SEC radically changes its appr to investigating insider tradin

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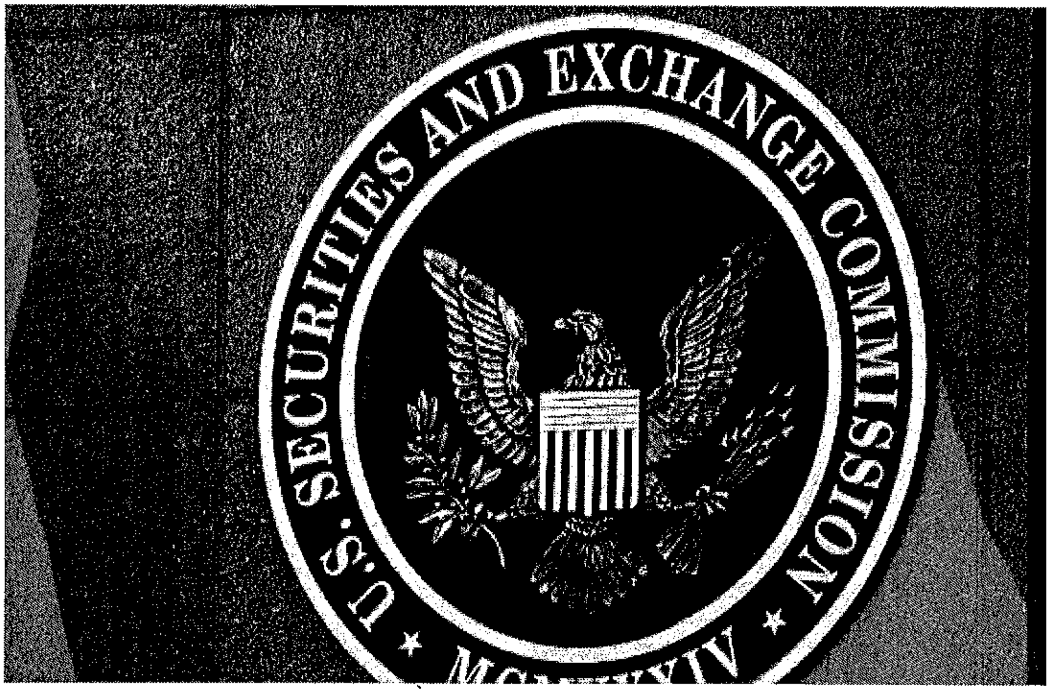

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Back in the day, the Securities and Exchange Commission patiently waited for its insider trading leads, be it a referral from the Financial Industry Regulatory Authority (FINRA), or an anonymous tip laying out the details of a lurid insider trading ring. Once the SEC had the individual target trader in its crosshairs, it would investigate the circumstances surrounding the suspicious trade(s), looking to determine what material, non-public information the trader knew, how he knew it, when he learned it and whether he tipped others. The SEC would also examine the target's trading history to determine whether there existed a pattern of insider trading involving the same stock or, perhaps, additional securities. This investigative process may be a thing of the SEC's past.

Now, armed and emboldened with an internal analytics platform and powerful data mining tools, the SEC is aggressively analyzing "big data" to first identify suspicious insider trading patterns in the hopes of then pinpointing culpable individual traders. The SEC's analytics tools allows it to scan databases with an eye to uncovering insider-trading patterns in an estimated 10 billion rows of historical trading data culled from securities brokerage firms over the last decade.

Among other red flags, the SEC looks for stock purchases in advance of mergers or FDA approval of new drugs. Once it has identified an unusual, fishy trading pattern, the SEC can then dig and identify the individual trader.

The SEC's big data approach thus turns on its head the SEC's traditional focus on the trader as the origin and starting point of the insider trading investigation, and thus marks a radical divergence from its historical, investigative technique. However, while the SEC's utilization of its new technology will certainly assist its Enforcement Division in identifying unusual and suspicious trading patterns and likely increase the number of insider trading inquiries, the SEC still has to investigate and prove -- in an old school, methodical fashion -- the legal elements of an insider trading violation against the individual trader. No easy task. For example, red flags identified by the SEC's use of big data that initially prompted the insider trading inquiry may, after a thorough investigation, turn out to be nothing more than coincidence, or events that the targeted trader can plausibly and innocently explain.

Bottom line: the SEC's use of big data, while certainly a powerful, relatively new tool in its enforcement arsenal, is not a panacea and can never substitute for the traditional investigatory work of its Enforcement Division, which frequently must make very human, "gut" decisions on often grey area insider trading fact patterns. As defense counsel to those under SEC insider trading investigations, I take great comfort in that "data".

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