC v. John M. Williams	S
LR22280/ LR22613	SEC v. Steven J. Harrold	S
LR22288	SEC v. Timothy J. McGee, et al.	S/L(D's motion to dismiss the complaint is denied)
LR22295	SEC v. Noah J. Griggs, Jr.	S
LR22293	SEC v. Sherif Mityas	S
LR22320	SEC v. Siming Yang, et. al.	S/L(Jury verdict in favor of Ds Siming Yang & Prestige Ltd.)
LR22345	SEC v. Kenneth T. Robinson	S
LR22360A	SEC v. Mohammed Mark Armin, et al.	S
LR22357	SEC v. Angela Milliard, et al.	S
LR22367	SEC v. Frank Kynn Blystone	S
LR22372/ LR22726	SEC v. Reema D. Shah, et al.	S/L
LR22374	SEC v. Stephen H. Guth	S
LR22387	SEC v. Charles E. Mazur Jr., et al.	S
LR22401/ LR22834	SEC v. Tai Nguyen	S
LR22413	SEC v. Apparao Mukkamala, et al.	S
LR22419	SEC v. Manouchehr Moshayedi	L(final pretrial conference order)
LR22423	SEC v. Ladislav "Larry" Schwacho	L(Final judgment in favor of Ladislav)
LR22428/ LR22436/ LR22515/ LR22693	SEC v. Well Advantage Limited, et al.	S
LR22433/ LR22754	SEC v. Robert D. Ramnarine	S
LR22434	SEC v. Joseph McVicker	S
LR22451	SEC v. James V. Mazzo, et al.	S/L
LR22455	SEC v. James L. Lieberman	S

LR22458	SEC v. Eric Martin, et al.	-
LR22465	SEC v. C. Roan Berry	S
LR22466	SEC v. Ashley J. Coots	S
LR22467	SEC v. Casey D. Jackson	S
LR22468	SEC v. Thomas D. Melvin, Jr., et al.	-
LR22469	SEC v. R. Jeffrey Rooks	S
LR22471	SEC v. Hyung Lim	L(final judgment in favor of the SEC)
LR22474	SEC v. Arthur H. Reed, et al.	S
None	SEC v. Mark W. Baggett	S
None	SEC v. H. Thomas Davis, Jr.	S
LR22486/ LR22905	SEC v. Waldyr Da Silva Prado Neto	L(default judgment)
None	SEC v. Kenneth F. Wrangell	S
LR22497/ LR22678/ LR22758	SEC v. Jauyo "Jason" Lee, et al.	L(Further case management order)
FY2012 Administrative Case		
Litig. Rel. No.	Case Name	Settle/ Litigated
IA3298	In the Matter of Steven Fortuna	S
34-65596	In the Matter of Arthur J. Cutilo	L
34-65597	In the Matter of Jason C. Goldfarb	L
34-66319	In the Matter of Todd L. Treadway	S
34-67204	In the Matter of Matthew H. Kluger	S
34-67423	In the Matter of Stanley Ng, CPA	S

表 1 2009 至 2012 年 SEC 內線交易執法案件簡表

第二項 執法案件分析

2009 至 2012 年執法案件之整體歸納數據請參考下表：

	FY2009	FY2010	FY2011	FY2012
Civil Actions	31	34	48	52
Administrative Proceedings	6	19	9	6
Total Cases	37	53	57	58

Total Defendants	85	138	126	131
------------------	----	-----	-----	-----

表 2 2009 年至 2012 年間 SEC 提起之「內線交易」執法案件數量表¹³³

若單看上表之總案件數，並無法看出內線交易執法案件佔聯邦證管會整年度所有執法案件之比例為何，因此有必要與各年度聯邦證管會所有的執法案件種類進行比較。如下表所示，內線交易案件於 2009 至 2012 佔總執法案件量約 6~8% 之間。相較於內線交易受矚目之程度，其所佔聯邦證管會總執法案件量之比例是相對比較少的。在此附帶說明，下表中之比例（%）是將民事與行政程序案件數加總之後除以當年度之總案件數而得之。

	FY 2009			FY 2010			FY 2011			FY 2012		
	Civ	Admin	%	Civ	Admin	%	Civ	Admin	%	Civ	Admin	%
Securities Offering	106	35	21%	72	72	21%	82	41	16.7%	73	16	12.1%
Issuer Reporting & Disclosure	68	75	22%	58	68	18%	32	57	12.1%	39	40	10.8%
Investment Advisors/ Companies	29	47	11%	33	80	16%	33	113	19.9%	35	112	20%
Delinquent Filings	0	92	14%	0	106	16%	0	121	16.5%	0	127	17.3%
Broker Dealer	26	83	16%	6	64	10%	7	106	15.4%	7	127	18.3%
Insider Trading	31	6	6%	34	19	8%	48	9	7.8%	52	6	7.9%
Market Manipulation	34	5	6%	24	10	5%	27	8	4.8%	35	11	6.3%
Other	18	9	4.1%	25	10	5.1%	37	14	6.9%	31	23	7.3%
Total	664			681			735			734		

¹³³ U.S. SECURITIES AND EXCHANGE COMMISSION, SELECT SEC AND MARKET DATA FISCAL 2009~ 2012.

表 3 2009 年至 2012 年間 SEC 「總執法案件」種類與數量表¹³⁴

第三項 被告之身分背景與消息種類

內線交易，或可稱作內部人交易，其規範對象除了傳統被認為是公司內部人的董事、經理人與員工外，尚包含從內部人獲得消息之外部人以及因職業關係而獲知消息的專業人士如分析師、律師、會計師等等。本研究首先針對聯邦證管會提起之內線交易執法案件中，被告的身分做調查，藉以觀察何種身分的人時常被聯邦證管會當作內線交易之執法對象。

本研究將案件之被告分為五大類。首先是「公司內部人」(Corporate Insiders)，其中包含了公司董事、經理人以及員工。其次為「準內部人」(Quasi-insiders)，包含了律師、會計師、投資銀行家等因與公司的契約關係或經公司同意而暫時成為公司內部人的專業人士，故又可稱為暫時內部人。第三類則是「金融從業人士」(Financial Professionals)，包含了證券與投資產業界的人士如證券經紀/自營商、基金經理人、證券分析師等等。第四類為「公司」(Company)，其代表的是公司自己交易自己的股票，並因此而被列為被告。最後一類則是「其他」(Others)。另外需注意的是，上述各分類中的被告許多亦可能將內線消息透露給親友，而親友亦利用此消息交易而獲利，故在此情形中，為不法交易之親友亦會被歸入與被告相同之類別¹³⁵。此外，由於一個執法案件可能有多數被告，而其背景亦不盡相同，因此下表中各種身分所對應到的案件數加總可能會多於該年度的總案件數。

	2009	2010	2011	2012
No. of Actions	37	53	57	58

¹³⁴ *Id.*

¹³⁵ 例如公司董事將獲知之內線消息透露給朋友 A，且 A 利用該消息交易而獲利，此時 A 會被歸入公司內部人之類別作計算。

Corporate Insider	18	24	24	31
Quasi-insider	8	11	12	16
Financial Professional	11	22	20	15
Company	0	0	1	0
Others	1	1	6	3

表 4 被告身分背景（單位：案件）

由上表可知，內線交易規範之違反以公司內部人為最大宗，或者至少可認為聯邦證管會將公司內部人列為重點的調查對象。而除了公司內部人之外，金融從業人士亦為內線交易執法的另一個重點¹³⁶。

本研究緊接著調查內線交易執法案件中，被利用或私取之內線消息種類。本研究將內線消息分為五大類。首先第一類是與「企業併購相關，或者涉及公司結構變動的重大交易消息」（M&A and Other Major Transactions）。其次為公司「財務預測或報表相關的消息」（Earnings & Financial Reports）。接著則是與「資本募集相關之消息」（Capital Related）例如公開發行大量新股。第四類則是與「公司營運相關之消息」（Major Events Regarding Business Operation）例如新藥通過測試準備上市。最後一類則是「其他」（Others）。

	2009	2010	2011	2012
M&A and Other Major Transactions	27	30	45	45
Earnings & Financial Reports	3	11	8	9
Capital Related (e.g., Large New Stock Issuance)	3	0	2	2
Major Events Regarding Business Operation	4	8	5	3
Others	2	6	1	1

表 5 內線消息種類（單位：案件）

¹³⁶ 特別值得一提的是，2010 年的 *SEC v. Galleon Management, LP, et al.* 與 2011 年的 *SEC v. Mark Anthony Longoria et al.* 案均涉及多名被告（前者有 21 名被告，而其中 11 名被告亦被刑事起訴；後者則有 11 名被告，其中 8 位被刑事起訴。）而這兩個案子中許多被告均為金融專業人士。由此可知，金融專業人士可說是違反內線交易的高危險群。

藉由觀察上表之數據，可看出哪些消息的利用經常會觸犯內線交易，惟需注意者是，上表所列之消息種類不盡然包括全部的內線交易行為態樣，換言之，我們最多只可得出聯邦證管會將其調查之重點放在哪些內線消息種類之結論而已。明顯地，與企業併購相關或其他涉及公司結構變動的重大交易消息，由於其本質之敏感性，佔了執法案件的大多數。因此，公司必須密切控管此類消息，且格外留意其公布時機，以免觸犯內線交易相關法規。

第四項 案件結果與不法所得之統計

一個執法案件之核心在於其調查、處理之過程以及最後的獲得之結果。許多學者與文獻均指出聯邦證管會通常係與被告達成和解的方式結束一件執法案件¹³⁷，因此本研究希望藉由調查案件結果，以真實數據來驗證學者文獻所述之現象是否確有其根據。

Case Result	2009	2010	2011	2012	total
Settled	30	42	38	38	148
Court Decided without Settlement	4	4	9	10	27
Only Some Defendants Settled	2	6	5	6	19
Data Not Available	1	1	5	4	11
Settled Cases to All Cases with Relevant Information ¹³⁸	83%	81%	73%	70%	76%

表 6 內線交易執法案件之結果（單位：案件）

	2009	2010	2011	2012	total
Total Number of Defendants ¹³⁹	78	119	106	120	423
Number of Settled Defendants	57	97	80	76	310
Settlement Ratio	73%	81%	75%	63%	73%

表 7 和解被告之人數與比例

¹³⁷ See CHOI & PRITCHARD, *supra* note 8, at 190-91. See Also Committee on Federal Regulation of Securities, *Report of the Task Force on SEC Settlements*, 47 BUS. LAW. 1083, 1096 (1992).

¹³⁸ 部分和解案件並未列入計算此比例。

¹³⁹ 不包含連帶被告（Relief Defendants）。

由上列兩表中可明顯看出，確實如學者與文獻所觀察到的現象，案件和解之情形相當普遍。無論是以案件為單位作計算，抑或是以被告為單位計算，其比例均落在70~80%左右。

為了更進一步地了解聯邦證管會對於內線交易之執法，觀察案件所涉及之不法所得數額是另一個有效的方式。誠如下表所示，大多數的內線交易案件，其涉及之不法所得數額均在一百萬美元以下，而多於一百萬美元之案件比例落在9~30%不等。惟透過觀察以下的數據並無法明確得出：（一）聯邦證管會之執法確實有效遏止大規模的內線交易產生，抑或（二）可能由於執法不力而導致無法有效發覺大規模內線交易，這兩種結論。不過若依據邏輯進行推論，由於大部分的內線交易案件所涉及之金額不多，規模並不大，此現象或許在某種程度上增加了聯邦證管會利用和解來解決大多數案件的誘因。

	2009	2010	2011	2012
Cases with Relevant Info	26	30	45	43
Less or Equal to \$100,000	9	10	17	24
\$100,001~\$1,000,000	12	11	18	15
Over \$1,000,000	5	9	10	4
Over \$1,000,000 Cases to All	19%	30%	22%	9%

表 8 內線交易案件之不法所得（單位：案件）

第五項 民事救濟與和解金額之統計

無論是透過行政程序抑或是民事程序，聯邦證管會均可向內線交易案件之被告請求金錢上與非金錢上之救濟。本研究首先調查內線交易案件中，聯邦證管會對於金錢上之救濟，亦即民事罰金（Civil Penalty）¹⁴⁰，之請求結果。

¹⁴⁰ 民事罰金係於不法所得之歸入（Disgorgement）外，額外科以被告之金錢懲罰。

	2009	2010	2011	2012
Cases with Relevant Info	22	22	22	33
Less or Equal to \$100,000	12	15	14	23
\$100,001~\$1,000,000	9	5	5	8
Over \$1,000,000	1	2	3	3

表 9 內線交易案件之民事罰金（單位：案件）

由上表可看出，大多數內線交易案件之民事罰金均少於十萬美元，且僅少數多於一百萬美元，此或許能呼應先前所述之內線交易案件不法所得偏低之情形。

再者，本研究將民事罰金與不法所得進行比較，希望藉由分析兩者間之關係，推測不法所得數額於聯邦證管會請求民事罰金時所扮演之角色。詳參下表：

Civil Penalties/Illicit Profits	2009	2010	2011	2012
Less than one time	6	13	11	20
Equal to one time	21	12	17	31
Between one time and two times	1	1	5	4
Greater than two times	4	6	1	5

表 10 民事罰金與不法所得之關係（單位：被告）

由上表可知，絕大多數案件的民事罰金是少於或等於該案件之不法所得數額的。因此，本研究認為造成此現象之原因可能有二：首先，根據表 8 所示，由於內線交易案件之規模並未如想像中大，因此民事罰金之數額亦不會太高。其次，由於聯邦證管會傾向以和解之方式解決內線交易案件，故為了換取被告之合作，其裁處之民事罰金即會低於法定最高三倍不法所得之數額，藉此提高和解之誘因。

而除了金錢上之救濟外，聯邦證管會亦可利用其他非金錢上救濟來進一步達到其執法之目的。而常見之非金錢上救濟有永久禁制令、禁止擔任董事、經理人、禁止命令、職業懲戒、以及暫時命令。前二者常係於民事程序中向聯邦地方法院法官主張，而後三者則係於行政程序中向行政法官主張。本研究亦針對上述非金錢救濟之使用進

行調查：

Remedy Types/Number of Issuance	2009	2010	2011	2012
Permanent Injunction	55	83	77	76
Director/Manager Bar	3	6	6	15
Cease-and-Desist Order	0	3	0	1
Professional Discipline	14	31	17	16
Temporary Order	0	7	3	3

表 11 非金錢上救濟（單位：次數）

由上表數據可知，在金錢上救濟之外，非金錢救濟其實於聯邦證管會之執法上亦具有其重要性。在各種非金錢救濟種類中，永久禁制令之使用是明顯多於其他類型的。此情形在某種程度上呼應內線交易案件之特色在於多數被告身分背景之特殊性，而藉由這樣的身分建立管道獲取內線消息，並不非法利用內線消息獲利。聯邦證管會欲藉由請求法院核發永久禁制令，禁止被告未來再犯相同的錯。故聯邦證管會請求救濟之目的除了冀望被告對於其不法行為付出代價，另一方面亦在於降低被告未來再犯之風險。

最後本研究亦統計了案件之和解金額。一般來說，和解金額為不法所得之返還額（Disgorgement Amount）、判決前利息（Pre-judgment Interest）與民事罰金之加總。

請參見下表：

	2009	2010	2011	2012
Cases with Relevant Info	22	26	31	36
Less or Equal to \$100,000	6	5	9	12
\$100,001~\$1,000,000	12	13	15	18
Over \$1,000,000	4	8	7	6

表 12 和解金額之統計（單位：案件）

第六項 平行刑事起訴案件

誠如前章第二節第二項第四款所述，聯邦證管會持續將對於內線交易法規有「明知故犯」(Willful Violation)情事之被告轉介至司法部由檢察官進行刑事追訴，希望藉由強而有力的刑事制裁來打擊大規模之內線交易犯罪。故本研究亦針對 2009 至 2012 年間聯邦證管會提起之內線交易執法案件中，被轉介至刑事程序之被告數量進行調查，據此觀察刑事追訴手段的使用程度。

	2009	2010	2011	2012
Total Number of Defendants in SEC Actions	78	119	106	120
Number of Defendants Involved in Parallel Criminal Actions	15	37	33	17
Total Number of Civil Cases	37	53	57	58
Civil Cases involving Parallel Criminal Action	5	17	17	13
% of Civil Defendants involved in Criminal Actions	19%	31%	31%	14%
% of Civil Cases that involves Criminal Actions	14%	32%	30%	22%

表 13 平行刑事起訴 (單位：被告數/案件)

如上表所示，事實上，被移送刑事程序之被告並未如想像中多。其或可歸因於刑事程序之舉證程度本較民事程序為高，抑或內線交易行為之本質即有高度之隱密性，因此，若欲指控被告係明知故犯，於現實上有其困難度存在。針對平行刑事起訴案件之簡表與整理後之刑度表請參見下兩表 (案件細節請參見附錄二)：

Fiscal Year 2009		
Civil Case Name	Defendant	Trial/ Plea
SEC v. Matthew C. Devlin, et al.	Matthew C. Devlin	P
	Jamil A. Bouchareb	P
	Daniel A. Corbin	P
	Frederick E. Bowers	P
	Eric A. Holzer	P

SEC v. Nicos Achilleas Stephanou, et al.	Nicos Achilleas Stephanou	P
	George Paparrizos	P
	Michael G. Koulouroudis	P
	Joseph Contorinis	T
In the Matter of David G. Ghysels, et al.	David G. Ghysels	T
	Kenneth E. Mahaffy, Jr.	T
	Linus N. Nwaigwe	T
SEC v. Carl E. Binette, et al.	Carl E. Binette	T
	Peter E. Talbot	P
SEC v. Melissa A. Mahler	Melissa A. Mahler	P
Fiscal Year 2010		
Civil Case Name	Defendant	Trial/ Plea
In the Matter of Samuel W. Childs, Jr.	Samuel W. Childs	P
In the Matter of Erik R. Franklin	Erik R. Franklin	P
In the Matter of David M. Tavdy	David M. Tavdy	P
SEC v. Galleon Management, LP, et al.	Raj Rajaratnam	T
	Rajiv Goel	P
	Anil Kumar	P
	Roomy Khan	P
	Ali T. Far	P
	Danielle Chiesi	P
	Mark Kurland	P
	Robert Moffat	P
	Ali Hariri	P
	Gautham Shankar	P
	Steven Fortuna	P
SEC v. Stanko J. Grmovsek	Stanko J. Grmovsek	P
SEC v. King Chuen Tang, et al.	King Chuen Tang (Chen Tang)	P
	Zisen Yu	P
	Joseph Seto	P

SEC v. Arthur J. Cutillo, et al.	Arthur J. Cutillo	P
	Jason C. Goldfarb	P
	Zvi Goffer	T
	Craig C. Drimal	P
	David Plate	P
	Emanuel Goffer	T
	Michael Kimelman	T
SEC v. Brien P. Santarlas	Brien P. Santarlas	P
SEC v. Thomas P. Flanagan, et al.	Thomas P. Flanagan	P
SEC v. Vinayak S. Gowrish, et al.	Adnan S. Zaman	P
In the Matter of Ken Okada	Ken Okada	P
SEC v. David R. Slaine	David R. Slaine	P
SEC v. Igor Poteroba, et al.	Igor Poteroba	P
	Aleksey Koval	P
SEC v. Yonni Sebbag, et al.	Yonni Sebbag	P
	Bonnie Jean Hoxie	P
In the Matter of James E. Gansman	James E. Gansman	T
In the Matter of Donna B. Murdoch	Donna B. Murdoch	P
SEC v. Richard A. Hansen, et al.	Richard A. Hansen	P
Fiscal Year 2011		
Civil Case Name	Defendant	Trial/ Plea
SEC v. Dr. Yves M. Benhamou, et al.	Dr. Yves M. Benhamou	P
	Dr. Joseph F. "Chip" Skowron	P
SEC v. Franz N. Tudor	Franz N. Tudor	P
SEC v. Lanexa Management LLC, et al.	Thomas Hardin	P
SEC v. Arnold McClellan, et al.	Annabel McClellan	P
SEC v. Brett A. Cohen, et al.	Brett A. Cohen	P
	Aaron J. Scalia	P
	Stephen J. Scalia	P
	David V. Myers	P
SEC v. George H. Holley, et al.	George H. Holley	P

SEC v. Zizhong Fan, et al.	Zishen Fan	P
SEC v. Adam Smith	Adam Smith	P
SEC v. Michael Cardillo	Michael Cardillo	P
SEC v. Mark Anthony Longoria, et al.	Mark Anthony Longoria	P
	Daniel DeVore	P
	James Fleishman	T
	Bob Nguyen	P
	Winifred Jiau	T
	Walter Shimoon	P
	Donald Longueuil	P
	Jason Pflaum	P
SEC v. Cheng Yi Liang, et al.	Cheng Yi Liang	P
SEC v. Matthew H. Kluger, et al.	Matthew H. Kluger	P
	Garrett D. Bauer	P
SEC v. Donald L. Johnson, et al.	Donald L. Johnson	P
SEC v. H. Clayton Peterson, et al.	Drew Brownstein	P
	Drew Clayton Peterson	P
	H. Clayton Peterson	P
SEC v. Toby G. Scammell	Toby G. Scammell	-
SEC v. Anthony Scolaro	Anthony Scolaro	P
SEC v. Clay Capital Management, LLC, et al.	James F. Turner II	P
	Scott A. Robarge	P
	Scott A. Vollmar	P
Fiscal Year 2012		
Civil Case Name	Defendant	Trial/ Plea
SEC v. Rajat Gupta, et al.	Rajat Gupta	T
SEC v. Spyridon Adondakis, et al.	Spyridon Adondakis	P
	Todd Newman	T
	Anthony Chiasson	T
SEC v. Douglas F. Whitman, et al.	Douglas F. Whitman	T
SEC v. John Kinnucan, et al.	John Kinnucan	P

SEC v. Timothy J. McGee, et al.	Timothy J. McGee	T
SEC v. Sherif Mityas	Sherif Mityas	P
SEC v. Kenneth T. Robinson	Kenneth T. Robinson	P
SEC v. Reema D. Shah, et al.	Reema D. Shah	P
	Robert W. Kwok	P
SEC v. Tai Nguyen	Tai Nguyen	P
In the Matter of Stanley Ng, CPA	Stanley Ng	P
SEC v. Robert D. Ramnarine	Robert D. Ramnarine	P
SEC v. Hyung Lim	Hyung Lim	P
SEC v. Jauyo "Jason" Lee, et al.	Jauyo "Jason" Lee	P
	Victor Chen	P

表 14 平行刑事起訴案件簡表

Sentencing		2009	2010	2011	2012
With jail time	Equals or under 18 months imprisonment (pled)	2(1)	9(8)	4(4)	5(4)
	Over 18 months imprisonment (pled)	4(2)	16(12)	8(6)	6(2)
No jail time	Only probation and/or home confinement (pled)	9(7)	12(12)	13(13)	3(3)
	Time served plus supervise release	0	0	6(6)	0
Sentencing information not available		0	0	2	3

表 15 平行刑事起訴案件之刑度表

第七項 作業時間

本研究亦針對內線交易執法案件所需之作業時間進行調查，藉此觀察執法人員於調查或者主導訴訟之效率為何。以下表格分別呈現 2011 與 2012 年間聯邦證管會執法人員調查與處理內線交易被告之案件所需花費之時間。

	2011	2012
Time from Behavior until SEC File Charges	Number of Defendants	
0 to 12 months	11	16
12 to 36 months	41	37
36 to 60 months	36	52
Over 60 months	9	8

表 16 被告行為發生日至 SEC 起訴之日所需時間（單位：被告）

	2011	2012
Time from SEC File Charges Until Settlement or Final Judgment Date	Number of Defendants	
0 to 3 months	22	58
3 to 12 months	34	3
Over 12 months	18	16

表 17 SEC 起訴之日至案件終結日所需時間（單位：被告）

	2011	2012
Time	Months	
Average Time From Behavior Starts Date Until SEC File Charges	34.8	35.2
Average Time From SEC File Charges Until Settlement or Final Judgment Date	8.0	4.49

表 18 平均花費時間（單位：月）

如表 18 所示，平均來說，調查案件的時間遠比處理訴訟的時間為長。一個可能的說法在於聯邦證管會其實大多在等相關人士檢舉，因而拉長調查時間，並非如想像中倚賴市場監控去發覺違法行為。此外，起訴後案件快速終結之原因應在於執法人員提起訴訟前早已將大多數的證據資料準備齊全，案件事實已無太多爭點，故於爭訟時並不需花費太多力氣便可與被告達成和解，或者透過向法院聲請即決判決（Summary Judgment）的方式，快速取得判決結果。

第八項 其他統計數據

本研究除了自行閱讀聯邦證管會公布之新聞稿，以對於其執法狀況進行相關的統計外，亦希望藉由提供其他資料庫之統計數據來供讀者進行比對分析。首先是 2005 至 2008 年聯邦證管會的執法數據：

	FY2005	FY2006	FY2007	FY2008
Insider Trading Enforcement Actions	50	46	47	61
Total SEC enforcement Actions	630	574	656	671

% of total action	8%	8%	7%	9%
-------------------	----	----	----	----

表 19 2005 年至 2008 年間 SEC 內線交易執法案件佔總案件數之比例表¹⁴¹

將上表與表 2、表 3 互相比較之後，可發現其實聯邦證管會每年對於內線交易執法所佔之比重相對穩定，大概介於 8% 上下。不過聯邦證管會亦可能為了因應當年度整體的社會氛圍對於其執法進行微幅調整，例如 2008 年遇到金融海嘯，因此對於較受社會矚目之內線交易之執法亦有些微的增加。

此外，NERA 亦有針對聯邦證管會的和解進行數據上之統計。NERA 為一經濟顧問公司，其致力於將實證數據應用至商業以及法律領域中。NERA 會定期公布聯邦證管會相關的和解數據報告，供其客戶與大眾研究使用¹⁴²。

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Individual	99	68	93	72	60	74	56	69	63	118
Companies	5	2	3	6	7	2	10	4	5	8
Total	104	70	96	78	67	76	66	73	68	126

表 20 內線交易案件和解被告數量統計(by NERA Economic Consulting)¹⁴³

Number of Settled Defendants	2009	2010	2011	2012	total
NERA's	66	73	68	126	333
Our Survey	57	97	80	76	310

表 21 本研究與 NERA 數據之比較 (2009 年至 2012 年內線交易案件和解被告數量)

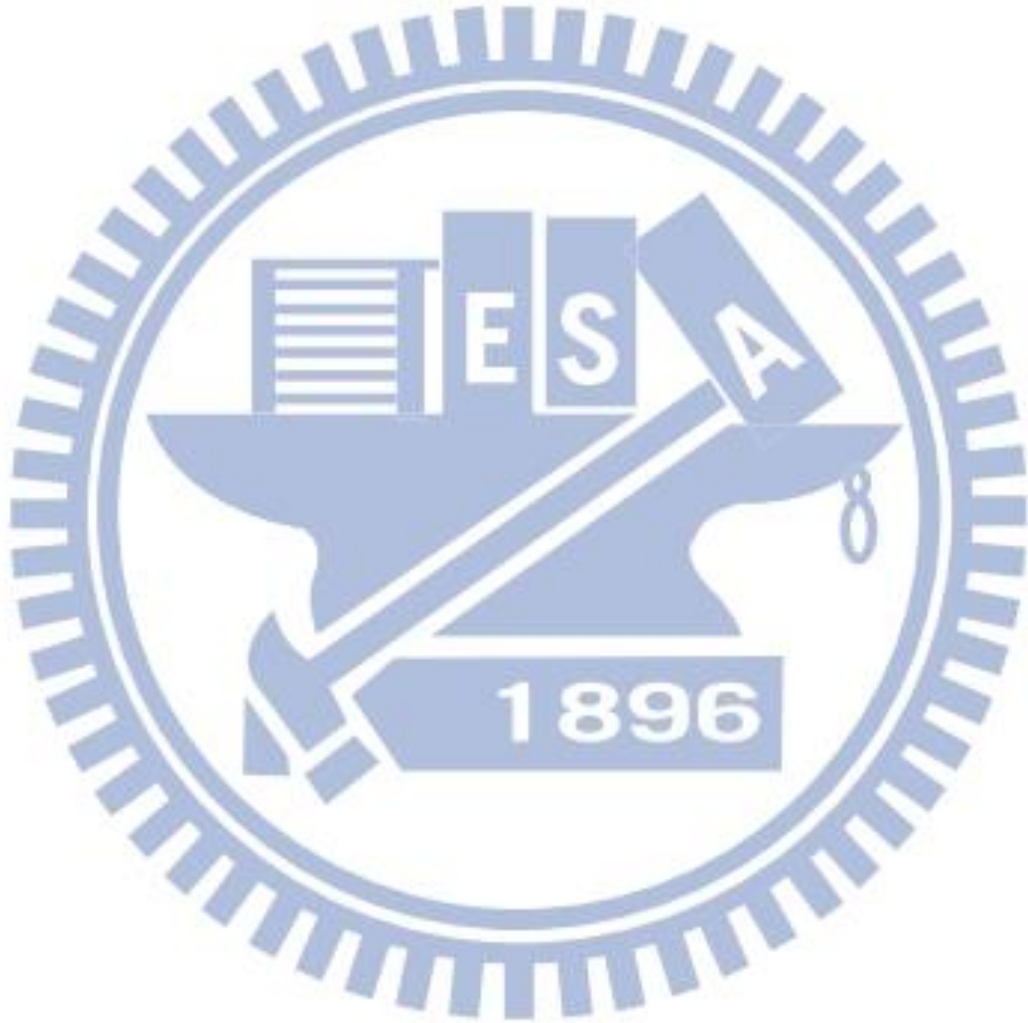
本研究所採用之研究方法大致上與 NERA 蒐集數據之方法相同，均係藉由閱讀

¹⁴¹ U.S. SECURITIES AND EXCHANGE COMMISSION, SELECT SEC AND MARKET DATA FISCAL 2005, available at www.sec.gov/about/secstats2005.pdf; U.S. SECURITIES AND EXCHANGE COMMISSION, SELECT SEC AND MARKET DATA FISCAL 2006, available at www.sec.gov/about/secstats2006.pdf; U.S. SECURITIES AND EXCHANGE COMMISSION, SELECT SEC AND MARKET DATA FISCAL 2007, available at www.sec.gov/about/secstats2007.pdf; U.S. SECURITIES AND EXCHANGE COMMISSION, SELECT SEC AND MARKET DATA FISCAL 2008, available at www.sec.gov/about/secstats2008.pdf.

¹⁴² NERA Economic Consulting, ABOUT NERA, <http://www.nera.com/56.htm> (last visited June 9, 2014).

¹⁴³ NERA ECONOMIC CONSULTING, SEC SETTLEMENT TRENDS: 2H12 UPDATE, available at http://www.securitieslitigationtrends.com/PUB_SEC_Trends_Update_2H12_0113.pdf

聯邦證管會公布之官方新聞稿，以了解各個案件和解之情形。而兩者數據之差異應在於本研究係依據該內線交易案件起訴之年度為標準計算（因此，若一案件係於2009年起訴，於2011年才和解，本研究仍將其歸在2009年的和解案件），反之，NERA是以案件和解之年度為標準計算（因此，2009年的和解案件其起訴年度可能為2007年）。



第四章 實證研究結果分析與討論

第一節 和解於內線交易案件中所扮演之角色

誠如前章第一節第四項所述，聯邦證管會對於大多數的內線交易違法案件，較傾向利用與被告達成和解之方式解決¹⁴⁴。因此本節將針對和解於聯邦證管會內線交易執法中所扮演之角色進行探討。在行政程序中，和解的形式通常是透過由聯邦證管會做成合意命令（Consent Order），經由雙方當事人簽名表示同意之方式為之。而於民事程序，和解的形式是透過法院下合意判決（Consent Decree），通常需由聯邦證管會先行批准，再送至法院給法官核可。總而言之，執法案件中之被告若認為聯邦證管會已掌握其不法行為之充分事證¹⁴⁵，將會嘗試與聯邦證管會達成和解，以尋求較輕微之懲罰，並同時避免額外的訴訟成本。

第一項 為何進行和解？

欲了解為何當事人雙方會採取和解之方式解決紛爭，即須由和解成立對於雙方產生的影響觀察起。首先，對於聯邦證管會而言，尋求被告的合作並與之達成和解，一方面大大降低調查所耗費的資源並同時增進執法效率，另一方面和解亦可節省案件訴訟所耗費的時間，因此有辦法於相同時間內提起更多執法行動¹⁴⁶。另外，對於被告而

¹⁴⁴ 學者指出多數的案件在經過非正式調查階段後便以和解收場。CHOI & PRITCHARD, *supra* note 8, at 196. *See also*, COX ET AL., *supra* note 2, at 803 (“Most SEC enforcement proceedings (over 90 percent) are settled, not litigated”). 此外，亦可於 1980 與 1990 年代之文獻發現類似之觀察。*See* Committee on Federal Regulation of Securities, *supra* note 137, at 1104 (“As is the case with judicial proceedings, the majority of administrative proceedings traditionally are settled prior to any evidential hearing or other adjudication of any matter of fact or issue of law”).

¹⁴⁵ 通常約為優勢證據之程度（大於 50%）。

¹⁴⁶ 例如在一個早期的報告中指出，聯邦證管會在 2007 年以前，平均一年提起約 600 至 700 個執法行動。因此因應如此情況，勢必將以大量和解的方式來消化如此龐大的案件量。*Proceedings of the 2007 Midwest Securities Law Institute*, 8 J. BUS. & SEC. L. 59, 98 (2007).

言，與聯邦證管會達成和解，不僅有機會獲得較輕之懲罰，亦可透過與執法人員協調，積極參與決定形成之過程，為自己的案件爭取到理想的結果，進而避免逕行訴訟所可能產生之不利結果。因此，基於以上兩點，不難理解為何和解的使用相對於其他管制手段來說是較為普遍的。

Choi 與 Pritchard 教授更進一步地於其所撰寫之教科書中羅列了被告傾向與聯邦證管會和解的四個原因¹⁴⁷，亦即被告欲藉由和解來避免：（一）因長年纏訟而對其聲譽的持續傷害。（二）訴訟花費之鉅大成本。（三）可能被轉介至司法部進行刑事追訴。（四）不利判決所帶來的禁反言效果。此外，其他文獻中亦有針對被告與聯邦證管會對於和解所採取之態度進行類似之討論¹⁴⁸。

和解的大量使用無疑反映出幾項事實上的假設：（一）訴訟之成本相對高昂。（二）敗訴所帶來的嚴厲懲罰（相對於和解而言）。（三）聯邦證管會的勝訴機率較高¹⁴⁹。正因被告與聯邦證管會均承認且同意前述假設的存在，因此雙方才有機會以合意之方式協調案件結果，最後達成和解。

第二項 聯邦證管會於和解時所考量之因素

聯邦證管會於執法手冊中列出四項與被告和解時所可能評估之因素¹⁵⁰：

（一）個人對於聯邦證管會之調查所提供之幫助

（二）案件之重要程度（如不法行為之嚴重性、所造成之損害多寡）

¹⁴⁷ CHOI & PRITCHARD, *supra* note 8, at 191.

¹⁴⁸ See COX ET AL., *supra* note 2, at 803.

¹⁴⁹ 舉例而言，一位 SEC 官員在某次會議討論中提及 2003 至 2007 年間，SEC 行政程序的勝訴率介於 72%~92% 之間。Proceedings of the 2007 Midwest Securities Law Institute Symposium, *supra* note 146, at 98 (Comment from an SEC branch officer).

¹⁵⁰ 17 C.F.R. § 202.12. See also SEC ENFORCEMENT MANUAL § 6.1.1.

(三) 將行為人繩之以法所伴隨之公共利益

(四) 行為人過去之形象與記錄（用以評價被告的協助所帶來之價值）

對於聯邦證管會而言，和解之前提應建立於其對於不法行為本身之懲罰已經足夠，並且同時得以對於未來之犯行產生嚇阻效果。但儘管如此，聯邦證管會仍舊會為了維護特定法律的原則而選擇進入法院訴訟，不接受與被告和解¹⁵¹。

第三項 評論

大量使用和解的方式處理證券不法案件難免會遭受許多挑戰與批評。首先，聯邦證管會為了與被告達成合意，可能會傾向以低於最重懲罰的方式來增加被告合作的誘因，如此將產生被告無法就其不法行為負擔完全責任之疑慮。換言之，正因和解的本質，使得「提供足夠的誘因使被告合作」與「課予被告完全之責任」兩者之間存在著緊張的拉扯關係，進而使手段與目的之間的界線日益模糊。

再者，如何正確評估和解的內容¹⁵²，事實上是個非常困難的問題。每個案件中雙方所持有的談判籌碼並不相同，因此和解的結果容易因為案件情況之不同而產生扭曲而失真。換言之，在較具爭議的案件中，由於當事人雙方對於案件的把握度並不高，此時若逕行和解，最後可能會因案件性質的不同¹⁵³，而造成對於被告之懲罰事實上過於輕微，或者過於嚴厲兩種迥然不同的結果。尤其當司法無法完全介入審查，或者審查時並未掌握完整事證時，對於和解結果正確性之評估所可能產生的問題顯得更加明顯。

¹⁵¹ Committee on Federal Regulation of Securities, *supra* note 137, at 1093.

¹⁵² 亦即在「被告提供之協助」，以及「減輕懲罰之程度」兩者之間去衡量。

¹⁵³ 有些案子可能被告實際上佔優勢，如果進入法院訴訟可能可以因此而無罪，但此時若逕行和解，容易有過度懲罰之疑慮。反之，若聯邦證管會實際上佔有優勢，若進入訴訟可能可以尋求較重之懲罰，則此時若逕行和解，會有懲罰不足之疑慮。

最後，不同被告之間在談判能力（Bargaining Power）上的落差，亦可能對於和解的結果產生影響。愈具權勢或財力之被告，往往可能因此獲得較輕之懲罰，此與懲罰白領犯罪之宗旨背道而馳，因其目的是希望消除階級所帶來之影響，獨立評價不法行為所應擔負之責任。此外，聯邦證管會與被告之間亦存在談判能力的落差，進而扭曲和解的本質。由於前者握有政府資源，因此相對於被告來說，在談判上較具優勢，故和解之結果多半可能對於被告較為不利。因此 Johnson 教授指出¹⁵⁴，傳統上私人間和解通常是經由談判能力相當之兩造，藉由反覆磋商後而達成協議，而和解之效力僅及於當事人雙方。反觀被告與政府部門間之和解，通常係後者佔盡優勢，且和解之效力通常可能對當事人以外之第三者產生影響¹⁵⁵。而另一方面，聯邦證管會傳統上被賦予應秉持者維護公眾利益態度執法的期待，惟 Johnson 教授認為事實上聯邦證管會於和解的考量因素中，對於自身利益的考量是多於公眾利益的¹⁵⁶。

第四項 反思

1992 年美國律師協會（American Bar Association）中的民事訴訟與聯邦證管會執法事項附屬委員會（Civil Litigation and SEC Enforcement Matters Subcommittee）組成了一個專案小組，去檢視聯邦證管會歷年來的和解情形，並針對與和解相關之背景事項做出說明¹⁵⁷。該報告中提及，在 1990 年間聯邦證管會收到了 52,000 件投資人的投訴，相較於 1982 年著實增加了 290%¹⁵⁸。並且於同年開啟了 1,218 件待調查案件（Matter

¹⁵⁴ See generally Danne L. Johnson, *SEC Settlement: Agency Self-interest or Public Interest*, 12 FORDHAM J. CORP. & FIN. L. 627 (2007).

¹⁵⁵ 例如在 *In re Maury* 與 *In re Runge* 兩個和解的行政程序案件中，聯邦證管會認為中階公司經理人不能完全聽命上級所下之指令，而應適時自行判斷上級所下之指令是否合法。而這樣的見解亦被日後相類似的和解案件當作前案遵循。See *id.* at 653-55.

¹⁵⁶ See *id.* at 669-70.

¹⁵⁷ Committee on Federal Regulation of Securities, *supra* note 137.

¹⁵⁸ *Id.* at 1095.

Under Inquiry, MUI)，相較於 1987 年增加了 30%¹⁵⁹。此外，聯邦證管會於 1990 年新啟動了 362 件調查，將待決之調查案件量提升至 1,152 件¹⁶⁰。另一方面，觀察本研究之表二與表十六，可發現聯邦證管會所提起之總執法案件量亦逐年攀升。

藉由分析以上數據，本研究做出兩項推論。首先，觀察 1990 年間投資人的投訴量與聯邦證管會開啟之待調查案件量的巨大差異，可發現聯邦證管會在案件執法上賦予了執法人員更多的裁量權，以因應逐年攀升的案件量。其次，和解是否是一個值得信賴的執法手段，關鍵在於執法者是否能仔細評估該案件所涉及之種種因素，以及可能產生之影響。換言之，若聯邦證管會得以持續對和解案件做出明智的判斷與決定，則此時應認為和解的使用是利大於弊的。據此，大量地使用和解來處理案件，必須仰賴眾多的事實環境背景的相互運作，包括執法機關對於執法案件調查與評估的效率與品質，以及所需處理的案件量多寡等等，並無法純從理論上加以評價是好是壞。故，若由比較法之觀點切入探討，欲判斷一個國家是否適合使用大量的和解來處理證券不法案件，其關鍵應在於該國證券執法機關的品質，尤其在於其是否具備足夠之專業性與獨立性去建立一套完整的和解機制。

第二節 平行刑事程序相關問題之探討

第一項 證券法規架構下之理想懲罰

誠如前述¹⁶¹，如內線交易行為等對於證券法有重大明知故犯之情形，均可利用刑事制裁對犯罪行為人加以懲罰。理論上，由於通常此種犯罪行為人通常係覬覦詐欺行

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ 本文第二章第二節第二項第四款。

為所可能帶來的龐大金錢報償，因此有必要利用嚴刑峻罰之威脅來嚇阻此等犯罪¹⁶²。然而，事實上學者對於例如內線交易此類之證券詐欺行為，到底應於何種程度時利用民事抑或是刑事程序追訴，其中的分界點在哪，眾說紛紜。此外，相對於前節第三項所述，和解的使用可能無法課予被告完全責任之疑慮，許多刑法學者卻對於使用刑罰來懲罰白領犯罪之妥適性提出質疑¹⁶³。如此兩極的見解，正反映出使用刑罰來制裁違反證券法之行為，如內線交易，此等議題的高度敏感性。

第二項 民事與刑事程序並行所可能產生之問題

姑且先將使用刑事程序制裁證券詐欺是否妥適的問題撇開不論，事實上聯邦證管會之民事程序與司法部之刑事程序之間早已存在許多互動，其中主要包括了調查資源與人力之間的分享。不可諱言地，民事程序與刑事程序之間存有本質上的不同，因此在兩種程序間互通有無之下，已產生一些問題值得我們仔細去探究。

首先第一個問題，針對同一違法行為而進行兩種追訴程序，容易產生是否違反美國憲法第五修正案之「一事不二罰」條款¹⁶⁴的疑慮。理論上來說，當民事罰金高於一定之限度後，即可能產生刑事懲罰之效果，進而落入一事不二罰條款之規範範圍¹⁶⁵。

¹⁶² CHOI & PRITCHARD, *supra* note 8, at 230.

¹⁶³ 許多學者對於白領犯罪使用刑事制裁之理提出看法。See generally, Geraldine Szott Moohr, *The Balance among Corporate Criminal Liability, Private Civil Suits, and Regulatory Enforcement*, 46 AM. CRIM. L. REV. 1459 (2009); Ellen S. Podgor, *Overcriminalization: The Politics of Crime*, 54 AM. U. L. REV. 541 (2005); 另外亦有文章指出美國司法部在對公司施加刑事制裁上採取之態度是相當謹慎與保守的，而刑事制裁之使用往往是肇因於執法高層之民粹思想。Darryl K. Brown, *The Problematic and Faintly Promising Dynamics of Corporate Crime Enforcement*, 1 OHIO ST. J. CRIM. L. 521, 544 (2004). 惟仍有學者指出使用嚴刑峻罰來制裁白領犯罪之行為人目的在於貶損其身分地位。JAMES WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* 43-49 (2003).

¹⁶⁴ U.S. CONST. amend. V (“nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb”).

¹⁶⁵ 在公民詐欺索賠法（Civil False Claim Act）的框架下，一則重要的聯邦最高法院判決指出，當裁處之民事罰金已明顯與回復損害的原意背道而馳時，將會構成一事不二罰原則的違反。See *United States v. Halper*, 490 U.S. 435 (1989).

然而，於 *Hudson v. United States* 案¹⁶⁶當中，聯邦最高法院針對此問題提出見解認為當國會立法時，將相關條文中註明罰金的民事（Civil）性質時，即不會有刑罰的效果，因此不會違反一事不二罰之原則¹⁶⁷。依據相同的脈絡，在 2007 年 *United States v. Van Waeyenberghe* 案¹⁶⁸中，處理到的正是聯邦證管會提起民事訴訟後，又產生另一刑事起訴的問題。聯邦第二巡迴上訴法院認同下級法院所做出的刑事判決，進而駁斥掉被告一事不二罰的抗辯。亦即，當沒有明確證據證明民事裁罰過於嚴苛而導致其具有刑罰之本質時，法院傾向尊重國會立法之原意與授權¹⁶⁹。換言之，在處理違反證券法之案件時，聯邦證管會之民事程序與司法部之刑事程序兩者之間，其法律上的本質並不相同，因此兩程序並行不會構成一事不二罰原則之違反。

民事與刑事程序並行，且互相分享調查資源，所可能帶來的第二個問題在於是否牴觸美國憲法第五修正案其中關於被告不自證己罪之規定¹⁷⁰。原因在於刑事程序中，被告所享有之程序保障本較民事程序周全，因此假如被告於聯邦證管會所提起之民事程序中做出對自己不利之證詞，而在日後該被告亦被移送至司法部進行刑事追訴，且檢察官亦以聯邦證管會執法人員所調查取得之證詞作為其入被告於罪之依據時¹⁷¹，法

¹⁶⁶ 522 U.S. 93 (1997).

¹⁶⁷ *Id.* at 94. 在 *Hudson* 案中，聯邦最高法院引述 *United States v. Ward* 與 *Kennedy v. Mendoza-Martinez* 兩案中的測試，並列出判斷一項制裁是否具刑罰性質的考量因素。其中包含：(1) “[w]hether the sanction involves an affirmative disability or restraint”; (2) “whether it has historically been regarded as a punishment”; (3) “whether it comes into play only on a finding of scienter”; (4) “whether its operation will promote the traditional aims of punishment-retribution and deterrence”; (5) “whether the behavior to which it applies is already a crime”; (6) “whether an alternative purpose to which it may rationally be connected is assignable for it”; and (7) “whether it appears *100 excessive in relation to the alternative purpose assigned.” It is important to note, however, that “these factors must be considered in relation to the statute on its face.” *Id.* at 99-100.

¹⁶⁸ 481 F.3d 951 (7th Cir.2007).

¹⁶⁹ 522 U.S. 93, 94 (1997).

¹⁷⁰ U.S. CONST. amend. V (“...nor shall be compelled in any criminal case to be a witness against himself,...”).

¹⁷¹ 例如聯邦證管會於正式調查階段得以核發傳票予當事人，強制其作證（且若被告違背命令時來附帶藐視法庭之法律上效力），此時便可能有違反不自證己罪原則之疑慮。

院是否應採認此證詞之效力呢？另一方面，即使被告得以於民事程序中主張不自證己罪之特權而行使拒絕證言權，然而由於聯邦證管會始終掌有是否將被告移送司法部進行刑事追訴之權力，因此事實上被告仍然沒有太多選擇的餘地。

為了因應上述的問題所產生之疑慮，聯邦證管會於其作業規則（Rule of Practice）中採納了一項較為折衷之方式，透過給予民事調查程序中之受調查對象準刑事程序之保障（Quasi-Criminal Procedural Protection），使民事調查程序中所得之事證得以於刑事程序中使用，避免重複調查而造成資源的浪費。舉例而言，於正式調查程序中，當證人被強制要求提供事證時，有權利要求律師陪同¹⁷²，並且若提供之事證有任何可能將入自己於罪時，亦享有合理交互詰問以及抗辯之權利¹⁷³。如此一來，在經過證人具結¹⁷⁴，並提供上述之程序保障後，於民事調查程序中所取得之事證即可於刑事程序中被使用。此外，受調查對象仍可於執法人員調查詢問時，主張不自證己罪之特權而拒絕證言¹⁷⁵，惟如此一來可能會招致不利後果¹⁷⁶。

然而，即使聯邦證管會已採取相關措施來降低雙重程序並行所可能產生之問題，仍然還是無法完全掩蓋民事程序之保障仍舊比刑事程序來得低的事實¹⁷⁷。因此實務上，在民刑程序並行之情況下，聯邦證管會通常會向法院聲請停止其民事程序，待刑事程

¹⁷² 17 C.F.R. § 203.7(a), (b), (c).

¹⁷³ 17 C.F.R. § 203.7(d).

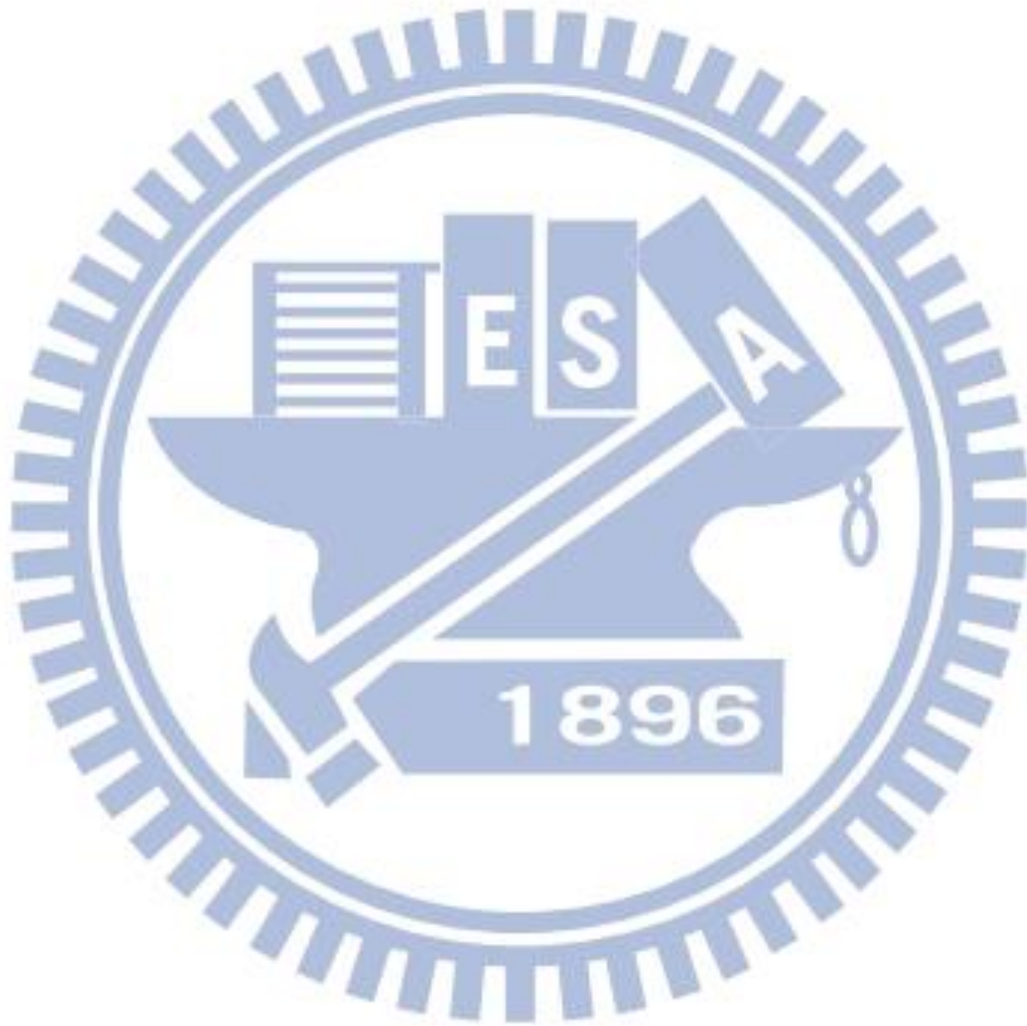
¹⁷⁴ 17 C.F.R. § 203.4(a)

¹⁷⁵ CHOI & PRITCHARD, *supra* note 8, at 200.

¹⁷⁶ *Id.*

¹⁷⁷ 事實上在 *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368 (D.C. Cir.), *cert. denied*, 449 U.S. 993 (1980), 法院明確指出若民、刑兩個訴訟程序並行，而非刑事程序不停止所可能引發之問題。（“The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case.”）*Id.* at 1376. 但本案法院亦提到，若不停止非刑事程序並不會損及公眾利益的話，則法院可自行決定是否停止該非刑事程序。*Id.*

序結束後再續行訴訟¹⁷⁸。而此方式亦有好處，聯邦證管會可以依據司法部所獲得之刑事勝訴判決，向民事法院主張爭點效（Collateral Estoppel），進而獲勝¹⁷⁹。若被告於刑事程序獲無罪判決，則聯邦證管會亦可繼續行民事訴訟，原因在於民事程序所負之舉證責任較刑事程序來得低¹⁸⁰。



¹⁷⁸ CHOI & PRITCHARD, *supra* note 8, at 207. See also Seymour Glanzer et al., *The Use of the Fifth Amendment in SEC Investigations*, 41 WASH. & LEE L. REV. 895, 920 (1984).

¹⁷⁹ HAZEN, *supra* note 99, § 16.2[8].

¹⁸⁰ 民事程序之舉證責任僅為優勢證據之程度（Preponderance of Evidence）而非如刑事程序的超越合理懷疑之程度（Beyond a Reasonable Doubt）。同理，反過來說，刑事程序無法利用民事勝訴判決主張爭點效，原因亦在於兩種程序舉證責任程度之差異。

第五章 結論

長久以來，各國一直積極找尋能有效打擊證券詐欺犯罪的方法，目的在於建立一個安全有秩序之證券市場，使投資人放心大膽地投資。因此各國證券主管機關無不希望藉由制定良好之證券法規，促使公司資訊透明化，市場參與者亦能各盡其責，進而塑造值得信賴之投資環境，促進整體經濟的發展。而除了具有良好的證券法規範外，能有效的執法亦為維繫證券市場完整性不可或缺之因素之一。畢竟，即使有了最好的法規，若無有效的執法亦是枉然。

隨著時代的邁進，證券市場的變化亦日趨複雜，交易模式日新月異。證券主管機關如何與時俱進，建立一套靈活有彈性且同時有效率之執法機制，以因應各種挑戰，是非常值得各國去思考的。

本研究透過介紹美國對於證券法規之執法，特別是其證券主管機關—聯邦證券管理委員會—之執法架構，一步步勾勒出美國的執法現況，而其中重要的特色之一在於其採行多元的執法架構。在政府端，除了聯邦證管會主導之民事與行政程序外，對於較為嚴重之證券犯罪亦可移送至司法部進行刑事追訴，以對被告產生警惕作用。而私人亦可利用團體訴訟之方式向被告提起損害賠償訴訟。如此多元之執法手段，其優點在於主管機關可因案制宜，就案件本身性質差異性、其所涉及行為之嚴重性進行評估後，選擇適當之方式處理，避免大大小小案子均採行相同程序所可能產生之不效率。惟，採行多元手段之疑慮在於，若主管機關對於不同程序發動之標準不一致，容易造成法的不安定性，使行為人無法預見其行為可能產生之後果。因此，欲使用多元執法手段之國家，必須保持證券主管機關與證券市場參與者溝通管道之暢通，藉由互相表達各自的立場，逐漸形成執法上的共識。

美國另外一項特色在於主導證券執法之聯邦證管會具有高度的專業性，並同時具有實質權力進行執法。透過獨立機關的編制，聯邦證管會享有一定程度之行政權、準立法權與準司法權可供行使，轄下並設有各個部門與辦公室分工協調，對於證券市場不同領域進行監管。此外，對於案件之調查聯邦證管會亦建立一套嚴謹之調查程序，不僅對於當事人權利提供適度之保障，亦同時考量到公共利益之維護。誠如本研究先前所述，聯邦證管會之執法無可避免地會涉及利益衝突時的衡量，因此若能確保執法之程序公平性，則當事人理應尊重最終的執法結果。

最後，本研究藉由研讀聯邦證管會對於內線交易執法案件之內容，彙整相關數據，描繪出 2009 年至 2012 年執法的圖像。此舉不僅得以了解內線交易案件所涉及之人（被告）、事（消息種類）、時（作業時間）、地（利用何種訴訟程序）、物（裁罰內容），種種面向，亦可由案件之結果歸納出其執法的特色，進而分析其妥適性。透過本研究之實證數據可發現，大量使用和解與對於民事程序的依賴是聯邦證管會執法的一大特色。而大量使用和解重要的爭議點在於如何在「使被告對其行為負擔全責」與「快速且有效率地終結案件」兩者之間達到一個適度的平衡。因此，欲探究和解是否為處理證券詐欺案件（特別是內線交易案件）理想的方式，其答案並非單純的是與否，重點應在於除了具有完善的證券法規外，背後之執法層面上有無建立制度性的配套，以因應可能產生的種種問題與挑戰。

參考文獻

中文書籍

曾宛如，《證券交易法原理》，6版，元照出版，台北（2012）。

劉連煜，《新證券交易法實例研習》，10版，元照出版，台北（2012）。

賴英照，《股市遊戲規則：最新證券交易法解析》，2版，自刊，台北（2011）。

中文期刊

余雪明、余慕德，〈證券交易法近年修法之回顧與前瞻〉，《月旦法學雜誌》，200期，
頁148-180。

賴英照，〈美國聯邦證券管理委員會之研究〉，《中興法學》，19期，頁283-363。

英文書籍

CHOI, STEPHEN J. & A.C. PRITCHARD, SECURITIES REGULATION: CASES AND ANALYSIS
(Foundation Press, 2d ed. 2008).

COX ET AL., JAMES D., SECURITIES REGULATION: CASES AND MATERIALS 879 (5th ed. 2006).

HAZEN, THOMAS LEE, TREATISE ON THE LAW OF SECURITIES REGULATION.

SHAVELL, STEVEN, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW (2004).

Sturc et al., John H., *SEC Investigations and Enforcement Actions, in SECURITIES LITIGATION:
A PRACTITIONER'S GUIDE* (Jonathan C. Dickey ed., 2006).

WHITMAN, JAMES, HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE
BETWEEN AMERICA AND EUROPE (2003).

英文期刊

- Atkins, Paul S. & Bradley J. Bondi, *Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program*, 13 FORDHAM J. CORP. & FIN. L. 367 (2008).
- Bhattacharya, Utpal & Hazem Daouk, *The World Price of Insider Trading*, 52 J. FIN. 75 (2002).
- Brown, Darryl K., *The Problematic and Faintly Promising Dynamics of Corporate Crime Enforcement*, 1 OHIO ST. J. CRIM. L. 521 (2004).
- Committee on Federal Regulation of Securities, *Report of the Task Force on SEC Settlements*, 47 BUS. LAW. 1083 (1992).
- Glanzer et al., Seymour, *The Use of the Fifth Amendment in SEC Investigations*, 41 WASH. & LEE L. REV. 895 (1984).
- Johnson, Danne L., *SEC Settlement: Agency Self-interest or Public Interest*, 12 FORDHAM J. CORP. & FIN. L. 627 (2007).
- McLucas et al., William R., *A Practitioner's Guide to the SEC Investigative and Enforcement Process*, 70 TEMPLE L. REV. 53 (1997).
- Moohr, Geraldine Szott, *The Balance among Corporate Criminal Liability, Private Civil Suits, and Regulatory Enforcement*, 46 AM. CRIM. L. REV. 1459 (2009).
- Podgor, Ellen S., *Overcriminalization: The Politics of Crime*, 54 AM. U. L. REV. 541 (2005).
- Proceedings of the 2007 Midwest Securities Law Institute*, 8 J. BUS. & SEC. L. 59 (2007).
- Rose, Amanda M., *Reforming Securities Litigation Reform: Restructuring the Relationship*

Between Public and Private Enforcement of Rule 10B-5, 108 COLUM. L. REV. 1301
(2008).

其他英文參考資料

L. HILTON FOSTER, INSIDER TRADING INVESTIGATIONS, *available at*

http://www.sec.gov/about/offices/oia/oia_enforce/foster.pdf.

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and

Commission Statement on the Relationship of Cooperation to Agency Enforcement

Decisions, Exchange Act Release No. 44,969, 76 SEC Docket 220 (Oct. 23, 2001),

available at <http://www.sec.gov/litigation/investreport/34-44969.htm>.



附錄一 2009 至 2012 年 SEC 內線交易執法案件總覽

Fiscal Year 2009						
Civil Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/Litigated	Settlement Amount/Civil Penalty	Other Sanc.
LR20774	SEC v. Francis Elias Axiq, et al.	4	Trading on the non-public M&A information tips received from one of the defendants	S	\$1,357,252/ \$382,398	P
LR20784	SEC v. Brian D. Ladin, et al.	1	Ladin, on the basis of the material, non-public PIPE information, presented an investment in Radyne to Bonanza, resulting in Bonanza establishing a 100,000 share short position in Radyne stock	S	\$647,427/ \$317,000	P
LR20789	SEC v. Brett C. Maas	1	Trading in the stock of Michigan-based Manatron, Inc., prior to the announcement of its pending acquisition by Chicago-based Thoma Cressey Bravo	S	\$88,615/ \$29,538	P
LR20805A	SEC v. Jonathan Wilson	1	Misappropriated material, non-public information from McKesson about its planned acquisition of D&K through a tender offer and purchased shares of D&K	S	117,046/ \$0	P

LR20810	SEC v. Mark Cuban	1	Trade on the basis of material, non-public information concerning an impending PIPE (private investment in public equity) offering by the company	L (Jury found not liable)	-	-
LR20831/ LR21854/ LR22700/ LR22734	SEC v. Matthew C. Devlin, et al.	9	Matthew Devlin traded on and tipped at least four of his clients and friends with inside information about 13 impending corporate transactions	S	-	-
LR20863A	SEC v. Aaron S. Cooksey	1	Misappropriated the information when he purchased SigmaTel stock before Freescale publicly announced the deal	S	\$47,988/ \$23,552	P
LR20884	SEC v. Ramesh Chakrapani	1	Tipped another friend, also an industry professional, with material nonpublic information about the ABS acquisition he learned as a result of his employment	-	-	-
LR20884	SEC v. Nicos Achilleas Stephanou, et al.	7	Two mergers and acquisitions professionals tipped five individuals with material nonpublic information about three impending corporate acquisitions	S/L	-	P/PD
LR20953A	SEC v. Michael Biello	1	Unlawfully traded in ACR Group's securities when he tipped his brother in advance of the July 5, 2007 public announcement that Watsco, Inc., a New York Stock Exchange issuer, would acquire ACR Group's outstanding common stock in a tender offer	S	\$12,668/ \$6,036	P
LR21005	SEC v. William M. Gallahair	1	Misappropriated material, non-public information from McKesson about its planned acquisition of D&K through a tender offer, and placed orders to sell all of his shares of D&K stock on the day of McKesson's announcement	S	\$272,239/ \$120,170	P
LR21015	SEC v. Matthew J. Browne	1	Browne breached duties of trust and confidence owed to his client and the law firm by secretly trading on the non-public information	S	\$165,052/ \$81,773	P

LR21020	SEC v. Maher F. Kara, et al.	6	Maheer Kara repeatedly tipped his brother (Michael Kara) about upcoming merger deals in an insider trading scheme that involved friends and family throughout Northern California and the Midwest	L	-	-
LR21020	SEC v. Joseph Azar	1	Trade on Michael Kara's tip	S	\$271,698/ \$126,998	P
LR21020	SEC v. Nasser Mardini	1	Encourages others to trade on Michael Kara's tip and receive personal benefits	S	-	P
LR21023	SEC v. Jon-Paul Rorech, et al.	2	Defendants engaged in insider trading in the credit default swaps of VNU N.V., an international holding company that owns Nielsen Media and other media businesses	L	-	-
LR21069	SEC v. Tajyar, et al.	4	One of the defendants repeatedly misappropriating confidential information about public announcement from firm clients and tipping his current employer and former colleague, who traded on that information and tipped others.	S	-	P/D
LR21072	SEC v. Robert L. Hollier, et al.	2	Involves insider trading in the securities of Warrior Energy Services Corporation ("Warrior Energy") by Dupuis, who received tips directly or indirectly from Hollier, a member of Warrior Energy's board of directors	S	\$147,977/ \$41,800	P
LR21079/ LR21376/ LR21807	SEC v. Phillip MacDonald, et al.	3	Defendants engaged in insider tipping and trading in the securities of several companies ahead of public announcements of business combinations. One of the business combinations involved a tender offer.	S	\$1,947,502/ \$0	P
LR21132/ LR22282a	SEC v. Kevan D. Acord, et al.	6	Six individuals illegally trade in the securities of Neff Corporation before an April 7, 2005, announcement of its acquisition	S/L	\$814,980/ \$78,394	P

LR21133	SEC v. Anthony Perez and et al.	2	Defendants either tipped or purchased securities of Safeco Corp. in advance of the April 23, 2008 announcement that it was being acquired by Liberty Mutual Insurance Company	S	\$330,223/ \$25,000	P
LR21133	SEC v. Math J. Hipp, Jr.	1	Hipp misappropriated material, non-public information about a potential sale of Safeco from his wife who was the executive assistant to Safeco's Executive Vice President of Insurance Operations	S	\$239,770/ \$118,245	P
LR21133/ LR21698/ LR22029	SEC v. Carl E. Binette, et al.	2	Defendants either tipped or purchased securities of Safeco Corp. in advance of the April 23, 2008 announcement that it was being acquired by Liberty Mutual	S	\$2,536,235/ \$3,690,000	P
LR21140	SEC v. Andres Leyva	1	Trading on the basis of confidential information about Qualcomm's new licensing agreement with Nokia and the settlement of all litigation between the companies	S	\$70,850/ \$34,740	P
LR21154/ LR21559	SEC v. Khaled Mohammed Sharif Al Sayed Al Hashemi	1	Unlawfully trading in advance of the merger announcement	S	\$875,000/ \$406,620	P
LR21183	SEC v. Nancy Jewell, et al.	3	Defendants each misappropriated the inside information(acquisition) from the Director by purchasing First Indiana common stock on the basis of the information	S	\$54,604/ \$25,926	P
LR21192	SEC v. Sarath B. Gangavarapu	1	Misappropriated material non-public information from his sister, whose husband was an executive officer at Covansys Corporation	S	\$769,931/ \$361,762	P
LR21201	SEC v. Jeff L. Soisson, et al.	2	Soisson and Walker, who are married, engaged in unlawful insider trading in the securities of i2 Technologies, Inc.	S	\$330,422/ \$163,224	P
LR21209	SEC v. Allen W. Moss	1	Engaged in unlawful trading in the securities of Callon Petroleum Company (Callon Petroleum) on the basis of material nonpublic information obtained from his girlfriend	S	\$152,891/ \$75,400	P

LR21221/ LR21360	SEC v. Reza Saleh, et al.	1	Made increasingly large purchases of Perot Systems call options contracts based on material, non-public information that he learned in the course of his employment	S	-	P/PD
None	SEC v. Melissa A. Mahler	1	Traded on material, nonpublic information in breach of her duty of loyalty and confidentiality	S	\$13,792/ \$5,800	P
Administrative Cases						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/ Litigated	Settlement Amount/ Civil Penalty	Other Sanc.
34-59240	In the Matter of Kevin J. Heron	1	Repeatedly engaged in insider trading by purchasing and/or selling Amkor securities prior to five Amkor public announcements relating to earnings results or company business transactions	S	-	PD
34-59367	In the Matter of Hafiz Naseem	1	Misappropriated material, non-public information concerning pending merger activity and repeatedly tipped a Pakistani banker, who traded on that information for his and Naseem's benefit	S	-	PD
34-59568	In the Matter of Matthew E. Kopsky	1	Kopsky purchased ESSi securities for himself and his clients based on material, nonpublic information received from Davis	S	-	PD
34-59960	In the Matter of Matthew J. Browne, Attorney	1	Secretly trading on the non-public information, Browne breached duties of trust and confidence owed to his client and the law firm at which he was then employed	S	-	PD

3-13481	In the Matter of David G. Ghyssels, et al.	3	Respondents participated in a scheme to provide access to "squawk boxes" to Watley to broadcast confidential information so its day traders could improperly trade ahead of the broker-dealers' institutional orders	L	-	PD
34-60119	In the Matter of Mitchel S. Guttenberg	1	Defendant misappropriated material, nonpublic information from UBS and unlawfully passed that information to David Tavdy and another coconspirator, and David Tavdy and this other coconspirator illegally traded using that information and then shared the illegal profits with Guttenberg	S	-	PD
Fiscal Year 2010						
Civil Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/ Litigated	Settlement Amount/ Civil Penalty	Other Sanc.
LR21240	SEC v. Feng "Frank" Xie	1	Xie began acquiring shares of DOCX common stock prior to the December 7th meeting, while preparing due diligence materials (concerning a plan to further extend the pre-existing partnership between EMC and DOCX) for EMC	S	\$12,9400/ \$62,050	P
LR-21249	SEC v. Benjamin P. Jones, et al.	4	Benjamin Jones, a former vice president of sales at Jamdat, was apprised of the status of Jamdat's merger discussions, and that he tipped several friends and his brother, William Jones, III ("Bill Jones"), who in turn bought Jamdat stock	S	\$305,200/ \$226,100	P/PD

LR21249/ LR22284	SEC v. Alissa Joelle Kueng	1	Based on the information received from another trader, Kueng recommended purchasing the stock to a trader in her firm, who bought Jamdat stock prior to the announcement, as well as to several institutional clients, two of whom bought Jamdat stock prior to the merger announcement	S	\$25,000/ \$25,000	P/PD
LR21526/ LR21732/ LR21740/ LR21802/ LR21827/ LR21834/ LR21839/ LR22010/ LR22021/ LR22042/ LR22071/ LR22114/ LR22185	SEC v. Galleon Management, LP, et al.	21	Raj Rajaratnam and his New York-based hedge fund advisory firm Galleon Management LP engaged in a massive insider trading scheme that generated more than \$25 million in illicit gains. The complaint alleged that Rajaratnam tapped into his network of friends and close business associates to obtain insider tips and confidential information about corporate earnings or takeover activity at several companies, including Google, Hilton and Sun Microsystems. He then used the non-public information to illegally trade on behalf of Galleon.	S/L(dismiss claims or obtain final judgment)	\$48,244,920/ \$25,599,210	P/D/PD
LR21260	SEC v. Don N. Spaugy	1	In the course of his employment at SemGroup, Spaugy learned that SemGroup was in a liquidity crisis, after learning this material nonpublic information, Spaugy liquidated his shares in SemGroup	S	\$138,226/ \$67,424	P

LR21263	SEC v. Stanko J. Grmovsek	1	Used inside information funneled to him by his former law school classmate Gil I. Cornblum to trade on U.S. exchanges through foreign accounts	S	\$1,500,000/ -	P
LR21267	SEC v. J. Bennett Grocock	1	J. Bennett Grocock, the former outside counsel for CyberKey Solutions, Inc., made at least \$170,000 by selling shares of the company's stock while in possession of material, nonpublic information about the company	S	\$0/\$0	P
LR21271	SEC v. King Chuen Tang, et al.	7	Chen Tang learned non-public information as the CFO of a private equity fund and from illegal tips by his brother-in-law, who was the CFO of a venture capital fund. Tang and his trading partners, which included his brother and four friends, traded on the inside information.	S	-	P
LR21283	SEC v. Arthur J. Cutillo, et al.	9	Cutillo, through his friend and fellow attorney Jason Goldfarb, tipped inside information concerning these acquisitions to Zvi Goffer, a proprietary trader at the broker-dealer Schottenfeld Group, LLC ("Schottenfeld"). The complaint further alleges that Zvi traded on this information for Schottenfeld, and had numerous downstream tippees who also traded on the information, including other professional traders and portfolio managers at two hedge fund advisers	S	\$10,987,659/ -	P/PD
LR21308	SEC v. R. Brooke Dunn, et al.	2	Illegal trading in Shuffle Master stock and options prior to an announcement of disappointing financial results by Shuffle Master	S	\$575,185/ \$363,188	P/D
LR21332/ LR21587	SEC v. Brien P. Santarlas	1	Misappropriated from his law firm material, nonpublic information concerning at least two corporate acquisitions	S	\$65,000/ \$32,500	P/PD
LR21339/ LR21838/	SEC v. Vinayak S. Gowrish, et al.	4	Vinayak S. Gowrish and Adnan S. Zaman stole confidential information from their firms in connection with five deals and tipped two friends - Pascal S. Vaghar and Sameer N.	S/L	\$223,456/ \$100,000	P/PD

LR22039			Khoury - in exchange for kickbacks. Vaghar and Khoury both then traded stock and options on the basis of the nonpublic information.			
LR21347	SEC v. Nicolas Patrick Benoit Condroyer, et al.	2	Condroyer and Roger, while in possession of material, nonpublic information regarding the Chattem acquisition, illegally traded Chattem's stock options.	S/L	\$7,263,584/ \$2,838,992	P/TO
LR21370	SEC v. Brooke D. Wagner	1	Sold shares of Indevus stock upon learning material non-public information that would have a negative effect on Indevus's stock price	S	\$133,122/ \$64,190	P
LR21383	SEC v. Charles J. Marquardt	1	Illegally traded in the shares of the Ultra Fund, while serving as the Senior Vice President and Chief Administrative Officer for operations of Evergreen, the investment adviser to the Ultra Fund	S	\$39,456/ \$19,107	P
LR21392	SEC v. Avi Fogel	1	Engaged in insider trading in the common stock of Document Sciences Corp., prior to the announcement on December 27, 2007 that EMC would acquire Document Sciences	S	\$397,366/ \$191,363	P
LR21404	SEC v. Bruce A. MacDonald, et al.	2	Defendants engaged in insider trading in the common stock of Connecticut- based Memry Corporation prior to the announcement on June 24, 2008 that SAES Getters S.p.A. ("SAES"), an Italian public company, would acquire Memry	S	\$60,702/ \$38,733	P
LR21403	SEC v. David R. Slaine	1	Used inside information tipped by a former executive at UBS Securities LLC to trade ahead of upcoming UBS analyst recommendations for Chelsey Capital and in his personal brokerage account	S	\$836,385/ \$0	P/PD
LR21405	SEC v. Joshua Z. Levinberg	1	Levinberg learned material, non-public information concerning the sale of Scopus through the course of his employment and purchased Scopus's stock after knowing the insider information	S	\$383,463/ \$187,996	P

LR21414	SEC v. Gerald D. Horn	1	Traded on the basis of information contained in LCA's internal Eyes by Laser Reports, which provided non-public information regarding LCA's total number of laser eye surgeries performed and revenue generated from these procedures	L(summary judgment in favor of Dr. Horn)	-	-
LR21415	SEC v. Steven Scoppetuolo, et al.	5	Two separate groups of traders illegally traded in the securities of World Fuel Services Corporation prior to two worse than expected earnings announcements by the company	S	-	P/D
LR21425	SEC v. John A. Foley, et al.	4	Insider trading and tipping in the securities of four public companies over a 22-month period that yielded illegal profits totaling \$210,580.62. The four public companies involved are Crocs, Inc., YRC Worldwide, Inc., Spectralink Corporation and SigmaTel, Inc.	S	\$298,262/ \$57,895	P
LR21460/ LR21681/ LR21730/ LR22617/ LR22851	SEC v. Igor Poteroba, et al.	3	Defendants engaged in a serial insider trading scheme and profited from highly confidential merger and acquisition information	S/L(default judgment)	\$1711,172/ \$0	P/PD/TO
LR21469	SEC v. Gary Navarro	1	Navarro breached duties of trust and confidence owed to his employer by trading on the non-public information that Sem Group, LP was experiencing liquidity issues	S	\$167,204/ \$83,602	P
LR21472	SEC v. Morando Berrettini, et al.	2	Pirtle received material, nonpublic information about Philips' acquisition plans and provided this information to Berrettini in breach of his fiduciary duties to his employer, while Berrettini traded on that information	L(set date for jury trial)	-	-

LR21536	SEC v. Yonni Sebbag, et al.	2	Defendants sent anonymous letters in March 2010 to more than 20 hedge funds in the U.S. and Europe, offering to provide pre-release results of Disney's second quarter 2010 earnings in exchange for a fee	S	-	P
LR21540	SEC v. Pequot Capital Management, Inc., et al.	2	Zilkha, a former Microsoft employee, conveyed to Samberg his understanding that Microsoft would meet or beat its earnings estimates. Samberg thereafter purchased Microsoft options on behalf of funds managed by Pequot	S	\$27938,468/ \$10,000,000	P/PD
AAER3164	SEC v. Thomas P. Flanagan, et al.	2	Thomas P. Flanagan traded in the securities of Deloitte clients since he had access to advance earnings results and other nonpublic information from Deloitte's audit engagements with Best Buy, Sears, and Walgreens as well as the firm's consulting engagement with Motorola	S	\$1174,312/ \$551,540	P/PD
LR21631	SEC v. Juan Jose Fernandez Garcia, et al.	2	Garcia and Sanchez engaged in insider trading in call options contracts of Potash Corp. of Saskatchewan, Inc. (Potash) just prior to an August 17, 2010 public announcement by Potash that it had received and rejected an unsolicited proposal from BHP Billiton Plc (BHP) to acquire Potash's stock	S/L	\$626,033/ \$50,000	P/TO
LR21638	SEC v. James W. Self, Jr., et al.	2	Defendants engaged in unlawful insider trading in advance of the April 23, 2007 announcement that AstraZeneca would acquire MedImmune, Inc. (MEDI).	S	\$16,695,027/ \$50,000	P
LR21644	SEC v. Dr. Bobby V. Khan	1	Acquired material nonpublic information regarding the acquisition of Sciele Pharma, Inc. by Shionogi & Co., Ltd., Khan then purchased a combined total of 4,000 shares of Sciele stock	-	-	-
LR21665	SEC v. Michael Jobe, et al.	2	Defendants engaged in unlawful insider trading in the securities of XTO Energy, Inc.	S	\$681,182/ \$100,000	P

LR21667/ LR22112	SEC v. Richard A. Hansen, et al.	2	Hansen traded on inside information concerning at least five pending corporate acquisitions, and tipped his longtime friend Stuart Kobrovsky about one of them	S	\$265,627/ \$0	P/D/PD
LR21678	SEC v. Rex C. Steffes, et al.	7	Defendants engaged in unlawful insider trading in the securities of Florida East Coast Industries, Inc. in advance of the May 2007 public announcement that the company would be acquired by an affiliate of the Fortress Investment Group, LLC.	S/L	\$225,913/ \$224,981	P
Administrative Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/ Litigated	Settlement Amount/ Civil Penalty	Other Sanc.
34-60802	In the Matter of Samuel W. Childs, Jr.	1	Childs concealed the insider trading scheme from Assent management in exchange for bribery payments from the Assent traders	S	-	PD
34-60803	In the Matter of Erik R. Franklin	1	Using material, nonpublic information concerning upcoming analyst recommendations by UBS Securities LLC ("UBS") to purchase and sell securities in his personal accounts and on behalf of the two hedge funds that he managed	S	-	PD
34-60804	In the Matter of David M. Tavdy	1	Illegally traded on the inside information for several companies in several accounts	S	-	PD
34-60892	In the Matter of Anthony Perez	1	Misappropriated material, nonpublic information concerning the potential acquisition of Safeco and tipped this confidential information to his brother	S	-	PD

34-60998	In the Matter of William T. Dailey, III	1	Dailey traded on the basis of the material nonpublic information that he received; and also tipped material nonpublic information regarding Jamdat's acquisition to a friend of his, which resulted in further illicit trading in the securities of Jamdat	S	-	PD
34-61288	In the Matter of Ken Okada	1	Using material, nonpublic information concerning upcoming analyst recommendations by UBS Securities LLC ("UBS") to purchase securities in his personal brokerage account."	S	-	PD
34-61362	In the Matter of Adnan S. Zaman	1	In breach of his fiduciary and other duties of trust and confidence owed to Lazard and its clients, Zaman misappropriated and illegally tipped material, nonpublic acquisition information to two friends and receive kickbacks in return	S	-	PD
34-61511	In the Matter of J. Bennett Grocock, Esq.	1	Former outside counsel for CyberKey Solutions, Inc., he made at least \$170,000 by selling shares of the company's stock while in possession of material, nonpublic information about the company	S	-	PD
34-61586	In the Matter of Tara R. Eisler	1	Eisler permitted Foley to utilize an on-line brokerage account in her name to trade in the securities of Spectralink in advance of its acquisition by Polycomm, Inc.	S	-	CD
IA2997	In the Matter of Steven E. Nothern	1	Nothern engaged in insider trading in United States Treasury 30-year bonds after Peter J. Davis, a Washington, D.C.-based consultant that MFS hired, tipped Nothern with material nonpublic information that the United States Treasury Department was going to suspend future issuances of the 30-year bond.	S	-	PD
33-9124	In the Matter of David W. Baldt	1	Advised his family members, while in possession of material non-public information, to sell their shares in the Short-Term Municipal Bond Fund that he managed	L	-	CD/PD

34-62186	In the Matter of David E. Zilkha	1	Conveyed to Samberg (Zilkha's employer) a recommendation to purchase Microsoft securities based on this material, nonpublic information	L	-	CD
IA3035	In the Matter of Pequot Capital Management, Inc., et al.	2	Based on material, nonpublic information about Microsoft's earnings estimates, Samberg purchased numerous Microsoft options on behalf of funds he managed for Pequot and recommended that a friend purchase Microsoft securities	S	-	PD
34-62267	In the Matter of Melissa A. Mahler	1	Traded on material, nonpublic information in breach of her duty of loyalty and confidentiality as an attorney	S	-	PD
34-62460	In the Matter of Brien Santarlas, Esq.	1	Trade on material, nonpublic information concerning upcoming corporate acquisitions involving Ropes & Gray's clients in several instance in exchange for cash kickbacks	S	-	PD
34-62769	In the Matter of James E. Gansman	1	Gansman tipped a friend concerning the identities of at least seven different acquisition targets of clients who sought valuation services from his firm in connection with those acquisitions	S	-	PD
34-62770	In the Matter of Donna B. Murdoch	1	Traded on tips of material, non-public information related to tender offers with respect to which substantial steps in furtherance of the tender offer had been taken by the time of the tips	S	-	PD
IA3084	In the Matter of David R. Slaine	1	Used inside information tipped by a former executive at UBS Securities LLC to trade ahead of upcoming UBS analyst recommendations for Chelsey Capital and in his personal brokerage account	S	-	PD

34-62999	In the Matter of Igor Poteroba	1	Defendant participated in an insider trading ring that netted over \$1 million in illicit profits by trading in advance of at least eleven mergers, acquisitions, and other business combinations	S	-	PD
Fiscal Year 2011						
Civil Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/Litigated	Settlement Amount/Civil Penalty	Other Sanc.
LR21685/ LR22273	SEC v. Marleen Jantzen, et al.	2	Former Dell Inc. employee Marleen Jantzen and her husband, John Jantzen, a licensed broker employed by an SEC-registered broker-dealer, are charged with insider trading around the public announcement of Dell's tender offer for Perot Systems	L(summary judgment)	-	P
LR21928/ LR22158	SEC v. Dr. Yves M. Benhamou, et al.	2	Benhamou, a French doctor and medical researcher, unlawfully tipped material, non-public information to Skowron, a former hedge fund portfolio manager, who used the inside information to trade ahead of a negative announcement	L(final judgment)	\$33,000,000/ \$2,720,000	P
LR21741/ LR22056	SEC v. Franz N. Tudor	1	Tudor purchased shares of Axcan based on tips in two separate personal trading accounts as well as in a proprietary account	S	\$78,138/ \$0	P
LR21741/ LR21999/ LR22297	SEC v. Lanexa Management LLC, et al.	2	Defendant traded based on tip in the securities of 3Com on behalf of a Lanexa Management hedge fund	S	\$768,533/ -	P

LR21740/ LR22000	SEC v. Thomas C. Hardin	1	Hardin traded in the securities of Hilton, Google and Kronos based on material nonpublic information that he allegedly received from Roomy Khan	S	\$40,071/ -	P
LR21758/ LR22139	SEC v. Arnold McClellan, et al.	2	Defendants repeatedly leaked confidential merger and acquisition information to family members overseas result in a multi-million dollar insider trading scheme	S	\$1,000,000/ \$1,000,000	P
LR21765	SEC v. Jeffery J Temple, et al.	2	Temple accessed material nonpublic information in the course of his employment and then traded in advance of at least 22 merger and acquisition public announcements involving 20 companies. He also tipped his borther-in-law.	-	-	-
LR21767	SEC v. Brett A. Cohen, et al.	4	Defendants engaged in insider trading in the stock of two biotechnology companies based on material, nonpublic information obtained from fraternity brother	S	-	P
LR21766/ LR21993	SEC v. One or More Unknown Purchasers of Securities of Wimm-Bill- Dann Foods	1	Defendants engaged in illegal insider trading in the last three days before the December 2, 2010, announcement that PepsiCo, Inc. intended to acquire a 66 percent interest in Wimm-Bill-Dann Foods OJSC	S	\$5,729,276/ \$2,864,638	P/TO
AAER3219	SEC v. Joseph M. Elles	1	Besides committing a fraud, defendant also exercised options for the purchase of Carter's common stock and sold the resulting shares	-	-	-
LR21792/ LR21980	SEC v. One or More Unknown Purchasers of Securities of Martek Biosciences Corporation	1	Defendants engaged in illegal insider trading in the days preceding an acquisition announcement	S	\$1,445,700/ \$250,667	P/TO

LR21794/ LR22312	SEC v. One or More Unknown Purchasers of Options of Intermune, Inc.	2	Defendants engaged in illegal insider trading in call options of InterMune prior to the public announcement that one of InterMune's development drugs, Esbriet, had been recommended for approval by the European Union's Committee for Medicinal Products for Human Use	S	\$709,806/ \$93,806	P/TO
LR21802/ LR22085/ LR22100/ LR22005	SEC v. Robert Feinblatt, et al.	5	Feinblatt and Yokuty traded on behalf of Trivium in connection with two corporate takeovers and two quarterly earnings announcements based on material nonpublic information that they allegedly received from Roomy Khan, an individual investor who had received such information from various sources	S/L	\$3,098,478/ \$1,808,745	P/D
LR21811/ LR22260	SEC v. CytoCore, Inc., et al.	3	Burns allegedly caused CytoCore to issue a press release touting Burns' investment in CytoCore stock, and then secretly sold shares immediately following the announcement	S/L(default judgment)	\$100,000/ \$100,000	P/D/PD
LR21815	SEC v. George H. Holley, et al.	3	Defendant illegally tipping friends and business associates with inside information about an impending acquisition of the company	S/L	-	P
LR21820	SEC v. Zizhong Fan, et al.	2	Zizhong Fan, a manager at Seattle Genetics, told family member Zishen Fan about confidential positive trial results for the company's flagship cancer treatment and further traded on that information.	L	-	-
LR21827/ LR22004	SEC v. Adam Smith	1	Smith caused the Galleon funds he advised to purchase shares of ATI based on material non-public information concerning Advanced Micro Devices Inc.'s takeover of ATI	S	\$149,706/ \$0	P
LR21826/ LR22051	SEC v. Michael Cardillo	1	Trading ahead of September 2007 announced acquisition of 3Com Corp., and November 2007 announced acquisition of Axcan Pharma Inc.	S	\$97,303/ \$29,260	P

LR21844/ LR22044	SEC v. Mark Anthony Longoria, et al.	11	Defendants received illegal tips from the expert network consultants and then caused their hedge funds to trade on the inside information	S	\$5,400,756/ \$0	P/D/PD
LR21859	SEC v. Zhenyn Ni	1	Defendant overheard his sister discuss a then-secret acquisition of Bare while visiting her office, and misappropriated this information for his own benefit by purchasing Bare stock and call options	S	\$3,414,681/ \$157,066	P
LR21871/ LR21978	SEC v. Gregory A. Seib	1	After misappropriating confidential information from his employer regarding a pending merger agreement involving NASDAQ-listed Cambridge Display Technology, Inc. , Seib purchased Cambridge stock and call options	S	\$156,702/ \$71,654	P
LR21877/ LR22251	SEC v. Todd Leslie Treadway	1	Used material, non-public information he obtained through his position at D&L to purchase stock in two separate companies prior to the announcement of the acquisition	S	\$37,000/ \$10,000	P
LR21878	SEC v. Joseph A. Dawson	1	After misappropriating confidential information from a family member regarding a pending acquisition, caused Dawson Trading to purchase call options of SPSS	S	-	P
LR21890	SEC v. Kim Ann Deskovick, et al.	2	Deskovick illegally tipping a friend about First Morris's confidential efforts to be acquired by another bank, and who later traded on the basis of that inside information	S	\$188,709/ \$102,425	P/D
LR21954/ LR22610	SEC v. Patrick M. Carroll, et al.	8	Defendants traded based on confidential information about their company's acquisition by Mitsui & Co. (USA) Inc. Three of the four executives illegally tipped family members or friends	S/L	\$639,258/ \$288,805	P
LR21896	SEC v. Daniel F. Wiener, II	1	Wiener learned material, nonpublic information regarding BAE's plan to acquire MTC and also actively participated in the discussion and shared detailed information concerning the target's business. He later on made trades based on that inside information	S	\$101,010/ \$25,000	P

LR21899	SEC v. Mark A. Duffell	1	Duffell bought shares of Silicon Valley software company SumTotal Systems while he was involved in discussions on AKKR's behalf regarding a potential acquisition of SumTotal	S	\$332,163/ \$162,500	P
LR21987	SEC v. Cheng Yi Liang, et al.	1	Defendants traded in advance of a 28th drug approval announcement and through an additional brokerage account in the name of a sixth nominee	S	-	P
LR21917	SEC v. Matthew H. Kluger, et al.	2	Defendants traded in advance of at least 11 merger and acquisition announcements involving clients of the law firm where the attorney worked	S	-	P
LR21950	SEC v. Jonathan Hollander	1	Traded ABS securities on the basis of the material nonpublic information and also tipped a family member and another friend who also traded ABS securities	S	\$191,614/ \$95,807	P/PD
None	SEC v. Bruce Hvidsten, et al.					
LR21972	SEC v. Mary Beth Knight, et al.	2	Defendants engaged in insider tipping and trading ahead of negative news about the company's earnings	S	\$370,222/ \$185,111	P
LR21977	SEC v. Abraham Haim	1	Haim purchased securities in advance of merger and acquisition announcements based on material nonpublic information	S	\$67,440/ \$30,126	P
LR21981	SEC v. Donald L. Johnson, et al.	1	Unlawfully traded in advance of nine announcements of material nonpublic information involving NASDAQ-listed companies	L	-	P
LR21990	SEC v. Dean A. Goetz	1	Goetz traded based on material, nonpublic information regarding the impending merger and acquisition involving Advanced Medical Optics that he misappropriated from his daughter who worked for the law firm representing Advanced Medical Optics in the transaction.	S	\$23,762/ \$11,418	P

LR-21991	SEC v. One or More Unknown Purchasers of Securities of Telvent GIT S.A.	-	Unknown Purchasers bought call option within five calendar days before the acquisition announcement and comprised as much as 52% of the volume of that series of call options that day	-	-	-
LR21996	SEC v. Phillip E. Powell	1	Powell learned material, non-public information about the commencement of a company share buyback, He instructed his broker to buy 100,000 First Cash shares	L(Granting D's motion to dismiss)	-	-
LR22055	SEC v. Compania International Financiera S.A., et al.	3	Insider trading ahead of a July 11, 2011 public announcement that Swiss-based Lonza Group Ltd. will acquire Connecticut-based Arch Chemicals, Inc.	L(motion to dismiss granted)	-	-
LR22048	SEC v. Howard B. Wildstein	1	Wildstein acquired material nonpublic information concerning the acquisition through his employment and make trade based on this material nonpublic information	S	\$114,848/ \$63,671	P
LR22050	SEC v. Robert Doyle	1	Doyle misappropriated material nonpublic information showing that Tyco International, Ltd. had offered to acquire Brink's. On the basis of this information, Doyle purchased Brink's common stock and call options	S	\$137,121/ \$44,278	P
LR22059	SEC v. William A. Marovitz	1	Marovitz traded based on confidential information that he misappropriated from Hefner, who was the CEO of Playboy during most of the trades at issue	S	\$168,352/ \$67,400	P
LR22062	SEC v. Douglas V. DeCinces, et al.	4	DeCinces and his associates made more than \$1.7 million in illegal profits when Abbott Park, Ill.-based Abbott Laboratories Inc. announced its plan to purchase Advanced Medical Optics Inc. through a tender offer	S	\$3,328,747/ \$1,590,948	P
LR22063/ LR22404	SEC v. H. Clayton Peterson, et al.	4	H. Clayton Peterson, who served on Mariner Energy, Inc.'s board of directors, provided his son with confidential information which he learned during various board meetings,	S	\$4,826,431/ -	P/D/PD

			about Apache Corporation's upcoming acquisition of Mariner Energy. His son later traded on that information.			
LR22066/ LR22838	SEC v. Toby G. Scammell	1	Traded after he learned from his girlfriend about the impending acquisition of Marvel Entertainment, Inc. by the Walt Disney Company	S	-	P
LR22078	SEC v. Anthony Scolaro	1	Based on this inside information, Scolaro traded in the securities of Axcn on behalf of a Diamondback hedge fund, resulting in illicit profits for the fund	S	-	P/PD
LR22080/ LR22404	SEC v. Clay Capital Management, LLC, et al.	5	Vollmar tipped Turner and Durbin with inside information about Autodesk's planned tender offer for Moldflow in advance of Autodesk's public merger announcement. Turner traded on the information with various accounts.	S/L	\$514,962/ \$240,983	P
LR22093	SEC v. Scott Allen, et al.	2	Scott Allen learned confidential information in advance of the acquisitions of Millennium Pharmaceuticals Inc. and Sepracor Inc. through his work and tipped his longtime friend John Michael Bennett who traded on that information	L(motion to stay granted)	-	-
LR22099	SEC v. One or More Unknown Purchasers of Securities of Global Industries	-	Engaged in illegal insider trading in the days preceding the September 12, 2011 public announcement of an acquisition between two companies	-	-	-
Administrative Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/ Litigated	Settlement Amount/	Other Sanc.

					Civil Penalty	
34-63114	In the Matter of Gregory C. Gunn	1	Gunn, while in possession of material, non-public information engaged in illegal insider trading in the securities of Aviall, Inc.	S	\$189,783/ -	PD
AAER3239	In the Matter of Eric A. Holzer, CPA	1	One count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and one count of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5 and 240.10b5-2, and 18 U.S.C. § 2	L	-	PD
34-63901	In the Matter of Frederick E. Bowers	1	Bowers possessed and used material, nonpublic information which he obtained in breach of a duty of trust or confidence, and tipped his client who used that material nonpublic information to purchase or sell securities	S	-	PD
34-63903	In the Matter of Jeffrey R. Glover	1	Engaged in an illegal insider trading scheme in which he possessed and used material, nonpublic information which he knew, should have known or was reckless in not knowing was obtained in breach of a duty of trust or confidence	S	-	PD
34-63902	In the Matter of Thomas Faulhaber	1	Faulhaber traded in three deals, and kicked back cash to Bowers	S	-	PD
33-9192	In the Matter of Rajat K. Gupta	1	Conveyed material nonpublic information that he obtained in the course of his duties as a board member of Goldman Sachs and Procter & Gamble to Raj Rajaratnam	L(proceedings dismissed)	-	-
34-64126	In the Matter of Joseph A. Dawson	1	After misappropriating confidential information from a family member regarding a pending acquisition, caused Dawson Trading to purchase call options of SPSS	S	-	PD
AAER3312	In the Matter of Steven Scoppetuolo, CPA	1	Scoppetuolo tipped his friend, Robert Tocci, and broker, Sarang Ahuja, about World Fuel's worse-than-expected earnings in advance of World Fuel's earnings announcements	S	-	PD

33-9261/ 33-9296	In the Matter of Spencer D. Mindlin, et al.	2	Traded while in possession of material nonpublic information concerning the trading intentions of Goldman, Sachs & Co.	S	\$92,562/ \$25,000	D/CD/PD
Fiscal Year 2012						
Civil Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/ Litigated	Settlement Amount/ Civil Penalty	Other Sanc.
LR22118	SEC v. M. Jason Hanold	1	Hanold bought shares of Hewitt Associates stock after learning of the impending merger from his wife, who was an executive at Aon at the time	S	\$20,766/ \$10,241	P
LR22140	SEC v. Rajat Gupta, et al.	2	Gupta provided Rajaratnam with confidential information learned from his official duties as a director of Goldman and P&G. Rajaratnam used the inside information to trade on behalf of certain Galleon funds, or shared the information with others at his firm	L	-	P/D/PD
LR22161	SEC v. Mark Konyndyk	1	Insider trading in advance of a tender offer base on information learned through his work	S	\$21,239/ \$9,725	P/PD
LR22169	SEC v. Jeffrey S. Richardson	1	Richardson received confidential information about the acquisition from a person knowledgeable about the negotiations and he traded based on the information he received. During this time, Richardson also illegally tipped two family members and one friend, who traded on the confidential information	S	\$197,586/ \$88,026	P

none	SEC v. One or More Unknown Purchasers of Common Stock of Jaguar Mining, Inc.		-	-	-	-
LR22180/ LR22194/ LR22508/ LR22897	SEC v. All Know Holdings Ltd., et al.	7	Defendants traded in advance of a recent public announcement of a merger agreement while in possession of material, non-public information about the merger	S/L(Ds moved for summary judgment)	\$691,891/ \$308,612	P
LR22205	SEC v. John R. Easom, et al.	8	John R. Easom tipped William Echeverri about the pending takeover. Echeverri, who at the time was a trader at a registered broker-dealer, then purchased Vital Signs stock and tipped five people, all of whom then traded.	S	\$921,144/ \$475,997	P/D
LR22223	SEC v. Earl C. Arrowood, et al.	2	Arrowood illegally traded based on material non-public information about the potential sale of Matria Healthcare, Inc. which is provided by his friend and flying partner, Petit.	L(parties are ordered to submit a consolidated proposed pretrial order)	-	-
LR22221	SEC v. Todd Farha, et al.	3	Defendants sold shares on the basis of the material, nonpublic information that they were conducting a fraudulent scheme that impacted WellCare's financial results, caused false and misleading statements, and imperiled the Company's business relationship with the State of Florida	L	-	-
LR22227	SEC v. Farzin Bazshushtari	1	Trading in company securities based on non-public information he learned on the job	S	\$153,353/ \$76,677	P

LR22325/ LR22691	SEC v. Spyridon Adondakis, et al.	9	Defendants engaged in insider trading scheme based on nonpublic information about Dell's quarterly earnings and other similar inside information about Nvidia Corporation	S/L	-	P
LR22233	SEC v. Dale Shafer, et al.	3	Defendants engaged in insider trading in the securities of Oak Hill Financial, Inc. ahead of an announcement that Oak Hill would be acquired by WesBanco, Inc.	S	\$151,196/ \$91,630	P/D/PD
LR22234	SEC v. Robert Ward, et. al.	4	Defendants engaged in insider trading in the securities of Oak Hill Financial, Inc. ahead of an announcement that Oak Hill would be acquired by WesBanco, Inc.	S	\$230,903/ \$108,413	P
LR22255	SEC v. Brent C. Bankosky	1	Trading on non-public information about two business transactions	S	\$136,076/ \$63,000	P/D
LR22257/ LR22653	SEC v. Douglas F. Whitman, et al.	2	Illegally traded based on material nonpublic information obtained from Rajaratnam's associate Roomy Khan	S	\$1,870,612/ \$935,306	P/PD
LR22261	SEC v. John Kinnucan, et al.	2	Kinnucan tipped clients with material nonpublic information that he obtained from prohibited sources inside the companies	L(Motion for summary judgment)	-	-
LR22274	SEC v. William F. Duncan	1	Trading on confidential information he obtained while providing the respective services to companies involved in an impending acquisition	S	\$175,649/ \$85,525	P
LR22274	SEC v. John M. Williams	1	Trading on confidential information he obtained while providing the respective services to companies involved in an impending acquisition	S	\$14,226/ \$6,803	P
LR22280/ LR22613	SEC v. Steven J. Harrold	1	Harrold purchased company stock in his wife's brokerage account after learning that his company had agreed to acquire The Coca-Cola Company's bottling operations in Norway and Sweden	S	\$182,654/ \$86,850	P/D

LR22288	SEC v. Timothy J. McGee, et al.	5	Defendants illegally traded in the stock of Philadelphia Consolidated Holding Corp. based on nonpublic information about the company's impending merger with Tokio Marine Holdings. And they also tipped others.	S/L(D's motion to dismiss the complaint is denied	-	-
LR22295	SEC v. Noah J. Griggs, Jr.	1	Defendant made two purchases of CKE stock after attending an executive meeting during which he learned that the company was in discussions with private equity investors about a possible acquisition.	S	\$268,000/ \$111,730	P/D
LR22293	SEC v. Sherif Mityas	1	Mityas learned that The Carlyle Group, one of his consulting clients, was negotiating to acquire NBTY. He then purchased shares of NBTY on the basis of this information	S	\$78,000/ \$37,931	P/D
LR22320	SEC v. Siming Yang, et al.	7	Defendants traded in advance of a public announcement by Zhongpin that its Chairman and CEO, Xianfu Zhu, had made a non-binding offer to acquire all of Zhongpin's outstanding stock	S/L(Jury verdict in favor of Ds Siming Yang & Prestige Ltd.)	\$122,993/ \$59,965	P
LR22345	SEC v. Kenneth T. Robinson	1	Robinson acted as a middleman to facilitate the illegal tips and trades of an insider trading scheme occurred in advance of at least 11 merger and acquisition announcements	S	\$845,000/ \$0	P
LR22360A	SEC v. Mohammed Mark Armin, et al.	6	Mohammed Mark Amin learned confidential information about expanding business opportunities for DuPont Fabros Technology Inc. and tipped his family and friends with nonpublic details. They all traded on the basis of that inside information.	S	\$1,933,491/ \$1,236,994	P/D
LR22357	SEC v. Angela Milliard, et al.	2	Angela Milliard learned that Semitool and Applied Materials Inc. had entered into advanced merger negotiations. After learning that the tender offer is about to happen, she wired money to her boyfriend's brokerage account and used it to surreptitiously buy shares of Semitool.	S	\$175,367/ \$101,827	P

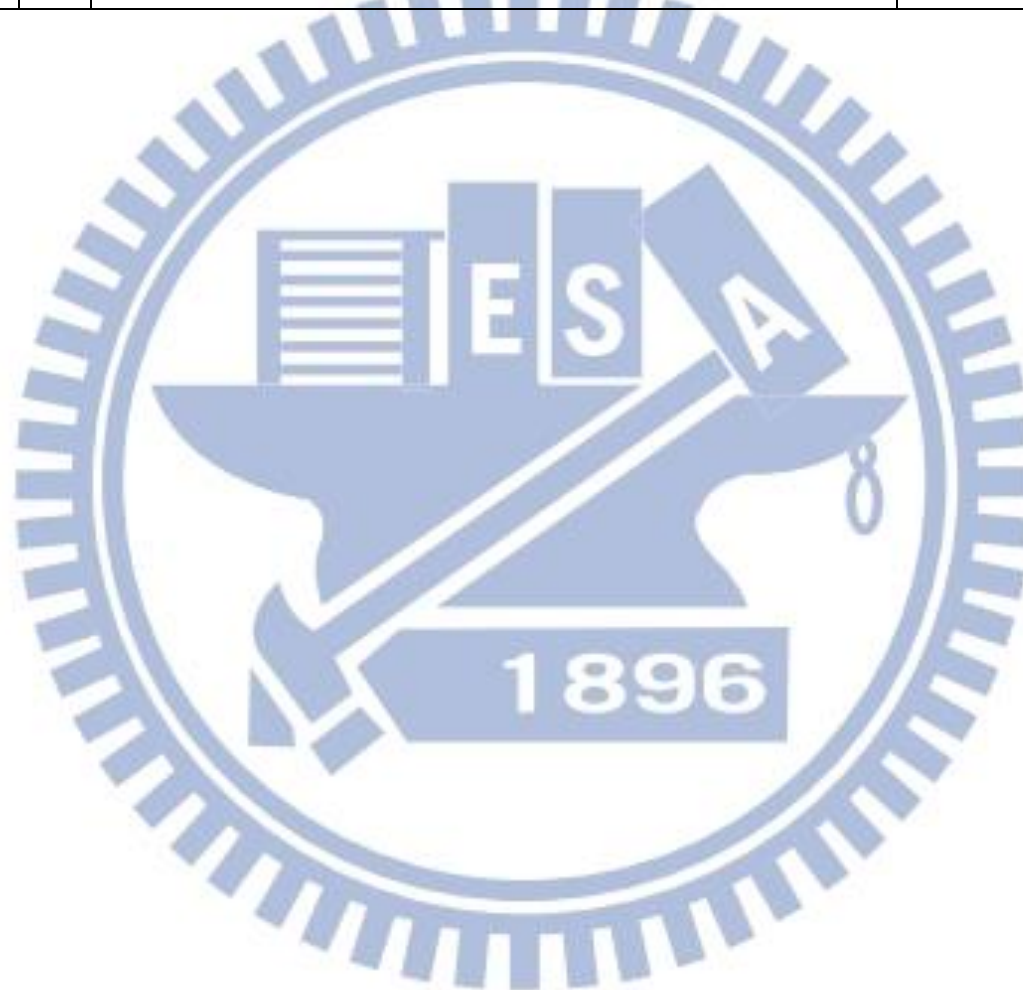
LR22367	SEC v. Frank Kynn Blystone	1	Frank Lynn Blystone obtained confidential information about the company's ongoing efforts to raise capital and problems it had encountered in a securities offering. Based on the non-public information he received, he liquidated his stock	S	\$75,027/ \$36,267	P/D
LR22372/ LR22726	SEC v. Reema D. Shah, et al.	2	Kwok tipped Shah material, nonpublic information that an internet search engine partnership agreement between Yahoo and Microsoft Corporation would announced soon. Based on Kwok's tip, Shah caused certain of the funds she helped manage to purchase shares of Yahoo	S/L	\$10,356/ \$4,754	P/D/PD
LR22374	SEC v. Stephen H. Guth	1	Guth Bought Omrix Biopharmaceuticals, Inc. common stock ahead of a public announcement that Johnson & Johnson, Inc. was making a tender offer for the outstanding shares of Omrix stock	S	\$102,970/ \$31,758	P
LR22387	SEC v. Charles E. Mazur Jr., et al.	3	Illegal insider trading in CONSOL securities in advance of the company's public announcement that it entered into an agreement to acquire the Appalachian Exploration and Production business of Dominion Resources, Inc.	S	\$132,224/ \$64,425	P
LR22401/ LR22834	SEC v. Tai Nguyen	1	Nguyen frequently traded in the securities of Abaxis, Inc. based on inside information he received from a close relative employed at Abaxis	S	\$313,707/ \$144,910	P
LR22413	SEC v. Apparao Mukkamala, et al.	5	Apparao Mukkamala learned confidential information from board meetings and in turn shared the nonpublic information with fellow physicians and friends. The five physicians each purchased ACAP stock based on confidential information	S	\$1,901,000/ \$616,569	P/D
LR22419	SEC v. Manouchehr Moshayedi	1	Manouchehr Moshayedi sought to take advantage of a dramatically upward trend in the stock price of STEC Inc. by selling a significant portion of his stock holdings as well as shares owned by his brother	L(final pretrial conference order)	-	-

LR22423	SEC v. Ladislav "Larry" Schvacho	1	Schvacho gleaned nonpublic information while the Comsys CEO called other Comsys executives to discuss the acquisition and through confidential, merger-related documents to which Schvacho had access, and he used the information to trade around the acquisition	L(Final judgment in favor of Ladislav)	-	-
LR22428/ LR22436/ LR22515/ LR22693	SEC v. Well Advantage Limited, et al.	2	Defendants stockpiled shares of Nexen stock based on confidential information about the deal in the days leading up to the announcement	S	\$14,811,745/ \$7,122,634	TO
LR22433/ LR22754	SEC v. Robert D. Ramnarine	1	Misuse (trade) nonpublic information he obtained while helping Bristol-Myers Squibb evaluate whether to acquire three other pharmaceutical companies	S	\$324,777/ -	P/D/TO
LR22434	SEC v. Joseph McVicker	1	McVicker engaged in insider trading in shares of Cambridge-based Art Technology Group, Inc. in advance of an announcement on November 2, 2010, that Art Technology would be acquired by California-based Oracle Corporation	S	\$88,901/ \$44,268	P
LR22451	SEC v. James V. Mazzo, et al.	3	Insider trading on confidential information ahead of an acquisition of Advanced Medical Optics Inc.	S/L	\$358,151/ \$117,657	P
LR22455	SEC v. James L. Lieberman	1	Lieberman traded based on material nonpublic information about a pending transaction, which he learned while working as Array's manager of environmental health and safety	S	\$147,628/ \$71,361	P
LR22458	SEC v. Eric Martin, et al.	1	Martin repeatedly traded Carter's shares during blackout periods while in possession of material, nonpublic information regarding the company's financial results	-	-	-
LR22465	SEC v. C. Roan Berry	1	Berry traded in Chattem securities based on the material non-public information disclosed by Melvin, and Berry tipped Coots, who also traded	S	\$115,043/ \$55,092	P

LR22466	SEC v. Ashley J. Coots	1	Traded based on the material non-public information disclosed to him by Berry. Coots also tipped two others	S	\$32,158/ \$13,232	P
LR22467	SEC v. Casey D. Jackson	1	Jackson traded in the securities of Chattem based on that material non-public information	S	\$3,777/ \$1,185	P
LR22468	SEC v. Thomas D. Melvin, Jr., et al.	4	Melvin disclosed material non-public information about the pending tender offer for Chattem, Inc. ("Chattem") securities to Cain and Jinks	-	-	-
LR22469	SEC v. R. Jeffrey Rooks	1	Rooks traded in the securities of Chattem based on that material non-public information and caused other individual to also trade	S	\$24,535/ \$4,621	P
LR22471	SEC v. Hyung Lim	1	Illegally tipping a hedge fund manager with inside information about Nvidia Corporation's quarterly earnings that he learned from his friend who worked at the company	L(final judgment in favor of the SEC)		
LR22474	SEC v. Arthur H. Reed, et al.	2	engaged in unlawful insider trading and/or tipping in advance of APP's public announcement that it was being acquired by Fresenius SE	S	\$664,277/ \$86,899	P
None	SEC v. Mark W. Baggett	1	Baggett tipped his golfing partner Kenneth F. Wrangell about Mercer Insurance Group's negotiations to be acquired by United Fire	S		P
None	SEC v. H. Thomas Davis, Jr.	1	Shared confidential details about Mercer Insurance Group's negotiations to be acquired by United Fire	S	\$83,169/ \$41,584	P/D
LR22486/ LR22905	SEC v. Waldyr Da Silva Prado Neto	1	Defendant used nonpublic information from a customer and engaged in insider trading ahead of Burger King Holding, Inc.'s announcement that it was being acquired by a New York private equity firm	L(default judgment)	\$5,634,232/ \$5,195,500	P
None	SEC v. Kenneth F. Wrangell	1	Received tips from Mark W. Baggett about Mercer Insurance Group's negotiations to be acquired by United Fire	S	\$53,902/ \$11,380	P

LR22497/ LR22678/ LR22758	SEC v. Jauyo "Jason" Lee, et al.	2	Jauyo "Jason" Lee gleaned sensitive nonpublic information about the deals from unsuspecting co-workers involved with those clients and by reviewing various internal documents about the transactions, which involved medical device companies. Lee tipped his longtime college friend Victor Chen with the confidential information, and Chen traded heavily on the basis of the nonpublic details that Lee had a duty to protect.	L(Further case management order)		
Administrative Case						
Litig. Release No.	Case Name	No. of D's	Misconduct	Results		
				Settled/ Litigated	Settlement Amount/ Civil Penalty	Other Sanc.
IA3298	In the Matter of Steven Fortuna	1	Fortuna effectuated trades on behalf of S2 Capital, controlled S2 Capital and/or unlawfully tipped inside information to S2 Capital	S	-	PD
34-65596	In the Matter of Arthur J. Cutilo	1	Cutilo misappropriated from his law firm material, nonpublic information concerning upcoming corporate acquisitions	L	-	PD
34-65597	In the Matter of Jason C. Goldfarb	1	Goldfarb tipped the information to Zvi Goffer, a former proprietary trader at the broker-dealer Schottenfeld Group, LLC., in exchange for kickbacks	L	-	PD
34-66319	In the Matter of Todd L. Treadway	1	Used material, non-public information he obtained through his position at the firm to purchase stock in two separate companies prior to the announcement of the acquisition	S	-	PD
34-67204	In the Matter of Matthew H. Kluger	1	Kluger repeatedly accessed material nonpublic information about pending mergers and acquisitions and pass on to his friends	S	-	PD

34-67423	In the Matter of Stanley Ng, CPA	1	Ng provided material information regarding Marvell's quarterly earnings to both Jiau and Nguyen in advance of the company disclosing this information to the public	S	\$13,912/ \$6,464	D/CD/PD
----------	-------------------------------------	---	--	---	----------------------	---------



附錄二 平行刑事起訴案件總覽

Fiscal Year 2009					
Civil Case Name	Defendant	Trial/	Result		
		Plea	Sentence	Fine	Other sanctions
SEC v. Matthew C. Devlin, et al.	Matthew C. Devlin	P	3 yrs prob.	\$10,000	\$23,000 forfeit.
	Jamil A. Bouchareb	P	30 months imprison. and 2 yrs supervised release	\$20,000	\$1,582,125 forfeit.
	Daniel A. Corbin	P	6 months imprison., 2 yrs supervised release	-	\$1,000,000 forfeit.
	Frederick E. Bowers	P	3 yrs prob.	\$15,000	\$12,000 forfeit., 2,000 hrs community service
	Eric A. Holzer	P	5 yrs prob.	\$15,000	\$119,300 forfeit.
SEC v. Nicos Achilleas Stephanou, et al.	Nicos Achilleas Stephanou	P	19 months imprison. (time served), plus 2 yrs supervised release	-	\$12,650,438 forfeit.
	George Paparrizos	P	3 yrs prob.	\$10,000	\$22,000 forfeit.
	Michael G. Koulouroudis	P	3 months home confinement, 3 yrs supervised release	\$100,000	\$198,174 forfeit.
	Joseph Contorinis	T	6 yrs imprison., 2 yrs supervised release	-	\$12,000,000 forfeit.
In the Matter of David G. Ghysels, et al.	David G. Ghysels	T	3 yrs prob., 6 months home detention	-	\$36,680 forfeit.
	Kenneth E. Mahaffy, Jr.	T	2 yrs incarceration	-	\$98,328 forfeit.

	Linus N. Nwaigwe	T	12 months and 1 day imprison.	-	-
SEC v. Carl E. Binette, et al.	Carl E. Binette	T	4 yrs prob., 6 months in a halfway house and 6 months house arrest	\$3,000,000	-
	Peter E. Talbot	P	3 yrs of prob., 10 months of house arrest	-	-
SEC v. Melissa A. Mahler	Melissa A. Mahler	P	2 yrs prob. (including 100 hrs of community service)	\$2,500	\$67,350 forfeit.
Fiscal Year 2010					
Civil Case Name	Defendant	Trial/ Plea	Result		
		Sentence	Fine	Other sanctions	
In the Matter of Samuel W. Childs, Jr.	Samuel W. Childs	P	2 yrs prob.	\$5,000	
In the Matter of Erik R. Franklin	Erik R. Franklin	P	3 yrs prob.	-	\$2.59 million forfeit., 200 hrs of community service
In the Matter of David M. Tavdy	David M. Tavdy	P	5 yrs and 3 months imprison. and 3 yrs of supervised release	-	\$10,300,000 forfeit.
SEC v. Galleon Management, LP, et al.	Raj Rajaratnam	T	11 yrs imprison.	\$10,000,000	\$53,800,000 forfeit.
	Rajiv Goel	P	2 yrs prob	\$10,000	\$266,649 forfeit.
	Anil Kumar	P	2 yrs prob.	\$25,000	\$2,260,000 forfeit.
	Roomy Khan	P	12 months imprison. plus 3 yrs supervised release	-	\$1,525,000 forfeit.
	Ali T. Far	P	1 yr prob.	\$100,000	100 hrs of community service

	Danielle Chiesi	P	2.5 yrs imprison. and 2 yrs supervised release	\$25,000	250 hrs of community service
	Mark Kurland	P	2 yrs and 3 months imprison. and 2 yrs supervised release	-	\$900,000 forfeit.
	Robert Moffat	P	6 months imprison. and 2 yrs supervised release	\$50,000	-
	Ali Hariri	P	18 months imprison. and 2 yrs supervised release	\$50,000	\$2,549 forfeit.
	Gautham Shankar	P	3 yrs probation, first 6 months in home confine.	\$25,000	\$448,437 forfeit.
	Steven Fortuna	P	2 yrs probation, 6 months home confine.	-	\$200,000 forfeit., 240 hours of community service
SEC v. Stanko J. Grmovsek	Stanko J. Grmovsek	P	3 yrs and 3 months imprison.	-	-
SEC v. King Chuen Tang, et al.	King Chuen Tang (Chen Tang)	P	1 yr and 1 day imprison. And 3 yrs of supervised release (6 months in home confine.)	-	1,000 hrs of community service
	Zisen Yu	P	6 months imprison. and 3 yrs of supervised release(12 months in home confine.)	-	-
	Joseph Seto	P	6 months imprison. and 3 yrs of supervised release(12 months in home confine.)	-	-
SEC v. Arthur J. Cutillo, et al.	Arthur J. Cutillo	P	2.5 yrs imprison. ,2 yrs of supervised release	-	\$378,608 forfeit.

	Jason C. Goldfarb	P	3 yrs imprison.	\$32,500	\$1,103,131 forfeit.
	Zvi Goffer	T	10 yrs imprison. and 3 yrs supervised release	-	\$10,022,931 forfeit.
	Craig C. Drimal	P	5.5 yrs imprison. and 3 yrs supervised release	-	\$11,000,000 forfeit.
	David Plate	P	3 yrs probation and 6 months home confinement	-	\$289,000 forfeit.
	Emanuel Goffer	T	3 yrs imprison., 3 yrs supervised release	-	\$761,623 forfeit.
	Michael Kimelman	T	2.5 yrs imprison., 3 yrs supervised release	-	\$289,000 forfeit.
SEC v. Brien P. Santarlas	Brien P. Santarlas	P	6 months imprison., 2 yrs supervised release	-	\$32,500 forfeit.
SEC v. Thomas P. Flanagan, et al.	Thomas P. Flanagan	P	21 months imprison. plus 1 yr supervised release	\$100,000	-
SEC v. Vinayak S. Gowrish, et al.	Adnan S. Zaman	P	26 months imprison., plus 3 years supervised release	-	\$78,456 disgorgement, 800 hrs community service
In the Matter of Ken Okada	Ken Okada	P	3 yrs prob.	\$300,000	1 yr home confinement
SEC v. David R. Slaine	David R. Slaine	P	3 yrs prob.	\$500,000	\$532,000 forfeit., 300 hours of community service
SEC v. Igor Poteroba, et al.	Igor Poteroba	P	22 months imprison. and 3 yrs supervised release	\$25,000	\$465,095 forfeit.
	Aleksey Koval	P	26 months imprison.	-	\$1,400,000 forfeit. , 2 yrs of supervised release

SEC v. Yonni Sebbag, et al.	Yonni Sebbag	P	27 months imprison. plus 2 yrs supervised release	-	\$15,000 forfeit.
	Bonnie Jean Hoxie	P	3 yrs supervised release (including 4 months home confinement)	-	300 hrs of community service
In the Matter of James E. Gansman	James E. Gansman	T	1 yr and one day imprison., 6 months supervised release	-	\$337,576 forfeit.
In the Matter of Donna B. Murdoch	Donna B. Murdoch	P	2 yrs prob., 6 months under house arrest	-	\$392,000 forfeit., and 300 hrs of community service
SEC v. Richard A. Hansen, et al.	Richard A. Hansen	P	3 months imprison.,5 months of home confine. and 2 yr prob.	-	\$59,631 forfeit.
Fiscal Year 2011					
Civil Case Name	Defendant	Trial/ Plea	Result		
			Sentence	Fine	Other sanctions
SEC v. Dr. Yves M. Benhamou, et al.	Dr. Yves M. Benhamou	P	time served plus 3 yrs supervised release	-	\$52,138 forfeit., \$5.96 million restit.
	Dr. Joseph F. "Chip" Skowron	P	5 yrs imprison.	\$150,000	\$5 million forfeit., \$5.96 million restit.
SEC v. Franz N. Tudor	Franz N. Tudor	P	3 yrs prob	\$20,000	\$86,119 forfeit.
SEC v. Lanexa Management LLC, et al.	Thomas Hardin	P	-	-	-
SEC v. Arnold McClellan, et al.	Annabel McClellan	P	11 months imprison. plus 3 yrs supervised release	-	-

SEC v. Brett A. Cohen, et al.	Brett A. Cohen	P	3 yrs prob	\$500	\$184,420 restit.
	Aaron J. Scalia	P	3 yrs prob. (including 4 months in a halfway house)	-	\$185,420 forfeit., 250 hrs of community service
	Stephen J. Scalia	P	3 yrs prob. (including 4 months in a halfway house)	\$3,000	\$185,420 forfeit.
	David V. Myers	P	Time served plus 3 yrs supervised release	-	-
SEC v. George H. Holley, et al.	George H. Holley	P	3 yrs prob.	\$260,000	-
SEC v. Zizhong Fan, et al.	Zishen Fan	P	18 months imprison. plus 3 yrs supervised release	\$260,000	-
SEC v. Adam Smith	Adam Smith	P	2 yrs prob.	\$15,000	\$105,300 forfeit.
SEC v. Michael Cardillo	Michael Cardillo	P	3 yrs prob.	-	\$291,189 forfeit.
SEC v. Mark Anthony Longoria, et al.	Mark Anthony Longoria	P	Time served plus 2 yrs supervised release	-	\$170,000 forfeit.
	Daniel DeVore	P	Time served plus 2 yrs supervised release	-	\$145,750 forfeit.
	James Fleishman	T	30 months imprison. and 2 yrs supervised release	-	Forfeiture to be determined at a later date
	Bob Nguyen	P	2 yrs prob.	-	\$30,000 forfeit.
	Winifred Jiau	T	48 months imprison. and 2 yrs supervised release	-	\$3,118,158 forfeit.
	Walter Shimoon	P	Time served plus 2 yrs supervised release	-	\$45,500 forfeit.
	Donald Longueuil	P	30 months imprison. and 2 yrs supervised	-	\$1,251,685 forfeit.

			release		
	Jason Pflaum	P	Time served plus 2 yrs supervised release.	-	\$500,000 forfeit.
SEC v. Cheng Yi Liang, et al.	Cheng Yi Liang	P	60 months imprison. and 3 yrs supervised release	-	\$2,757,188 forfeit.
SEC v. Matthew H. Kluger, et al.	Matthew H. Kluger	P	12 yrs imprison. and 3 yrs supervised release	-	\$415,000 forfeit.
	Garrett D. Bauer	P	9 yrs imprison. and 3 yrs supervised release	-	Forfeiture of specified assets and real property
SEC v. Donald L. Johnson, et al.	Donald L. Johnson	P	42 months imprison. and 1 yr supervised release	-	\$755,066 forfeit.
SEC v. H. Clayton Peterson, et al.	Drew Brownstein	P	1 yr and 1 day imprison. and 3 yrs supervised release (including 6 months home confine.)	\$7,500	\$2,445,856 forfeit., 500 hrs of community service
	Drew Clayton Peterson	P	3 yrs prob.	\$10,000	\$205,416 forfeit., 200 hrs of community service
	H. Clayton Peterson	P	2 yrs prob. (including 3 months home confine.)	\$400,000	\$63,000 forfeit.
SEC v. Toby G. Scammell	Toby G. Scammell	-	-	-	-
SEC v. Anthony Scolaro	Anthony Scolaro	P	3 yrs prob.	\$150,000	\$125,890 forfeit.
SEC v. Clay Capital Management, LLC, et al.	James F. Turner II	P	12 months imprison. plus 3 yrs supervised release	\$25,000	-

	Scott A. Robarge	P	1 yr prob.	\$5,000	-
	Scott A. Vollmar	P	2 yrs prob.	\$15,000	-
Fiscal Year 2012					
Civil Case Name	Defendant	Trial/	Result		
		Plea	Sentence	Fine	Other sanctions
SEC v. Rajat Gupta, et al.	Rajat Gupta	T	24 months imprison. plus 1 yr supervised release	\$5,000,000	Restitution to be determined at future date
SEC v. Spyridon Adondakis, et al.	Spyridon Adondakis	P	sentencing delayed	-	-
	Todd Newman	T	54 months imprison. plus 1 yr supervised release	\$1,000,000	\$737,724 forfeit.
	Anthony Chiasson	T	78 months imprison. plus 1 yr supervised release	\$5,000,000	\$1,382,217 forfeit.
SEC v. Douglas F. Whitman, et al.	Douglas F. Whitman	T	24 months imprison. plus 1 yr supervised release	\$250,000	\$935,306 forfeit.
SEC v. John Kinnucan, et al.	John Kinnucan	P	51 months imprison. plus 3 yrs supervised release	-	\$164,000 forfeit.
SEC v. Timothy J. McGee, et al.	Timothy J. McGee	T	6 months imprison. plus 2 years supervised release	\$100,000	-
SEC v. Sherif Mityas	Sherif Mityas	P	3 yrs prob.	-	\$25,800 forfeit.
SEC v. Kenneth T. Robinson	Kenneth T. Robinson	P	27 months imprison. plus 3 years supervised	-	\$175,000 forfeit.

			release		
SEC v. Reema D. Shah, et al.	Reema D. Shah	P	-	-	-
	Robert W. Kwok	P	2 yrs prob.	\$1,000	\$4,754 forfeit.
SEC v. Tai Nguyen	Tai Nguyen	P	12 months and one day imprison. plus 1 yr supervised release	-	\$400,000 forfeit.
In the Matter of Stanley Ng, CPA	Stanley Ng	P	2 years prob.	\$2,000	\$6,464 forfeit., 400 hrs of community service
SEC v. Robert D. Ramnarine	Robert D. Ramnarine	P	12 months and 1 day imprison. plus 2 yrs supervised release	\$10,000	\$311,361 forfeit.
SEC v. Hyung Lim	Hyung Lim	P	-	-	-
SEC v. Jauyo "Jason" Lee, et al.	Jauyo "Jason" Lee	P	16 months imprison. plus 2 yrs supervised release	-	-
	Victor Chen	P	16 months imprison. plus 2 yrs supervised release	-	\$283,817.18 forfeit., \$326,281.82 restit.