INSIDER TRADING
IN GLOBALISATION AND CYBERSPACE

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Insider trading involves persons in positions of power who use non-public information and permit this information to be promptly incorporated into stock prices. Cyberspace is characterised as 'a-territorial' and can be used in practice as a tool for hegemonic exercise of control by challenging the law's traditional dependence on territorial borders. The regulation of insider trading has contributed to the success of the securities markets. Law and economics in tandem will secure the market against insider trading.

INTRODUCTION

Insider trading is the exploitation of material, non-public information about a company in a securities transaction. Insiders are defined as any person who has access or has been given access to inside information. Insider trading involves persons in positions of power who use non-public information that is gained from their corporate standing to serve their own financial interests or, at times, the financial interests of their clients, family, or friends. It has to be taken into consideration that the law of insider trading forbids actual trading in a security while in possession of material non-public information; the law does not ban abstaining from trading while in possession of such information.[1]

Cyberspace is already a global communications medium and the subject of valid international interest. Is cyberspace territorial? Cyberspace is characterised as 'a-territorial' with the conventional[2] understanding of territory but it creates the notion of cyber-territory. As many types of activity in cyberspace affect people in real space, cyberspace can be used in practice as a tool for hegemonic exercise of control which could be utilised either to prohibit insider trading or to allow it. Considering that the effects of actions in cyberspace are evidently perceptible within the territory of each state that might want to regulate that action, there emerges a new space environment for insider trading.

Information technology has made possible and accelerated the globalisation of business.[3] Globalisation is a course, or a series of procedures, which create and merge a unified world economy, a complex and dynamic network of communications covering the globe[4]. Moreover, globalisation would be deemed a good thing insofar as it leads to progress in economic circumstances and standards within various countries. Geographical, social and political boundaries definitely do not disappear but are eroding due to globalisation and cyberspace. Globalisation is creating a community of knowledge and a global market society[5] within which insider trading could take place. Thus, globalisation changes the nature of both business and the societies in which business is transacted[6].It intensifies social and economic transactions, creating a stronger worldwide inter-connection of vital social actors via technological developments in the field of communication, media and logistics[7].

This article proposes to investigate the recent developments on insider trading in globalisation and cyberspace. The inter-relation of law and economics will be investigated in order to find out their impact upon insider trading/dealing.

GLOBALISATION AND INSIDER TRADING

The progress of production, networking and communicating technologies has been decisive to the task of pushing forward economic and financial global integration. The principal social effect of globalisation is the more intense generation of inequality. Market systems unavoidably generate winners and losers but the globalisation process seems to stimulate this to extremes. The industrial countries with their sound economic base and abundance of capital and skill have acquired the most considerable benefits from globalisation, with the increasing market power of MNEs[8], the global growth of financial markets permitting higher returns in emerging markets which leads to a technological leadership and strengthening of IPRs' international rules.

Financial globalisation produces key economic benefits, enabling investors worldwide to divide risks better[9]. In addition, financial globalisation allows capital to flow where its productivity is highest, providing countries a prospect to reap the benefits of their particular comparative advantages[10]. International regulatory coordination and regulatory globalisation on the whole are increasing across the globe. Capital market reforms promote domestic market development through their influence on the stock market internationalisation process. Thus, it has to be taken into account that insider trading takes place nowadays in this new global environment augmenting the materiality of non-public inside information and the nature of insiders.

Corporations[11] are the compelling force in the transformation of the world economy participating in the global market to raise capital. The realisation of the overwhelming effect of corporations on the economies and societies of all countries of the world has focused attention on the mounting value of corporate governance. With many companies now operating globally, corporate governance has acquired an extra-territorial dimension, which necessarily considers diverse national and cultural norms.

Consequently, the magnitude of how corporations are governed – their ownership and control, the objectives they pursue, the responsibilities they accept, and how they allocate the value they generate – has become a matter of the greatest importance, not merely for their directors and shareholders, but

for the wider communities they work for. Corporate insiders appropriate private benefits, and in that way expropriate investors for the reason that they amplify their own welfare rather than the welfare of outside investors. Through the rights they concede investors in corporations and the extent to which they protect these rights, states influence the cost to corporate insiders of extracting private benefits from the companies they manage. By opening borders, financial globalisation offers means and a reason for corporate insiders to protect the rights of their minority investors more through better corporate governance.[12]

The effectiveness of internal governance is the driving force behind the restrictive effect of governance on the profitability of insider trading[13]. Corporate governance deters insiders from exploiting their private information but not from using their public information in making transaction decisions. Better governance restrains insiders from exploiting negative private information, but not from exploiting positive private information. Lee, Lemmon, Li, and Sequeira[14] find that while insiders of companies with voluntary restrictions on insider trading can utilise positive information in their trading, they become more careful when exploiting negative information. Opportunistic traders in badly governed companies are the most informed traders and opportunistic insider sales are the most informative transactions.

Corporate governance drastically restricts the profitability of insider sales made by officers but not the profitability of insider sales made by directors. Roulstone[15] finds that companies that restrict insider trading in their internal policies escalate executive compensation. On the one hand, better governance can benefit shareholders by discouraging insiders from taking advantage of private information[16]. On the other hand, insider trading could be regarded as part of corporate governance. Tracing insider transactions regularly is undertaken starting from noteworthy price developments associated with public announcements of price sensitive information. While corporations universally function on a global scale, the laws governing their internal affairs are national or sub-national[17] which causes a problem in a harmonised defense against global insider trading.

In a highly speculative market, it is more difficult to ascertain the intrinsic value of a share. Keynes[18] believed that speculation not only causes instability but also distorts prices and fails to reflect the intrinsic value of shares. The task of speculators for a quick profit depends upon the influence of speculation upon mass psychology rather than future changes of underlying factors in the market. Accordingly, share prices reflect mass psychology rather than providing information in the market for allocational and promotional purposes.

On the one hand, insider trading permits private information to be promptly incorporated into stock prices, in so doing leading to more efficient stock prices[19]. On the other hand, allowing insiders to trade at the expense of uninformed outsiders reduces investor confidence and impairs the integrity of capital markets[20]. Insider trading increases stock market efficiency – the degree to which stock prices reflect true value – which helps to assure effective resource allocation. In line, Henry Manne[21] argued that insider trading contributes to greater efficiency in stock market pricing because information becomes embedded in stock prices more quickly than it would if insiders waited until such information was ripe for disclosure. Therefore, insider trading drives the price of a stock in the right direction[22]. According to Jose M Marin and Jacques Olivier[23], 'stocks purchased by insiders earn positive abnormal returns but stocks sold by insiders do not exhibit negative abnormal returns'.

Earnings manipulation is a key mechanism that managers could use to increase stock price[24]. Managers exaggerate earnings more in quarters that go before high insider selling activities and stock price run-ups of individual corporations during the bubble period are associated with both earnings management and insider trading activities during the bubble[25]. Managers highlight price-enhancing information while suppressing price-decreasing information[26].

The question to be answered is if we let the market itself regulate insider trading. Markets are effective when prices precisely reflect all available information about the assets traded and so getting efficient pricing is crucial for achieving optimal allocation of resources in the economy[27]. The higher the accuracy of the insider's information and the lower the accuracy of outsiders' beliefs about company value, the more the insider can earn from his/her trades. As much as insider trades signal company value to other market contestants, they influence the stock price. Thus, the market itself seems to successfully regulate insider trading.

This author considers that insider trading cannot become an instrument in the hands of managers to manipulate the money of investors for completely unethical gains of ownership, but an ethical use of information for the advantage of investors and so

bringing gains for them as well will be productive. On the other hand, investors must know that the top management of companies will always have more information and knowledge and will use it to their advantage, and so the fundamental criterion for investment should be the macro perspectives of the company rather than short-term gains.

CYBERSPACE AND INSIDER TRADING

Cyberspace challenges the law's traditional dependence on territorial borders; it is an endless electronic/digital space and place bounded by screens and passwords rather than physical markers. Cyberspace is transformational and considered to be just like a real place, and the development of property interests over cyberspace means that this place is enclosed and privately exploited . Cyberspace does not challenge the territorial notion of a nation as a collective organisation that resides within specific geographical borders, but electronic sovereignty based on nations' cyberspace territories brings a new dimension into the concepts of territory and national sovereignty. Moreover, cyberspace can contribute to international co-operation by: strengthening international law and economic interdependence, empowering non-governmental organisations and supporting international security mechanisms. In general, the emergence of cyber-territory and the advanced electronic technology can be used to paralyse an inferior technology of a state and therefore threatening practically its sovereignty[30] which consequently affects the fight against global insider trading.

Networks are replacing hierarchies and markets as a basic form of economic organisation. Cyberspace has had a predominantly dynamic influence because of its operation as a medium by which information can be transmitted[31]. The revolution in information technology provides the opportunity for logistics to utilise transaction-based and decision support systems as a source of competitive differentiation and increased market share[32]. Thus, a company can develop its own logistics/ e-logistics system regarding the management and flow of information onfinancial securities in an effort to minimise insider trading. An electronic networking of information logistics eliminates the time advantage of every insider who could be a potential direct or indirect player in insider trading. Moreover, cyberspace has changed both the character of information promptly available to the public and brought greater simplicity of access to information[33] .

Not only are the financial barriers to publishing on cyberspace low, but the social barriers to publishing on cyberspace are also low[34] . To that extent, modern media[35] is easily accessible to anyone with access to the Internet dominated by user-generated material such as blogs, YouTube, Twitter and Facebook and users can readily publish information, but they cannot keep others from doing the same. Moreover, modern media suffers from a vacuum of property rights or regulation that would offer sufficient policing of the commons or would grant for the exclusion of offending users.

REGULATING INSIDER TRADING

The regulation of insider trading prohibits insiders from using inside information in securities transactions and the central goal of the regulator is to preclude non-public information from circulating in the stock markets. In other words, there is a need to achieve the establishment of the best way of circulating the information from its initiating source to the market. Specifically, inside information is all information of a defined character which has not been made public, relating directly or indirectly, to one or more issuers of stocks or to one or more financial instruments. Information which could have a major consequence on the development and forming of the prices of a regulated market, as such, could be regarded as information which ultimately relates to one or more issuers of financial stocks or to one or more related derivative financial instruments[36]. The main weapon in the hands of swindlers involved with extensive insider trading/dealing is information. Therefore, management of information could be the weapon against insiders.

Insider trading is most frequently done in order to amass profits by trading in advance of takeover announcements. In addition to proving that the information is non-public, it must be proven that the information on which an individual traded is 'material'. The materiality standard involves showing that there is an extensive possibility that, under all the conditions, the fact 'would have assumed actual significance in the deliberations of a reasonable investor'[37]. Moreover, materiality depends upon 'balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity'[38].

Traditional insider trading habitually involved trading by directors, officers, and employees of the corporation, but the definition of inside information has expanded over time due to globalisation and cyberspace to embrace market/ global market/

cyber-market information, which is any information affecting the market for a company's security, not just information upsetting the company's assets or earning power. An expansive definition of inside information has led to individuals above and beyond traditional insiders being found accountable for insider trading.[39]

As mentioned earlier, the crux of any insider trading claim is material, non-public information. Determining the point when information is considered to be in the public realm is decisive for understanding whether the information is public[40]. It could be argued that cyberspace creates opportunities for global insider trading because of the phenomenon to have information which in fact is still inside to be utilised for insider trading and nearly a second earlier this inside information to have been distributed via cyberspace and so considered as publicly available information contributing to the dismissal of the insider trading offence. In the US, the federal government has begun to investigate the use of expert networks by hedge funds and other institutional investors to find out whether some networks are being used as a channel for the conveyance of material, non-public information to investors[41]. Courts have held that disclosure of partial information does not constitute public dissemination for the remaining non-public portion of the information[42].

Generally, information that is 'public' cannot found the basis of an insider trading claim encompassing not only publicly-distributed information, but also information that an investor personally developed from independent observation of the public world. Investors seem not to be affected by public information in contrast with a reaction under heavy speculation. On the other hand, in efficient markets, stock price reaction is expected to occur at the time information becomes public. Most of the time the expertise and knowledge of the insider leads to a better evaluation of the information, which drives insiders to have a better use of the information rather than the unpublished information, because an expert can evaluate with precision the real status of a company using the published fingers in combination with the status of the specific market. Furthermore, uninformed outsiders can earn significant abnormal profits by imitating insiders. Outsiders can purchase or sell following an insider's stock purchases. Trading by investors who posses superior information imposes significant liquidity costs on other market participants due to adverse selection[43]. Insiders time the flow of information to make the most of trading gains and discourage the flow of information within a firm[44].

According to Huffan[45], the value of trade, as well as the price of capital, can be highly correlated with the measure of the information content of prices. Insider selling is more active when there are stock price run-ups and it then corrects prices significantly[46]. Hence, insider trading conveys more information to the market, which means more pragmatic share prices[47] which signifies that the rules of the market may achieve better results in fighting insider trading than legal rules.

Is the correct rationale for regulating insider trading the protection of property rights in information? Stephen M. Bainbridge[48] argues that there is a move from equal access to property rights in information. Information is free unless proven otherwise. Information that is not yet widely disseminated is like a found object and can, absent some contractual reason to the contrary, be liberally disposed of. It has to be taken into account that property rights upon information can be claimed/ established only in specific occasions regulated by laws differently in various jurisdictions. The general principle of law in a liberal democracy is that the freedom of contract governs private transactions[49]. Kimberly D. Krawiec[50] argues that insider trading should be regulated by contract law. Property rights in copyright law are exceptions from the general rule that information lawfully obtained is available to everyone.

Firstly, information is free and not property unless and until proven otherwise by the party claiming the information is proprietary; secondly, information is unavoidably asymmetric and inescapably imperfect, and thirdly, trade is inevitable and needed because information is asymmetric leading to the conclusion that 'insider information' cannot be defined in a meaningful sense[51]. Information is unavoidably imperfect because it is asymmetric. Perfect information would freeze transactions because no person would be able to upgrade their position by trading in a global market with perfect information. It has to be taken into account that trade is the means by which information flows approximate perfection. For the reason that information is certainly imperfect and asymmetric and since information is free and not property until proven otherwise, the concept 'inside information' is untenable. Consequently, all information is, to some extent, non-public.

Insider Trading in US Law

As neither the text nor the legislative history of Exchange Act § 10(b) or Rule 10b-5 defines insider trading, it was left to the courts to work out not just

the appropriate legal rules but also the rationale for prohibiting insider trading. Today, trading based on traditional inside information as well as outside information is regarded as insider trading in violation of Rule 10b-5. Prakash[53] says that Rule 10b-5 prohibits only intentional misrepresentations, not mere breaches of fiduciary duty. Insider trading violates procedural equality and fairness of opportunity[54].

The SEC adopted Rule 14e–3 in response to the surge of insider trading activity coupled with the increase in merger and acquisition activity during the 1980s, prohibiting insiders of the bidder and target from revealing confidential information about a tender offer to people who are expected to violate the rule by trading on the basis of that information. Rule14e–3, with undeniable narrow and well-defined exceptions, excludes any person that possesses material information with regard to a tender offer by another person from trading in target company securities if the bidder has started or has taken significant steps towards initiation of the bid. In O'Hagan[55], the Supreme Court upheld Rule 14e–3 as a valid exercise of the SEC's rule-making authority despite the absence of a fiduciary duty element.

The Supreme Court has recognised three general theories of insider trading liability, commonly referred to as: (1) the 'classical' theory, (2) the 'tipper-tippee' theory, and (3) the 'misappropriation' theory. Prominently, in order to fit within any of these three categories, a person (even though not automatically the person actually trading) must have dishonored a duty of trust or confidence. Besides, the Second Circuit has recognised a fourth theory of insider trading, referred to as 'outsider trading' or the 'affirmative misrepresentation' theory, based on a positive misrepresentation that does not need a breach of a duty.

'Classical' Theory

The 'classical' theory of insider trading in the main applies when an insider, in violation of a fiduciary duty to his or her company or to another enterprise to which the insider owed a duty, trades in the securities of the firm/enterprise on the basis of material non-public information obtained by reason of the insider's position[56]. In *Chiarella v. United States*[57], the US Supreme Court rejected this 'equal access' rule which remains the law today and so under Rule 10b-5, a duty either to disclose information or abstain from trading arises *only* from a particular fiduciary relationship or analogous relationship of trust and confidence. In classical theory, an individual cannot be held liable for insider trading in a particular company's stock unless the individual owes a fiduciary duty to that company's shareholders. Hence, to be liable under the classical theory, a party must be an insider or tippee of an insider of the traded company[58].

'Tipper-Tippee' Theory

The 'tipper-tippee' theory imposes liability when (1) the tipper 'has breached his fiduciary duty to the shareholders by disclosing the [material non-public] information to the tippee', (2) the tippee 'knows or should know that there has been a breach', (3) the tippee uses the information in connection with a securities transaction, and (4) the tipper obtains some personal benefit in return[59].

'Misappropriation' Theory

The 'misappropriation' theory involves circumstances in which a person, who is not an insider, legitimately comes into possession of material, non-public information, but all the same breaches a duty of trust or confidence owed to the source of the information by trading on the basis of such information or by handing over the information to another person to trade[60]. Under the 'misappropriation theory', a corporate outsider's[61] use of a "principal's information to buy and sell securities, in breach of a duty of loyalty and secrecy, defrauds the principal of the exclusive use of that information, which is similar to misappropriation[62]. While the classical theory aims at an insider's breach of duty to shareholders, the misappropriation theory proscribes trading on the basis of non-public information by a corporate 'outsider' in breach of a duty of some fiduciary, contractual, or comparable commitment to someone who shared the confidential information with the trader[63]. Under the misappropriation theory, the source of the confidential information is not needed to be the issuer of the securities that are the matter/theme of the insider trading.

Despite Rule 10b5-2, the court in *SEC v Cuban*[64] held that the relevant Supreme Court precedents contemplated liability based on breach of a contractual obligation but only if the contract imposed a duty of confidentiality and a duty of non-use. On appeal, the Fifth Circuit vacated the district court opinion and remanded for trial without reaching the issue of Rule 10b5-2's validity. Moreover, the Court in *SEC v Cuban*[65] did not rule on the SEC's claim that a confidentiality agreement, without more, is enough to presume insider trading liability on a non-fiduciary under the misappropriation theory of insider trading.

In Cuban, the United States District Court for the Northern District of Texas held that Mark Cuban was not guilty of insider trading for the reason that his specific agreement to uphold confidential insider information concerning Mamma.com did not involve an extra agreement to refrain from the sale of his own stock based on that information which brings out a narrow interpretation of the scope of the misappropriation theory[66]. Instead of adhering to the apparent guidelines of Rule 10b5-2 the district court insisted on a new, judicially-created no-use agreement requirement.

'Outsider Trading' or the 'Affirmative Misrepresentation' Theory

The SEC and the courts gradually chipped away at the fiduciary duty rationale[67]. In 2009, the Second Circuit recognised a new form of insider trading, the 'outsider trading' or the 'affirmative misrepresentation' theory not requiring a breach of a fiduciary duty. In *SEC v Dorozhko*[68], the Second Circuit held that neither Supreme Court nor Second Circuit precedent imposed a fiduciary duty prerequisite on the normal meaning of 'deceptive' where the alleged fraud is an affirmative misrepresentation rather than a non-disclosure. The SEC brought an action alleging that Dorozhko committed insider trading by positively misrepresenting himself by hacking into the computer system in order to obtain access to material non-public information about IMS, which he used to trade[69]. Computer hacking is a 'deceptive device or contrivance' that is prohibited by Section 10(b) and Rule 10b-5[70]. Moreover, *SEC v Dorozhko*[71] dealt with the liability of persons who steal inside information but have no fiduciary duty to either the source of the information or the issuer of the securities in which the thief trades. The Second Circuit tried to finesse the fiduciary duty requirement by stating 'that the SEC's claim against the defendant, a corporate outsider who owed no fiduciary duties to the source of the information, is not based on either of the two generally accepted theories of insider trading'. [72]

Previously, regulators have focused on insider trading in equity markets rather than in debt or credit derivatives markets. In recent years, the capacity to transfer credit risk through the use of credit default swaps ('CDS') and the instability of the fixed income markets have drawn attention to the issue of insider trading in the debt markets. It could be said that insider trading could apply to every market trading. In *SEC v Marquardt*[73], the SEC brought and settled an insider trading case against the senior vice-president of an investment adviser to a mutual fund, who had traded based on material non-public information about noteworthy devaluations to the collateralised debt obligations, collateralised mortgage obligations, and other mortgage-related securities that the fund-owned. Moreover, in *SEC v Barclays Bank PLC* , the SEC brought and settled an action against Barclays Bank and one of its former proprietary traders in distressed debt for illegally trading bond securities while conscious of material non-public information.

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While the prohibition on insider trading applies as much to debt securities and credit derivatives as it does to equities, the application of the prohibition to the credit markets seems to be predominantly complicated for numerous reasons. Unlike the equity markets, the credit markets consist of comparable products that may trade on the public side (debt securities) or on the private side (bank loans), on top of products that may be traded on both the public and private side of a financial institution (credit default swaps). The SEC recently applied the law of insider trading to the credit default swap market. In *SEC v Rorech*[75], the SEC brought an action against a salesman at Deutsche Bank Securities for sharing information about the restructuring of an upcoming bond issuance with a hedge fund portfolio manager, who then bought CDS covering the specific bonds.

INSIDER TRADING IN EU LAW

EU has decided to issue Directive 2003/6/EC[76] regarding insider trading, using the terminology insider dealing, and connected with market manipulation instead of a Regulation directly applicable to all

member states achieving a further harmonisation in avoiding differentiations based on national law idiosyncrasies. Market abuse consists of insider dealing and market manipulation. Insider dealing and market manipulation preclude full and accurate market transparency, which is a requirement for trading for all economic players in integrated financial markets. The goal of legislation against insider dealing is the same as that of legislation against market manipulation, assuring the integrity of EU financial markets and boosting investor confidence in those markets. Market manipulation and insider trading are inter-related based on circulation of information, therefore cyberspace & the e-logistics of information could be the keys in neutralise the human instinct of taking advantage of their privilege in governing information within a company. Materialisation of the information makes easier the detection of the parties initially holding this information. In line directives 2003/6/EC and 2003/124/EC[77] outline what could be considered as inside information producing materialisation of the information but not with an absolute precision as in US law allowing people to bypass the definitions.

The proposal for a regulation of the European parliament and of the council on insider dealing and market manipulation (market abuse)[78] defines inside information (Articles 6–7). Inside information can be exploited before an issuer is under the responsibility to disclose it. The state of contract negotiations, terms conditionally agreed in contract negotiations, the prospect of the placement of financial instruments, conditions under which financial instruments will be sold, or provisional terms for the placement of financial instruments may be pertinent information for investors. Consequently, such information should be eligible as inside information. Nevertheless, such information may not be adequately precise for the issuer to be under a duty to disclose it. In such cases, the prohibition against insider dealing should apply, but the duty on the issuer to disclose the information should not. The increasing trade of instruments across diverse settings makes it more difficult to check probable market abuse.

The Market Abuse regulation intends to bring convergence by introducing a common European framework seeking to prevent, detect, investigate and sanction both insider dealing and market manipulation[79]. Moreover, the Market Abuse regulation makes available a common framework for revelation of information and powers as well as obligations for the enforcement of the regulation, to be vested in a single knowledgeable authority in each member state. To that extent, the Market Abuse regulation applies to any financial instrument admitted to trading or where an appeal for admission to trading has been made on a regulated market in at least one member state. The Commission wants to protect investors against market abuse, in principle, irrespective of the type of market. The Draft Regulation also expands supervisory and enforcement possibilities for regulators. One of the more considerable proposed modifications is the provision of access to private premises and telephone and data traffic records from telecom operators[80].

EFFECTIVENESS OF INSIDER TRADING LAWS[81]

According to J Carr Bettis, William A Ducan and W Ken Harmon, 'the legal and regulatory prohibitions have not been completely effective in preventing insiders from trading using their inside information'[82]. Moreover, Arshadi and Eyssell[83] say that insider-trading regulation is overall ineffective in preventing trading on the basis of inside information. It has to be taken into consideration that there is a positive connection between the information environment, insider trading and insider trading laws enforcement. N Fernandes and M Ferreira[84] argue that 'the enforcement of insider trading laws leads to an actual deterioration in stock price informativeness in countries that rank low on these criteria. Our evidence also suggests that stock price informativeness declines the most in countries where insider trading is more common."

An effective securities regulatory framework offers a vision to the investor of fairness in the market place. This should be accomplished through increased disclosure, additional monitoring of requirements for investment businesses and effective and vigorous prosecution of securities law violations. Moreover, this vision should be based upon positive macro and micro economic factors of a strong economy functioning in a changeable international market. Scholars have argued that permitting trade on the basis of inside information creates desirable incentives and improves economic efficiency[85]. According to Carlton and Fischel[86], insider trading is efficient and public regulation is inefficient. Besides, Georgakopoulos[87] argues the opposite. Economists believe that insider trading ensures that the market price of affected securities moves in the appropriate direction[88]. Price pressure is the key to the argument that insider trading improves the efficiency of the securities market.

CONCLUSION

The regulation of insider trading has contributed to the success of securities markets by restoring investor confidence, enhancing liquidity and decreasing the cost of equity[89]. However, due to the intangible nature of the information, insiders have found numerous ways and loopholes to avoid this regulation. While the regulation of insider trading does not effectively curtail it, the resulting benefits include increased investor confidence, better market liquidity and a reduction in the cost of capital. The achievement of absolute honesty and equal knowledge is a utopian ideal. An advantage in informational knowledge based on better analysis of information is the engine for the development of the stock exchange and market development in general. Cyberspace and e-logistics will add to information dissemination undercutting the time advantage of people wanting to get involved in insider trading. The establishment of an effective network of information logistics among companies and the stock exchange is the antidote against insider trading. In tandem, the company as a legal person should be liable and responsible for the effective run of the logistics of information regarding inside information causing market abuse (insider trading/ dealing and market manipulation) as analysed above. Additionally, SEC and the stock exchange could also be liable for the effective run of the network of information logistics among the whole system of selling and buying stocks.

Whether illegal insider trading takes place before tender offers and whether illegal insider trading has become more rampant/ uncontrolled over time. The pre-announcement run-up in stock prices has turned out to be larger over time. The implied volatility of option prices translates to an enhancement before the announcement of tender offers and a decline on the announcement date. Although insider trading on material non-public information is prohibited by law, insiders exploit their private information and earn significant abnormal profits from their trading[90].

The law of insider trading is nuanced and highly dependent on the facts and circumstances of a particular case. Insider trading law is fluid and continues to change as markets grow, technology revolutionises, and the DOJ and SEC press new theories of insider trading[91]. Criminalising[92] insider trading is central to the policies of promoting investor confidence and ensuring fundamental fairness among market participants, and the uprightness of the securities market depends on investor confidence[93]. Without investor confidence, investors would decline to participate in any market activity. The current increased intensity in insider trading enforcement in the USA[94] stems from an increased presence of illegal insider trading. Insiders in Europe[95] do not make positive risk-adjusted returns, and statistically noteworthy outperformance is observed only in particular countries and for certain holding horizons.

A basic legal framework is required for the proper functioning of markets.[96] An effective regime against insider trading cannot exist without a means of monitoring the market to ensure that all participants follow the rules. Insider trading can be used to serve the best interests of shareholders and the economy at large. The economic contribution of insider trading balances a natural level of insider trading based on investor relations and public relations rather on an extensive fraud. No legal rule can achieve the economic results mentioned above of having more accurate prices rather than leaving the market to deal with insider trading. Extensive insider trading is not absorbable from the market with positive effects, leading ultimately to market collapse. The law by itself is unable to curtail all forms of insider trading, but offers considerable protection to investors from traditional forms of insider trading when thoroughly enforced. Finally, the ongoing effort to accurately define the mutable content of insider trading due to globalization and cyberspace, as illustrated above, shows the complexity involved in insider trading regulation that effectively minimises damage upon trade and economy. Laws which encompass an astute economic dimension are going to be more effective than present regulations based only on abstract terminology and definitions. The law and economics need to work in tandem to fortify the market against insider trading.

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