



Bad Apple

News of insider trading at Apple raises questions about those responsible for compliance

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When former top lawyer at Apple Inc, Gene Daniel Levoff, was revealed to have had charges filed against him by the U.S. attorney's office in Newark, New Jersey earlier this month for committing insider trading, collective titters of disbelief and much eye rolling was to be had at the reporting of the fact that he had been the person 'responsible for Apple's compliance with securities law'- making sure employees didn't violate insider trading laws.

It is alleged by the Securities and Exchange Commission (SEC) and federal prosecutors that Levoff repeatedly traded on non-public revenue-and-earnings filings dating back to 2011, during which time he was Apple's senior director of corporate law. It has been claimed that the illegal investments have resulted in around \$227,000 in profits, while allowing him to avoid \$377,000 of losses.

As well as criminal charges Levoff is facing a related civil complaint from the SEC, these charges carry a maximum sentence of 20 years in prison and a fine of up to \$5m (£3.9m).

One notable incident occurred in July 2015 when, according to the SEC Levoff sold about \$10 million of Apple stock – virtually all of his holdings – after learning that Apple wouldn't meet analysts' third-quarter forecast for iPhone sales. When the company reported earnings, its shares plunged more than 4%. By selling his stock it is alleged that Levoff avoided losing about \$345,000.

Criminal action

An associate director in the SEC's enforcement division, Antonia Chion, said in a statement: 'Levoff's alleged

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being considered a flight risk. U.S. Magistrate Judge Steven Mannion remarked that Levoff has travelled considerably in the past, and has 'extensive assets' that could help him flee.

During filings in the case it was revealed by the SEC that Levoff was fired by Apple in September 2018, after being laid off two months previously. Part of their charges against him from the SEC are as follows:

'Levoff shared responsibility for ensuring that employees complied with Apple's insider trading policies. On at least three occasions in 2010 and 2011, Levoff sent emails to company employees notifying them that a blackout period was about to commence and that they were prohibited from trading Apple securities for the duration of the period. In fact, Levoff sent two such emails immediately prior to his insider trading in 2011'.

The situation has served to highlight the issue of leadership and the efficiency of checks and balances

'For example, on February 24, 2011, Levoff sent an email to Apple employees explaining that a blackout period would begin on March 1, 2011, and remain in effect "until 60 hours after earnings are released in April 2011".'

'The first sentence of Levoff's February 24, 2011 email stated: "REMEMBER, TRADING IS NOT PERMITTED, WHETHER OR NOT IN AN OPEN TRADING WINDOW, IF YOU POSSESS OR HAVE ACCESS TO MATERIAL INFORMATION THAT HAS NOT BEEN DISCLOSED PUBLICLY".'

'In summary, Levoff, an Apple insider, traded on the basis of material, non-public information about Apple's earnings results in violation of the company's policies and in breach of the fiduciary duty that he owed to the company'.

Broken trust

Prior to this embarrassing incident Apple has largely had a clean record on financial reporting issues. This was following accusations in the early 2000s by shareholders against its co-founder and former Chief Executive Officer Steve Jobs of options backdating. A spokesperson for the company, Josh Rosenstock said in a statement that: 'after being contacted by authorities last summer, we conducted a thorough investigation with the help of outside legal experts'.

Levoff's alleged misconduct is a chilling

lesson about the power of compliance officers and the possibility for the immense trust placed in them to be broken. Levoff's alleged brazenness and disregard for both internal policies and regulatory responsibilities would if proven, show contempt for corporate governance norms.

The situation has served to highlight the issue of leadership and the efficiency of checks and balances. The U.S is generally seen to be tough on insider trading and there have been several high-profile prosecutions, such as that of Rajat Gupta from Goldman Sachs.

Corporate entities have a tremendous responsibility, shouldered by the top management, to work for the interest of shareholders. The nature of the information to which those at the upper echelons of the company are privy, alongside the promise of

great wealth means that the higher the gains, the higher the chances of inside information being misused. Possibly too much to be resisted by the insiders.

However, it should be remembered that instances like this are rare and that's why they make headlines when they do occur. Corporate governance norms are usually effective in acting as deterrent for someone tempted by what could be seen as low hanging fruit.

The length of time over which Levoff was simply allowed to commit his alleged crimes, does however, lead one to question whether internal checks were not robust enough to detect his misdeeds or whether perhaps a blind eye was turned.

This is where the real worry is as the success of robust corporate governance lies in the principle of collective responsibility from top management. It is this which allows bad apples like Levoff to be quickly identified and punished, before the rot infects the rest of the company.

Peter Swabey, Policy & Research Director at ICSA: The Governance Institute commented: 'Insider trading is quite simply, dishonesty and it is shocking that somebody charged with the regulatory responsibility for its prevention should be accused of doing it themselves. Controls do not appear to have been effective and the Board will need to consider how they can be improved'. n

exploitation of his access to Apple's financial information was particularly egregious given his responsibility for implementing the company's insider trading compliance policy'.

Levoff's attorney, Kevin Marino, said he is reviewing both the SEC's civil complaint and the criminal charges and said of Levoff: 'We look forward to defending him with respect to these allegations'. Levoff is currently released on a \$500,000 bond following an appearance in federal court where he pled not-guilty to all charges. According to Bloomberg the bond is imposed by a federal court in New Jersey due to Levoff