



## 美國內線交易法制簡介及 Salman v. United States<sup>1</sup> 判決導讀<sup>2</sup>

■ 曾開源<sup>3</sup>

內線交易向為世界各國查緝金融犯罪重點項目之一，美國也不例外。在素有「華爾街剋星」之紐約南區聯邦檢察官 Preet Bharara<sup>4</sup> 帶領之下，美國在內線交易防制工作上成果豐碩。而近來最受美國實務界矚目之案件之一，即屬美國聯邦最高法院於 2016 年 12 月 6 日，就 *Salman v. United States* 案件作出之判決。該案除了係美國聯邦最高法院睽違近 20 年，再次針對內線交易案件表示法律見解，也同時解決了第二巡迴上訴法院與第九巡迴上訴法院就「消息傳遞者期待因違背義務透露消息，而直接或間接取得個人利益」(expect a direct or indirect benefit for breaching that duty) 要件見解之歧異。

內線交易係指內部人在知悉發行股票公司有重大影響其股票價格之消息時，在該消息未公開前，自行或以他人名義買入或賣出公司之股票或其他具有股權性質之有價證券。美國內線交易法制係源於 1934 年聯邦證券交易法第 10 條 (b) 項<sup>5</sup> (Securities Exchange Act of 1934 Section 10b, 下稱 Section 10b) 與美國證券交易委員會 (United States Securities and Exchange Commission, 下稱 SEC) 經法

<sup>1</sup> 137 S. Ct. 420 (2016).

<sup>2</sup> 本文係儘可能依原文英文句型的架構進行翻譯，但英文與中文的語法架構差異甚大，難免有語意不順或難以理解之情，若讀者有任何問題，可用 [kaiyuan1014@gmail.com](mailto:kaiyuan1014@gmail.com) 與我連絡。

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<sup>4</sup> Preet Bharara 自 2009 年至 2017 年間擔任美國紐約南區聯邦檢察官，任內致力掃蕩貪污及金融犯罪，尤其以積極查辦內線交易著稱。Preet Bharara 有效追效多起華爾街共同基金經理人涉犯內線交易，曾創下連續起訴 85 件 (人) 獲判有罪之紀錄，其中又以 S.A.C. Capital 案中，被告同意繳交史上最高之 18 億美金和解最為著名。Preet Bharara 也因而名列時代雜誌 2012 年全球最具影響力百大人物。儘管 Preet Bharara 聲名遠播，美國司法部仍於今年 3 月解除 Preet Bharara 職務，此舉引發輿論嘩然。

<sup>5</sup> 15 USCS § 78j.

律授權所頒布之 Rule 10b-5<sup>6</sup> 中之反詐欺條款。

Section 10b 的規定如下：

It is unlawful 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, any manipulative or deceptive device or any securities-based swap agreement, 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.

（中譯：在買賣證券交易所上市或未向 SEC 登錄之有價證券之相關交易中，任何人不得使用操縱或詐欺之手段、或任何以證券為基礎之交換協議、計謀，而違反 SEC 為維護公共利益及保護投資人所制定之規定。）

Rule 10b-5 的規定如下：

It shall be unlawful for any person, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud,
- (b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in 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 a security.

（中譯：任何人【按：於買賣上市或非上市有價證券時】不得直接或間接地為下列各款行為：

- (a) 利用任何設備、手段或詭計從事詐欺行為。
- (b) 對重大事實作不實陳述，或省略某些重大事實陳述，以致在當時之情境下，能使他人產生誤導之效果。
- (c) 從事任何會對他人產生詐欺或詐欺之情事的行為、業務、商業活動等。）

美國內線交易法制源自反詐欺條款，是以內線交易亦屬詐欺市場行為之一。美國法認為與公司股價有關之重大消息，係屬於公司之資產，對於因職務而知悉重大消息之「內部人」(insider)，向來認定負有「公開消息否則戒絕交易」義務 (Abstain from trading or disclose it)。而對於受規範之內部人，美國聯邦最高法

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<sup>6</sup> 17 CFR 240.10b.



院在 *Chiarella v. United States*<sup>7</sup> 案件，認為應限於對於該公司基於職務或契約而負有忠實義務，或基於特殊信賴關係而知悉重大消息者為限。

另一方面，若知悉重大消息之內部人本身並不從事交易，將重大消息告知第三人，由該第三人交易，則該內部人（消息傳遞者，下稱 tipper）與實際從事交易之他人（消息受領者，下稱 tippee）間之法律責任即依消息傳遞理論（Tipper/Tippee Liability）加以判斷。在 *Dirks v. SEC*<sup>8</sup> 案中，美國聯邦最高法院認為僅內部人對公司及股東有獨立之忠實義務，而消息受領人並無，必須在內部人違反忠實義務而傳遞消息之情形下，消息受領人於知悉重大消息時，亦一併繼受內部人「公開消息否則戒絕交易」義務。消息傳遞理論之成立要件有三：

1. tipper 違背義務（The tipper has breached duty）
2. tippee 知悉或可得知悉 tipper 違背其義務（The tippee knows or should have known that the tipper breached a duty）
3. tipper 藉由傳遞消息行為，將可獲得直接或間接利益（The tipper will benefit, directly or indirectly, from his disclosure）；或 tipper 將傳遞之消息視為禮物而告知親友（when an insider makes a gift of confidential information to a trading relative or friend）

然而獲得直接或間接「利益」的定義為何，特別是在 tipper 與 tippee 係親友時，各巡迴法院之見解未見統一。在 *U.S. v. Newman*<sup>9</sup> 案件中，第二上訴巡迴法院認為 tipper 獲得之利益，應指具有金錢或本質上有類似金錢價值之利益

<sup>7</sup> 445 U.S. 222 (1980) 該案當事人 Chiarella 受僱於 Pandick Press 公司，擔任排版工作，Pandick Press 公司受託製作公開收購相關文件。雖該等文件上目標公司係以代號或空白表示，但 Chiarella 推論目標公司之名稱，便買進目標公司之股票，於公開收購消息公開後賣出，賺取利益約 3 萬美元。法院認為 Chiarella 對於目標公司並無任何忠實義務，自不受內線交易拘束。

<sup>8</sup> 463 U.S. 646 (1983) Dirk 係保險產業投資分析師，自 Equity Funding 公司內部人處得知該公司內部重大舞弊，Dirk 進行調查後向 SEC 檢舉，但 SEC 並未正式立案調查。Dirk 即向華爾街日報爆料，並通知他的客戶大量賣出 Equity Funding 公司股票。嗣弊案經華爾街日報揭露後，Equity Funding 公司股價大幅下跌。法院認為 Dirk 之消息來源雖有告知重大消息，但並未違背忠實義務，故 Dirk 對 Equity Funding 公司亦不負忠實義務。值得注意的是，本件無論係 Dirk 或其消息來源之 Equity Funding 公司內部人均未進行交易，但 SEC 仍對 Dirk 提起民事訴訟。

<sup>9</sup> 773 2.3d 438(2d Cir. 2014) Newman 係華爾街分析師，因自其他分析師處得知 DELL 與 NVIDIA 尚未公告之營收數額交易獲利，而遭檢察官起訴。Newman 從未與 DELL 與 NVIDIA 公司內部人接觸。Newman 的抗辯有二：沒有證據證明內部人因告知重大消息而獲有利益；即便有收受利益，Newman 亦不知悉。

(something of a pecuniary or similarly valuable nature)；然而第九巡迴上訴法院認為 *Dirk* 案中已表示利益亦可包括增進人際關係 (to a meaningfully close personal relationship)，而將傳遞之消息視為禮物<sup>10</sup>。此法律見解之歧異，即待美國聯邦最高法院加以裁決，這也是 *Salman v. U.S.* 案件備受矚目之原因。該案判決如下：

### 導讀：

1934 年證券交易法第 10 條 b 項及 SEC rule 10b-5 禁止對公司負有義務之內部人，利用未公開之重大消息進行交易獲利，違反者將負刑事及民事責任。(除非他們事先適當地揭露【按：這裡是指內部人向股東會或董事會報告：知悉消息，並將利用消息進行交易】)。

Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b-5 prohibit undisclosed trading on inside corporate information by individuals who are under a duty of trust and confidence that prohibits them from secretly using such information for their personal advantage. Individuals under this duty may face criminal and civil liability for trading on inside information (unless they make appropriate disclosures ahead of time).

### 單字：

section- 條文；securities- 證券；Act- 法案；prohibit- 禁止；undisclosed- 未揭露的；under a duty- 負有義務；confidence- 信任；advantage- 優勢、利益；liability- 債務、責任。

### 導讀：

內部人亦不得將內部（按：重大）消息告知他人。*tippee* 如知悉內部人違背義務而告知重大消息，將繼受內部人之「公開消息否則戒絕交易」義務，若 *tippee* 進行交易，亦將違犯證券詐欺罪。在 *Dirks* 案中，*tippee* 之責任取決於 *tipper* 告知重大消息之行為是否構成違反忠實義務，若 *tipper* 係為求個人利益而告知他人

<sup>10</sup> *United States v. Salman*, 792 F.3d 1087.



重大消息，即已違反義務。進一步言之，陪審團可在下列情形推論該當個人利益（因此違背義務）：tipper 收受有價值之物品作為告知重大消息之對價或將重大消息作為禮物告知進行交易之親友。

These persons also may not tip inside information to others for trading. The tippee acquires the tipper's duty to disclose or abstain from trading if the tippee knows the information was disclosed in breach of the tipper's duty, and the tippee may commit securities fraud by trading in disregard of that knowledge. In *Dirks v. SEC*, 463 U.S. 646 (1983), this Court explained that a tippee's liability for trading on inside information hinges on whether the tipper breached a fiduciary duty by disclosing the information. A tipper breaches such a fiduciary duty, we held, when the tipper discloses the inside information for a personal benefit. And, we went on to say, a jury can infer a personal benefit—and thus a breach of the tipper's duty—where the tipper receives something of value in exchange for the tip or “makes a gift of confidential information to a trading relative or friend.”

**單字：**

tip- 告知；acquire- 獲得；abstain- 禁止；in breach of - 違反；commit fraud- 觸犯詐欺；in disregard of knowledge- 無論是否知悉（按：不論主觀犯意）；hinge on- 取決於；fiduciary duty- 忠實義務；jury- 陪審團；infer- 推論；in exchange for- 作為交換；confidential- 秘密的。

**導讀：**

上訴人 Salman 就內線交易有罪判決上訴。Salman 自同住之親屬處得知重大消息，而該親屬之消息來源係 Salman 之姻親。Salman 得知重大消息後進行交易，他主張他不應負擔 tippee 責任，因為 tipper（他的姻親）並未收受任何金錢或財物，作為告知消息之對價，自然沒有獲得個人利益。二審法院並不認同，認為 *Dirks* 案已揭示可將重大消息作為禮物告知進行交易之親友推論該當個人利益。我們認為二審法院正確地適用 *Dirks* 案法律見解，維持二審法院判決。

Petitioner Bassam Salman challenges his convictions for conspiracy and insider trading. Salman received lucrative trading tips from an extended family member, who had received the information from Salman's brother-in-law. Salman then traded on the information. He

argues that he cannot be held liable as a tippee because the tipper (his brother-in-law) did not personally receive money or property in exchange for the tips and thus did not personally benefit from them. The Court of Appeals disagreed, holding that *Dirks* allowed the jury to infer that the tipper here breached a duty because he made a “gift of confidential information to a trading relative.” Because the Court of Appeals properly applied *Dirks*, we affirm the judgment below.

**單字：**

petitioner- 對政府機關主張權利之人（按：此處翻成上訴人）；challenge- 質疑、挑戰；conviction for- 定罪；conspiracy- 共謀從事；lucrative- 有利益的；extend family- 相較於核心家庭（父母子女同住），較多家庭成員共同居住之家庭；be held liable- 應負責任；property- 財產、財物；disagree- 不同意；hold- 認定（按：法院表示法律意見時常用此動詞）；apply- 適用；affirm- 確認、維持；judgment- 判決。

**導讀：**

Maher Kara 在花旗銀行醫療投資部門任職，經手處理關於客戶併購案之高度機密消息。Maher 跟哥哥 Mounir Kara（也叫 Michael）感情很好。自 Maher 到花旗銀行上班開始，他都會跟 Michael 聊到工作上的事情。一開始，他尋求具備化學背景的 Michael 協助，以掌握與工作相關之科學觀念。後來當他們的父親罹患癌症，2 兄弟聊到從事癌症創新療法及減少疼痛技術的公司，Michael 開始利用 Maher 告訴他的消息進行交易。起初 Maher 不知道 Michael 的交易，但後他來開始懷疑 Michael（有利用 Maher 告知的訊息進行交易）。

Maher Kara was an investment banker in Citigroup’s healthcare investment banking group. He dealt with highly confidential information about mergers and acquisitions involving Citigroup’s clients. Maher enjoyed a close relationship with his older brother, Mounir Kara (known as Michael). After Maher started at Citigroup, he began discussing aspects of his job with Michael. At first he relied on Michael’s chemistry background to help him grasp scientific concepts relevant to his new job. Then, while their father was battling cancer, the brothers discussed companies that dealt with innovative cancer treatment and pain management techniques. Michael began to trade on the information Maher shared with him. At first, Maher



was unaware of his brother's trading activity, but eventually he began to suspect that it was taking place.

**單字：**

deal with- 從事；mergers and acquisitions- 併購；close relationship- 關係密切；rely on- 依賴；grasp- 掌握；relevant to- 關於；innovative- 創新的；treatment- 治療方法；eventually- 後來；suspect- 懷疑。

**導讀：**

最後，Maher 告知 Michael 關於正在進行的併購交易之消息，藉此協助 Michael 從事內線交易。Maher 有時用代號跟 Michael 傳達公司消息，其他時候 Maher 還會告知並非他負責的公司的交易消息，以避免被發現。而 Maher 不知道的是，Michael 另將重大消息告知 Salman，他是 Michael 的朋友及妹夫。在遭當局查獲之前，Salman 已獲利超過 150 萬美元，他與實際下單的親友平分利潤。

Ultimately, Maher began to assist Michael's trading by sharing inside information with his brother about pending mergers and acquisitions. Maher sometimes used code words to communicate corporate information to his brother. Other times, he shared inside information about deals he was not working on in order to avoid detection. Without his younger brother's knowledge, Michael fed the information to others—including Salman, Michael's friend and Maher's brother-in-law. By the time the authorities caught on, Salman had made over \$1.5 million in profits that he split with another relative who executed trades via a brokerage account on Salman's behalf.

**單字：**

ultimately- 最後地；assist- 協助；pending- 進行中的；code- 代號；communicate- 傳達、溝通；avoid- 避免；detection- (被) 發現；without someone's knowledge- 某人不知道的是；feed- 餵 (按：分享)；profits- 利潤；execute trade- 下單交易；via- 透過；brokerage- 經紀商；on someone's behalf- 代表某人。

**導讀：**

Salman 因涉犯共謀證券詐欺之 1 項罪名，與證券詐欺之 4 項罪名遭起訴。

Maher 及 Michael 就自己涉案遭控訴之部分都自白犯罪，並在 *Salman* 案審理中作證。證據顯示，Maher 與 Michael 關係密切，Maher 非常喜愛自己的兄弟，Michael 就像是 Maher 的第二個父親，而 Michael 還是 Maher 與 Salman 妹妹結婚時之伴郎。Maher 亦證稱，他告知 Michael 重大消息是為了讓 Michael 可以從中獲利，並預期 Michael 會利用重大消息進行交易。雖然 Maher 解釋他告知重大消息，大部分是為了要應付 Michael（因 Michael 總是不停地糾纏），但他也陳稱告知重大消息是要幫助 Michael 及滿足 Michael 的需求。例如，Michael 曾打電話給 Maher，要求 Maher 提供「協助」，Maher 以為 Michael 指的是錢，要拿錢給 Michael 時，但 Michael 要求的是重大消息。Maher 就告知 Michael 一個將要發生的併購案。雖然 Maher 馬上就後悔告訴 Michael，並回電懇求 Michael 不要利用重大消息交易，但他預期 Michael 無論如何都會進行交易。

Salman was indicted on one count of conspiracy to commit securities fraud, and four counts of securities fraud. Facing charges of their own, both Maher and Michael pleaded guilty and testified at Salman's trial.

The evidence at trial established that Maher and Michael enjoyed a "very close relationship." Maher "love[d] [his] brother very much," Michael was like "a second father to Maher," and Michael was the best man at Maher's wedding to Salman's sister. Maher testified that he shared inside information with his brother to benefit him and with the expectation that his brother would trade on it. While Maher explained that he disclosed the information in large part to appease Michael (who pestered him incessantly for it), he also testified that he tipped his brother to "help him" and to "fulfil[l] whatever needs he had." For instance, Michael once called Maher and told him that "he needed a favor." Maher offered his brother money but Michael asked for information instead. Maher then disclosed an upcoming acquisition. Although he instantly regretted the tip and called his brother back to implore him not to trade, Maher expected his brother to do so anyway.

**單字：**

be indicted on- 被起訴；count(s)- 罪名；charge- 控訴；plead guilty- 自白犯罪；testify- 證述；evidence- 證據；at trial- 審理中；expectation- 預期；appease- 使平息（按：這裡指應付 Michael 的要求）；pester- 糾纏；incessantly- 不停地；favor- 幫助；regret- 後悔；implore- 懇求；anyway- 無論如何。



**導讀：**

至於 Michael，他告訴陪審團，Maher 給他的即時資訊，是一般人沒有管道可以得知的，而且他可以利用這些關於股票、選擇權的資訊進行交易，更是一般人無法得知、想像的。Michael 證稱他是在 Maher 在追求 Salman 妹妹期間，跟 Salman 成為朋友，之後就跟 Salman 分享 Maher 告訴他的資訊。他在審理中詳述：每一次我得知重要的交易，Salmon 總是我電話通知名單的第一個。Michael 也證稱他有告知 Salmon 資訊來源是 Maher。

For his part, Michael told the jury that his brother's tips gave him "timely information that the average person does not have access to" and "access to stocks, options, and what have you, that I can capitalize on, that the average person would never have or dream of." Michael testified that he became friends with Salman when Maher was courting Salman's sister and later began sharing Maher's tips with Salman. As he explained at trial, "any time a major deal came in, [Salman] was the first on my phone list." Michael also testified that he told Salman that the information was coming from Maher.

**單字：**

Timely- 即時的；average- 平均的、一般的；access to- 管道（得知）；options- 選擇權；capitalize- 利用；court- 追求（按：這裡當動詞用）；explain- 解釋。

**導讀：**

經陪審團審議後，Salmon 所有罪名成立，他上訴第九巡迴法院。在上訴期間，第 2 巡迴法院關於 Newman 案的判決出爐，該案法院撤銷 2 名基金經理人的內線交易有罪判決。Newman 案的被告與消息來源並不認識，而且法院認定沒有證據可以證明任何一名被告知道消息來源為何。法院雖承認 Dirks 跟案例法允許「將秘密消息作為禮物告知進行交易之親友」作為推論 tipper 的個人利益，但法院的結論是，在沒有證據可以證明當事人間存有法律意義的緊密關係，而這緊密關係足以產生客觀的、後果深遠的資訊交換，並代表著其間至少有潛在的金錢或本質上具類似價值的個人利益，Dirks 案的推論在某程度上是不被允許的。

After a jury trial ..., Salman was convicted on all counts. ... Salman appealed to the Ninth Circuit. While his appeal was pending, the Second Circuit issued its opinion in United States

v. Newman, 773 F.3d 438 (2014). There, the Second Circuit reversed the convictions of two portfolio managers who traded on inside information. The Newman defendants were “several steps removed from the corporate insiders” and the court found that “there was no evidence that either was aware of the source of the inside information.” The court acknowledged that Dirks and Second Circuit case law allow a fact finder to infer a personal benefit to the tipper from a gift of confidential information to a trading relative or friend. But the court concluded that, “[t]o the extent” Dirks permits “such an inference,” the inference “is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature.”

**單字：**

appeal- 上訴；Ninth Circuit- 第 9 巡迴法院（聯邦第二審法院）；opinion- 意見；reverse- 推翻；portfolio- 資產配置、投資組合；removed- 被移除的；be aware of- 知悉；acknowledge- 承認；conclude- 作出結論；to the extent- 某程度上；impermissible- 不被允許的；in the absence of- 在缺少…的情形下；generate- 產生；objective- 客觀的；consequential- 後果的；represent- 代表。

**導讀：**

Salman 援用 Newman 案見解，主張他的有罪判決應與撤銷，雖然證據顯示 Maher 將重大消息當作禮物告知 Michael，而 Salman 也知悉上情，但沒有證據證明 Maher 有收受任何具金錢或本質上具類似價值的個人利益作為對價，或證明 Salman 知悉有這種利益存在的情形。第 9 巡迴法院不贊成他的答辯，維持一審有罪判決。法院的理由是本案適用 Dirks 案揭示之原則 - 將秘密消息作為禮物告知進行交易之親友，此情形可認定 tipper 獲有個人利益。無疑地，Maher 告知 Michael 重大消息完全符合 Dirks 案所揭示之將秘密消息作為禮物告知進行交易親友之原則。Newman 案某程度上甚至進一步要求，在將秘密消息作為禮物告知親友之情形下，tipper 須獲得額外的利益。然而第 9 巡迴法院拒絕適用 Newman 案的見解。我們准許上訴並調閱全卷，以解決第 2 巡迴法院 Newman 案與第 9 巡迴法院本案法律見解歧異之局勢。



Pointing to Newman, Salman argued that his conviction should be reversed. While the evidence established that Maher made a gift of trading information to Michael and that Salman knew it, there was no evidence that Maher received anything of “a pecuniary or similarly valuable nature” in exchange—or that Salman knew of any such benefit. The Ninth Circuit disagreed and affirmed. The court reasoned that the case was governed by Dirks ‘s holding that a tipper benefits personally by making a gift of confidential information to a trading relative or friend. Indeed, Maher’s disclosures to Michael were “precisely the gift of confidential information to a trading relative that Dirks envisioned.” To the extent, Newman went further and required additional gain to the tipper in cases involving gifts of confidential information to family and friends, the Ninth Circuit “decline[d] to follow it.” We granted certiorari to resolve the tension between the Second Circuit’s Newman decision and the Ninth Circuit’s decision in this case.

**單字：**

point to- 指向（按：此處翻為援引）；receive- 收受；govern- 統治（按：此處翻成適用）；precisely- 準確地；envision- 預見（按：此處翻揭示未來適用之法則）；require- 要求；involving- 包括；decline- 拒絕；follow- 跟隨；grant- 核發；certiorari- 調卷令（法院聯邦最高法院允許上訴核發之令狀）；resolve- 解決；tension- 緊張局勢（按：此處翻成法律見解歧異之局勢）。

**導讀：**

本案 Salman 抗辯內部人將秘密消息作為禮物告知親友，並不足以構成證券詐欺。相反地，Salman 認為 tipper（在此情形下）個人並未獲有利益，除非 tipper 告知重大消息的目的是在獲取金錢、財物或其他有具體價值之物。他主張關於內線交易的判決先例、及援引的相關判決，係適用在內部人為求自身具體金錢利益而濫用秘密資訊的情形。他認為我國內線交易以外之刑事詐欺判決先例都可佐證他的主張，因為這些案例都確認實施詐欺行為之人必須個人獲得金錢或財物。進一步言，Salman 力陳將 gift（指的是他的情形）視為個人利益將導致內線交易行為定義不明確，而且也過於廣泛。不明確的原因是，因為有無責任須取決於事實認定，例如 tipper、tippee 間關係密切程度以及 tipper 傳遞消息之目的為何。而過於廣泛，因為政府可以藉由主張 tipper 意在給與 tippee 一個禮物，以此規避舉證

證明個人利益明確存在。他還認為最高法院應限縮解釋 *Dirks* 案揭示的標準，以避免憲法上的疑慮。最後，*Salman* 主張「禮物說」為遙遠的 *tippee* 帶來了煩人的困擾，遙遠的 *tippee* 是指是並非從原始 *tipper*，而是從其他 *tippee* 處得知資訊，他們不知道原始 *tipper* 與 *tippee* 的關係，因此也無法得知為何 *tipper* 要傳遞消息。

In this case, *Salman* contends that an insider's "gift of confidential information to a trading relative or friend," is not enough to establish securities fraud. Instead, *Salman* argues, a *tipper* does not personally benefit unless the *tipper*'s goal in disclosing inside information is to obtain money, property, or something of tangible value. He claims that our insider-trading precedents, and the cases those precedents cite, involve situations in which the insider exploited confidential information for the insider's own "tangible monetary profit." He suggests that his position is reinforced by our criminal-fraud precedents outside of the insider-trading context, because those cases confirm that a fraudster must personally obtain money or property. More broadly, *Salman* urges that defining a gift as a personal benefit renders the insider-trading offense indeterminate and overbroad: indeterminate, because liability may turn on facts such as the closeness of the relationship between *tipper* and *tippee* and the *tipper*'s purpose for disclosure; and overbroad, because the Government may avoid having to prove a concrete personal benefit by simply arguing that the *tipper* meant to give a gift to the *tippee*. He also argues that we should interpret *Dirks*'s standard narrowly so as to avoid constitutional concerns. Finally, *Salman* contends that gift situations create especially troubling problems for remote *tippees*—that is, *tippees* who receive inside information from another *tippee*, rather than the *tipper*—who may have no knowledge of the relationship between the original *tipper* and *tippee* and thus may not know why the *tipper* made the disclosure.

**單字：**

contend- 對抗、爭執；establish- 建立；unless- 除非；obtain- 得到；claim- 主張；訴求；precedent- 判決先例；cite- 引用；exploit- 利用；outside of - 在…之外；context- 情形、狀況；confirm- 確認；fraudster- 實施詐欺行為之人；urge- 催促（按：這裡指力陳）；define- 定義；render- 導致；offense- 犯罪行為；indeterminate- 不明確的；overbroad- 過於廣泛的；concrete- 具體明確的；mean to do- 試圖去作；interpret- 解釋；constitutional- 憲法上的；concern- 疑慮；remote- 遙遠的；rather than- 而非。

**導論：**

政府並不同意他的看法，並主張將秘密資訊當作禮物送給任何人，不僅是從事交易的親友，都足以證明證券詐欺。從政府的觀點，當 tipper 告知機密資訊，係出於與公司無關之目的時，tipper 都已獲得個人利益。因此，（將機密資訊當作）禮物送給朋友、親屬或任何人，都可支持「tipper 為求個人目的，利用內部消息的交易價值，及因告知（他人訊息）而獲得個人利益」之推論。

The Government disagrees and argues that a gift of confidential information to anyone, not just a “trading relative or friend,” is enough to prove securities fraud. Under the Government’s view, a tipper personally benefits whenever the tipper discloses confidential trading information for a noncorporate purpose. Accordingly, a gift to a friend, a family member, or anyone else would support the inference that the tipper exploited the trading value of inside information for personal purposes and thus personally benefited from the disclosure. ...

**單字：**

view- 觀點；noncorporate- 與公司無關的；benefit- 獲得利益。

**導論：**

政府另就 Salman 論點中，關於遙遠的 tippee 責任認定上的無限制及不明確疑慮表示意見。政府表示檢察官仍須滿足其他法定要件才能認定 tippee 的內線交易責任，如此即可大大減輕上開疑慮。政府認為，為了建構被告刑事 tippee 責任，必須證明「tipper 期待傳遞之資訊將會被用於交易」此一事實直至無合理懷疑。政府另主張，為建構被告刑事 tippee 責任，必須證明 tippee 知悉 tipper 已違背義務，換言之，tippee 知悉 tipper 傳遞消息是為了個人利益以及預期交易將會發生。The Government also argues that Salman’s concerns about unlimited and indeterminate liability for remote tippees are significantly alleviated by other statutory elements that prosecutors must satisfy to convict a tippee for insider trading. The Government observes that, in order to establish a defendant’s criminal liability as a tippee, it must prove beyond a reasonable doubt that the tipper expected that the information being disclosed would be used in securities trading. The Government also notes that, to establish a defendant’s criminal liability as a tippee, it must prove that the tippee knew that the tipper breached a duty—in other words,

that the tippee knew that the tipper disclosed the information for a personal benefit and that the tipper expected trading to ensue.

**單字：**

Unlimited- 無限制的；significantly- 非常重要地；alleviated- 減輕的；statutory- 法定的；element- 要件；prosecutor- 檢察官；satisfy- 滿足；observe- 觀察（按：這裡指提出論點）；beyond- 超出；reasonable- 合理的；ensue- 即將到來。

**導讀：**

我們依循 *Dirks* 案（所揭示之原則即可解決本案爭點）。在 *Dirks* 案中，我們已說明如果 tippee 要負內線交易責任，只有在 tippee 參與 tipper 違背忠實義務之情形下。而 tipper 是否違背義務則大多取決於傳遞消息給 tippee 的目的為何。我們認為，在於檢視內部人是否自傳遞消息中直接或間接獲有利益。因此，傳遞重大消息而未取得個人利益並不足夠。在決定 tipper 是否獲得個人利益，我們要求下級法院將注意力集中在客觀的標準，也就是說，內部人是否因傳遞消息直接或間接取得個人利益，例如金錢所得或可轉化成未來利益的名譽上利益。個人利益「通常」可從客觀事實及情形加以推論，例如內部人與消息受領人間之關係，而該關係代表著後者會提供對價，或是意圖使特定受領人得利。特別是，我們認為「忠實義務」及「利用機密資訊」要件，在內部人將機密資訊當作禮物告知進行交易之親友之情形下都會構成。在這種情形下，（告知機密資訊之）禮物與交易，就如同內部人自行交易後，再將交易利得當作禮物送給受領人一樣。我們就適用此一原則來處理 *Dirks* 案，最終認定 *Dirks* 案中的 tipper 並未因自傳遞消息給 *Dirks* 而獲得任何金錢或個人利益，tipper 也不是要將機密資訊當作禮物告知 *Dirks*。

We adhere to *Dirks*, which easily resolves the narrow issue presented here. In *Dirks*, we explained that a tippee is exposed to liability for trading on inside information only if the tippee participates in a breach of the tipper's fiduciary duty. Whether the tipper breached that duty depends "in large part on the purpose of the disclosure" to the tippee.. "[T]he test," we explained, "is whether the insider personally will benefit, directly or indirectly, from his disclosure." Thus, the disclosure of confidential information without personal benefit is not enough. In determining whether a tipper derived a personal benefit, we instructed courts



to “focus on objective criteria, i.e., whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings.” This personal benefit can “often” be inferred “from objective facts and circumstances,” we explained, such as “a relationship between the insider and the recipient that suggests a quid pro quo from the latter, or an intention to benefit the particular recipient.” In particular, we held that “[t]he elements of fiduciary duty and exploitation of nonpublic information also exist when an insider makes a gift of confidential information to a trading relative or friend.” In such cases, “[t]he tip and trade resemble trading by the insider followed by a gift of the profits to the recipient.” We then applied this gift-giving principle to resolve *Dirks* itself, finding it dispositive that the tippers “received no monetary or personal benefit” from their tips to *Dirks*, “nor was their purpose to make a gift of valuable information to *Dirks*.”

**單字：**

adhere to- 依循；resolve- 解決；present- 呈現；participate in- 參與；derive- 獲得；instruct- 指示；objective- 客觀的；criteria- 標準；reputational- 名譽上的；circumstances- 情形；suggest- 建議（按：這裡指代表著某種意義）；quid pro quo- 對價；latter- 後者；intention- 意圖；principle- 原則；dispositive- 提供最終解決方法。

**導讀：**

我們關於「贈送禮物」的討論可以解決本案（問題）。Maher 提供內部資訊給近親，他的哥哥 Michael。Dirks 案已明確揭示：當 tipper 把重大消息作為禮物告知進行交易之親友，tipper 已違背忠實義務，而這個原則已足夠解決本案。而 Salman 的辯護人也在言詞辯論時承認，Maher 如果自行交易後將交易所得當作禮物送給他哥哥，這行為也將違背義務，明顯地在此情形 Maher 個人將獲得利益。而 Maher 有效地達成相同結果，藉由告知 Michael 資訊，然後允許由 Michael 自行交易。Dirks 案也禁止這樣的行為。Dirks 案特別指出，當 tipper 將內部資訊告知進行交易之親友，陪審團可以推論 tipper 意在提供等同於現金的禮物。在此情形下，tipper 個人獲有利益，因為將交易資訊當作禮物就如同 tipper 自行交易後將

交易利得當作禮物一樣。本案中，藉由將機密訊息當作禮物告知他的哥哥，並預期他哥哥將會進行交易，Maher 已經違背了對於花旗銀行及客戶所負之忠實及保密義務，而這些義務也為 Salman 所承繼，Salman 也因明知資訊不當傳遞卻仍進行交易的行為，而違背了這些義務。

Our discussion of gift giving resolves this case. Maher, the tipper, provided inside information to a close relative, his brother Michael. Dirks makes clear that a tipper breaches a fiduciary duty by making a gift of confidential information to “a trading relative,” and that rule is sufficient to resolve the case at hand. As Salman’s counsel acknowledged at oral argument, Maher would have breached his duty had he personally traded on the information here himself then given the proceeds as a gift to his brother. It is obvious that Maher would personally benefit in that situation. But Maher effectively achieved the same result by disclosing the information to Michael, and allowing him to trade on it. Dirks appropriately prohibits that approach, as well. Dirks specifies that when a tipper gives inside information to “a trading relative or friend,” the jury can infer that the tipper meant to provide the equivalent of a cash gift. In such situations, the tipper benefits personally because giving a gift of trading information is the same thing as trading by the tipper followed by a gift of the proceeds. Here, by disclosing confidential information as a gift to his brother with the expectation that he would trade on it, Maher breached his duty of trust and confidence to Citigroup and its clients—a duty Salman acquired, and breached himself, by trading on the information with full knowledge that it had been improperly disclosed.

**單字：**

discussion- 討論；sufficient- 充足的；at hand- 手邊的；counsel- 辯護人；oral argument- 言詞辯論；achieve- 達成；appropriately- 適當地；specify- 特別指出；equivalent- 等同於。

**導讀：**

就第 2 巡迴法院認為 tipper 須獲得具有金錢或本質上具類似價值之利益，作為（按：將重大消息當作）禮物告知親友之對價而言，我們同意第 9 巡迴法院的見解，認為（按：第 2 巡迴法院）這樣的要件與 Dirks 案見解並不相符。





To the extent the Second Circuit held that the tipper must also receive something of a “pecuniary or similarly valuable nature” in exchange for a gift to family or friends, we agree with the Ninth Circuit that this requirement is inconsistent with *Dirks*.

單字：

in exchange for- 交換（按：此處翻成對價）

導讀：

Salman 指出許多內線交易案子，其中也包括 *Dirks* 案中引用的，都是內部人從濫用交易訊息中個人獲利。但這並不影響 *Dirks* 案所揭示、適用之原則。Salman 另引用我們解釋其他聯邦詐欺法律的刑事詐欺案件見解，認為這些見解代表著一個原則 - 「除非被告獲得金錢或財物，否則詐欺不會成立」。假設這些案子跟我們對 § 10(b)（按：解釋）架構有關（政府強烈反對這點），然而這些案子都不會影響我們在 *Dirks* 案中揭示的基本論點。將重大消息當作禮物告知像 Michael 的親友，跟自己交易獲得利益後，再分給親友其實沒有太大區別。Tipper 在這 2 種情形都獲有利益。本案事實說明了這點：在他們其中一次 tipper/tippee 的互動中，Michael 請 Maher 幫他一個忙，但拒絕 Maher 給他錢的提議，反而要求以及知悉有利可圖的交易訊息。

Salman points out that many insider-trading cases—including several that *Dirks* cited—involved insiders who personally profited through the misuse of trading information. But this observation does not undermine the test *Dirks* articulated and applied. Salman also cites a sampling of our criminal-fraud decisions construing other federal fraud statutes, suggesting that they stand for the proposition that fraud is not consummated unless the defendant obtains money or property. Assuming that these cases are relevant to our construction of § 10(b) (a proposition the Government forcefully disputes), nothing in them undermines the commonsense point we made in *Dirks*. Making a gift of inside information to a relative like Michael is little different from trading on the information, obtaining the profits, and doling them out to the trading relative. The tipper benefits either way. The facts of this case illustrate the point: In one of their tipper-tippee interactions, Michael asked Maher for a favor, declined Maher’s offer of money, and instead requested and received lucrative trading information.

**單字：**

Point out- 指出；misuse- 不當使用；undermine- 破壞（按：此處翻成影響）；articulate- 闡述；construe- 解釋；stand for- 代表；proposition- 提議；consummated- 完成的；assume- 假設；relevant to- 有關；construction- 架構；commonsense point- 基本論點；illustrate- 說明。

**導讀：**

我們駁回 *Salman* 的論點，他認為 *Dirks* 案所揭示之（按：將機密訊息當作）禮物見解，在本案適用上是不明確而違憲。*Dirks* 案揭示了一個簡易明確、用來決定 *tippee* 責任的指導原則。而 *Salman* 並未說明 § 10(b) 或 *Dirks* 案禮物見解，（按：在適用上會）導致衡量犯罪帶來的風險時產生不明確的情形為何，也未說明 § 10(b) 或 *Dirks* 案見解（按：適用上）因不明確而遭批評之情。充其量，*Salman* 只說明在某些情形下，認定（按：將重大消息當作）禮物之法律責任會有困難。單憑這點並無法指摘聯邦刑事禁令不明確，因為即使明確的規則（按：在適用上）也會有不只一種的解釋可能。我們也駁回 *Salman* 請求適用「有疑唯利被告」法則之請求，因為他並沒有指出有何明顯的含糊不清而可以適用上開法則之情形。相反地，*Salman* 的行為正是 *Dirks* 案（按：將機密訊息當作）禮物見解的核心。對法院來說，要決定有無內部人自傳遞消息而獲有個人利益之事實，仍然不是一件容易的事，但我們今日無須處理這個問題，因為本案正是 *Dirks* 案揭示之「將機密訊息當作禮物告知進行交易之親友」

We reject *Salman's* argument that *Dirks's* gift-giving standard is unconstitutionally vague as applied to this case. *Dirks* created a simple and clear “guiding principle” for determining *tippee* liability, and *Salman* has not demonstrated that either § 10(b) itself or the *Dirks* gift-giving standard “leav[e] grave uncertainty about how to estimate the risk posed by a crime” or are plagued by “hopeless indeterminacy.” At most, *Salman* shows that in some factual circumstances assessing liability for gift-giving will be difficult. That alone cannot render “shapeless” a federal criminal prohibition, for even clear rules “produce close cases.” We also reject *Salman's* appeal to the rule of lenity, as he has shown “no grievous ambiguity or uncertainty that would trigger the rule’s application.” To the contrary, *Salman's* conduct is in



the heartland of *Dirks*'s rule concerning gifts. It remains the case that “[d]etermining whether an insider personally benefits from a particular disclosure, a question of fact, will not always be easy for courts.” But there is no need for us to address those difficult cases today, because this case involves “precisely the ‘gift of confidential information to a trading relative’ that *Dirks* envisioned.

**單字：**

leave- 留下（按：此處翻成導致）；grave- 嚴重的；estimate- 估計；pose- 提出（按：此處翻成帶來）；plague- 苦惱（按：此處翻成遭批評）；hopeless- 沒有希望的；indeterminacy- 未決、不明確；at most- 最多；assess- 評估；close case- 指法院的裁決，有不只一種的解釋方法。remain- 仍然是；address- 處理。

**導讀：**

*Salman* 案的陪審團適當地被引導個人利益包括將機密訊息當作禮物告知進行交易親友之情形，如同二審法院所說，政府已提出直接證據證明（本案）是把攸關市場交易的訊息當作禮物傳遞。而且，*Salman* 自己也承認，依我們在 *Dirks* 案的見解，本案證據足夠維持他的有罪判決。因此，第 9 巡迴法院的判決應予維持。*Salman*'s jury was properly instructed that a personal benefit includes “the benefit one would obtain from simply making a gift of confidential information to a trading relative.” As the Court of Appeals noted, “the Government presented direct evidence that the disclosure was intended as a gift of market-sensitive information.” And, as *Salman* conceded below, this evidence is sufficient to sustain his conviction under our reading of *Dirks*. Accordingly, the Ninth Circuit's judgment is affirmed.