



Bulletin

of The International Academy
of Financial Crime Litigators

ISSUE 6 | SPRING 2026

Insider Trading Risks in Big Law: Governance, Accountability, and Enforcement

*A Discussion with Professor
Karen Woody*

ELIZABETH ORTEGA



KAREN WOODY

Introduction

Big Law has not been immune to the insider trading scandals that have engulfed politicians and business executives alike, generating headlines and liability. Prompted by Professor Woody's recent [Bloomberg Law analysis](#) examining insider trading risks within major law firms, this Q&A considers how evolving enforcement trends may reshape compliance expectations across the legal industry.

As regulators expand their focus beyond traditional trading activity and toward more complex informational advantages, firms are increasingly confronting questions about governance, surveillance, attorney trading policies, and institutional accountability. The discussion below explores the broader market, legal, and ethical implications of these developments and what they may signal for the future of law firm risk management.

Q: IN LIGHT OF GROWING SCRUTINY AROUND INSIDER TRADING ENFORCEMENT, SHOULD MAJOR LAW FIRMS ADOPT MORE FORMALIZED TRADING COMPLIANCE MECHANISMS—SIMILAR TO RULE 10B5-1 PLANS—TO GOVERN ATTORNEY SECURITIES ACTIVITY INVOLVING ACCESS TO MATERIAL NONPUBLIC INFORMATION?

Prof. Woody: The answer is not an obvious “yes,” but the question deserves serious consideration. The recent [Big Law insider trading scandal](#) has moved that question from a theoretical realm to a realistic one.

For background, Rule 10b5-1 plans were designed to provide corporate insiders with a structured, affirmative defense against insider trading liability. The idea is that the insider's trades are pre-scheduled, and, as a result, it is presumed that the trader is not trading solely based on material nonpublic information (MNPI). The underlying logic of 10b5-1 plans can be mapped on to law firms, who are arguably in an equally precarious position as that of corporate insiders. For example, an M&A associate routinely possesses MNPI across multiple clients, industries, and deal timelines simultaneously.

A pre-set trading plan, like that of the 10b5-1 plan, would give attorneys a clear, defensible pathway to participate in securities markets without constantly navigating gray areas surrounding insider trading. When a lawyer makes a trading decision months after working on a deal, with only partial recollection of what information she possessed and when, the legal analysis becomes genuinely murky. A pre-established plan eliminates much of that ambiguity.

That said, the 10b5-1 plan is not a perfect fit. Law firms are not corporations, and their attorneys are not trading primarily in their own employer's stock; rather, they are trading across a broad, evolving universe of securities. Designing plans that are both meaningful and workable could pose a significant challenge. The shadow trading problem compounds this: if liability can attach based on economically linked companies, the set of implicated securities expands dramatically, potentially making any compliance plan either unworkably complex or so restrictive as to effectively bar attorneys from market participation altogether.

The takeaway is not that firms must adopt 10b5-1 plans specifically, but that firms should adopt something like a formalized, *ex ante* compliance architecture that takes seriously the scope of their informational exposure. Whether that takes the form of pre-scheduled trading plans, robust preclearance systems, or tiered restricted lists keyed to matter involvement, the key recommendation is the same: compliance must be designed, not assumed.

Q: AS REGULATORS INCREASINGLY FOCUS ON 'SHADOW TRADING' AND INFORMATIONAL ADVANTAGES TIED TO ECONOMICALLY CONNECTED COMPANIES, HOW SHOULD FIRMS RETHINK THE SCOPE OF RESTRICTED TRADING LISTS AND INTERNAL MONITORING PROTOCOLS?

Prof. Woody: The SEC's embrace of shadow trading—the theory that trading in one company's securities can be unlawful because the MNPI one learns in relation to Company A also can apply to Company B because Company B is “economically linked” to Company A -- fundamentally changes the compliance calculus for law firms.

Under a traditional compliance regime, a firm working on an acquisition between two companies would place both companies on a restricted trading list. That list is bounded and manageable. Under a shadow trading theory, the relevant universe expands dramatically: competitors, suppliers, customers, joint venture partners, and potentially firms operating in adjacent sectors may all become implicated. The compliance problem, [as I have argued](#), becomes simultaneously overbroad and underdetermined—overbroad because in theory everything is off-limits, and underdetermined because no one can say with confidence where the boundaries lie.

Firms can respond to this reality in a number of ways. First, restricted trading lists should be rethought to incorporate economic linkage analysis between clients and their competitors and peer companies. This likely requires moving away from static lists toward dynamic, matter-specific assessments. When a deal is opened, the compliance function should engage in a structured analysis of which peer and adjacent companies may be implicated under a shadow trading theory, and the resulting restrictions should be communicated clearly to all attorneys with matter access. Additional monitoring of attorneys' trades, particularly in industries in which the firm has clients, must also be considered.

The deeper implication is that shadow trading forces firms to treat their entire client base as a potential source of compliance liability, and not just the clients with active matters. That is a significant operational shift, and one that requires both technological investment and likely a cultural change within the compliance function.

Q: TO WHAT EXTENT SHOULD LAW FIRMS BE EXPECTED TO IMPLEMENT PROACTIVE SURVEILLANCE TOOLS, TRADING PRECLEARANCE SYSTEMS, OR AI-DRIVEN COMPLIANCE TECHNOLOGIES TO DETECT SUSPICIOUS TRADING ACTIVITY BEFORE REGULATORS INTERVENE?

Prof. Woody: Firms that routinely handle MNPI of the highest commercial value—merger negotiations, securities offerings, litigation strategy—bear a particular responsibility to prevent misuse of that information. The recent scandal involving Big Law attorneys underscored that reliance on attorney

professionalism and ethics standards alone is insufficient. Proactive surveillance is not just good practice; it is increasingly a baseline expectation that regulators, clients, and courts are likely to impose.

Major financial institutions have long operated under compliance frameworks that include personal trading preclearance, restricted lists, certifications, and automated surveillance—all while navigating serious privilege and confidentiality constraints. Thus, the technology exists; the question is whether law firms will invest in it, and whether attorneys will agree to the norm-shifting that will require much more personal disclosure and transparency surrounding their trades.

AI-driven compliance tools could provide streamlined solutions. Machine learning systems can flag trading patterns that correlate with matter timelines, identify anomalous activity by attorneys with matter access, and generate alerts for human review—without requiring direct inspection of privileged communications. Although AI-based systems may still create issues, particularly related to privacy, they represent a meaningful advance over the current norm of manual monitoring and self-reporting.

Ultimately, the standard firms should hold themselves to is proportionality: compliance investment should reflect the firm's exposure to MNPI. Large M&A and capital markets practices create asymmetric informational risk and should be subject to correspondingly robust controls. The days of treating trading compliance as an afterthought are over.

Q: DOES THE EXPANDING INTERPRETATION OF INSIDER TRADING LAW CREATE AN ENVIRONMENT WHERE LEGAL AND FINANCIAL PROFESSIONALS ARE OPERATING WITHOUT SUFFICIENTLY CLEAR BOUNDARIES REGARDING PERMISSIBLE MARKET ACTIVITY?

Prof. Woody: There is a genuine doctrinal instability at the heart of contemporary insider trading law, and it creates real uncertainty for practitioners—including lawyers who are themselves experts in the field. The core prohibition under Rule 10b-5 has never been defined by statute; it has been built [case-by-case](#) through SEC enforcement actions and judicial

decisions. The boundaries of material information, the scope of the duty that triggers liability, and the definition of who qualifies as a “tipper” or “tippee” have all shifted over time, and have varied based on circumstance. Shadow trading pushes the envelope further: it extends liability beyond the securities of the company to which the information directly relates, based on economic linkage theories that are not yet fully settled in the case law.

The result is a legal landscape that is, by any objective measure, unstable. Professionals operating in this environment must navigate uncertainty about where precisely liability begins and ends. For attorneys who deal in MNPI daily, that uncertainty is professionally significant: they cannot always know in advance whether a contemplated trade—even in a company with only indirect links to a current client—will be deemed unlawful based on enforcement theories that may evolve.

Some may suggest that this lack of clarity in the law encourages bad actors. I am not convinced by the argument that unclear law counsels against enforcement. The stronger point is that this doctrinal instability increases the importance of *ex ante* structural protections. If professionals cannot reliably assess the boundaries of permissible trading on a case-by-case basis, the rational response is to build compliance structures that reduce the need for that case-by-case analysis—precisely the logic behind 10b5-1-style plans.

There is also a legitimate policy concern here for legislators and regulators. Continued reliance on judge-made law and aggressive enforcement theories, without clearer statutory guidance, places the burden of navigating uncertainty disproportionately on compliant actors, while sophisticated bad actors continue to find workarounds.

Q: AS FIRMS STRENGTHEN COMPLIANCE OVERSIGHT IN RESPONSE TO ENFORCEMENT PRESSURE, HOW SHOULD THE INDUSTRY BALANCE THE NEED FOR MARKET INTEGRITY AND CLIENT PROTECTION AGAINST CONCERNS SURROUNDING EMPLOYEE PRIVACY AND PROFESSIONAL AUTONOMY?

Prof. Woody: The tension between robust compliance and individual autonomy is real, but it is neither new nor irresolvable. The financial industry has navigated this tension for decades, and the resulting frameworks offer useful precedent.

Personal trading preclearance systems, which are standard practice at major financial institutions, are therefore the most logical first step for large law firms. They require attorneys to disclose proposed trades involving securities that may be implicated by active matters, and they allow the compliance function to identify conflicts before they become violations. When properly designed, preclearance systems generate only the minimum disclosure necessary for compliance review. They likely would not require wholesale surveillance of attorney communications or personal financial accounts.

In my opinion, the professional autonomy concern is somewhat overstated. Attorneys routinely accept constraints on their conduct as conditions of professional practice—conflict checks, confidentiality obligations, competency standards. In order to sit for the bar exam, an attorney must take an ethics exam and often undergo a “character and fitness” review. Trading restrictions tied to matter-specific MNPI exposure are conceptually no different. The question is not whether restrictions are appropriate, but what form they should take and how they should be administered.

Most importantly, the attorney-client relationship creates a fiduciary obligation that encompasses the protection of client information. Strengthening compliance frameworks is not merely a response to enforcement pressure, nor is it a reflection of overzealous micromanagement; it is an expression of that core fiduciary obligation required by all attorneys. Firms that frame compliance investment as a matter of client duty—rather than regulatory risk management—are more likely to build cultures in which the underlying norms are genuinely internalized, rather than merely performed.

PROFILE

Fellow [Karen Woody](#) is a professor at Washington & Lee University School of Law. Prior to teaching, she practiced law as a white collar defense litigator in Washington, D.C.