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A Comparative Legal Appraisal of the Problem of Insider Trading in Mergers and Acquisitions

A. A. Oluwabiyi[a],*

[a]Ph.D., Lecturer Department of International Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.
*Corresponding author.

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Abstract

Insider trading in company law is not only unethical but amounts to cheating by making unjust profit, and sometimes fraudulent, particularly in mergers and acquisitions situations. This paper aims at examining the effects of insider trading in mergers and acquisitions in the United Kingdom and Nigeria and how legislations had tried to curb the ignoble acts.

Key words: Insider trading; Comparative legal appraisal; Mergers and acquisitions

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INTRODUCTION

The issue of insider trading in company law is a troubling one, and it is a subject that had attracted scholarly discussions all over the world, particularly in Europe and America for over forty years. Serious efforts have been made to curb the malaise either through market driven measures, or by legislation. Insider trading has no doubt created a situation of suspicion among shareholders about the integrity and transparency of directors and officers of companies and other insiders, about the way they handle price-sensitive information of companies.

It is a world-wide view that insider trading flourishes in periods of rampant mergers and acquisitions, enabling insiders to use their prior knowledge to make huge profits. The objective of this paper is to examine critically the effects of insider trading in mergers and acquisitions in the United Kingdom and Nigeria, and how the various legislations had tried to curb the ignoble acts.

1. DEFINITION OF TERMS

1.1 What Is Insider Trading?

There is said to be insider trading

> when a person in possession of price sensitive information about a company buys or sells shares in that company, and so obtains better terms in the contract of sale than would have been the case, had the counterpart been aware of the information in question (Gower & Dayles, 2003, p.751).

By his action, the insider can either make a profit or avoid a loss, depending on whether the information once made public will drive the share price up or down. In other words, insider trading can be said to occur where a company director or any other related person has the information that the company is in a bad or robust financial condition, buys or sells his shares in it before the piece of news is made public, with a view to avoiding a loss or making a higher profit. Immediately an insider is in possession of confidential information not yet known to the public, he becomes an insider trader.

Insider trading is not confined to company's shares alone, it can also occur in the market for government securities such as bonds and certificates. One of the earliest cases on insider trading or market manipulation occurred in the market for government bonds. In one old case,[1] some fraudsters pretended themselves to be soldiers returning from France with the false news of the defeat of Napoleon. The rumours which they spread caused the price of the British government bond to rise, which enabled them to dispose of their holdings at a profit.

Ordinarily, and before statutory intervention, if a director or officer of a company has made use for his own purpose of price-sensitive information acquired while a director or officer, he will have breached the fiduciary duty which he owes to the company and be liable to the company accordingly. The company will therefore, be able to recover any profit he has made even though it has suffered no loss. In the American case of Diamond v. Oreamuno[2] the New York Court of appeal held that the defendant was liable to the company for loss of reputation and integrity even if no financial loss was suffered.

1.2 What Is Merger and Acquisition?

Merger is the absorption of one company that ceases to exist into another that retains its own name and identity and acquires the assets and liabilities of the former (Black,

[1] R.V. De Berenger (1814) 3 M. 25.68.
[2] (1969) 218 N.E 2d 910.

1999). Acquisition on the other hand is the gaining possession or control over something.[3] Section 590 of the Companies and Allied Matter Act (CAMA)[4] defines a merger as an amalgamation of the undertaking of one or more companies and one or more bodies corporate,[5] while a scheme of merger of companies contemplates a transfer of properties and liabilities of one or more companies to another, such transfer does not include rights and obligations which are not transferable such as contracts of personal service,[6] and these have to be specially provided for if desired (Orojo, 1992, p.426).

1.3 Who Is an Insider?

To properly appreciate the scope of insider trading and why it is considered illicit, it is essential to profile the typical insider trader, how he operates in the security market, and the consequences of his seemingly harmless act.

The typical insider trader falls within 2 broad categories:

Section 57 (2) (a) of the Criminal Justice Act, 1993 of Great Britain established two categories of insider. The first are those who obtain inside information through being a director, employee or an issuer of securities, while the second category is the individual with inside information though having access to the information by virtue of his employment, office or profession whether or not in the employment of the issue. Insider in this category may include a professional adviser to the company i.e lawyer, accountant etc., and their employees, an investment analyst, a civil or public servant.

1.4 The Securities Market

The securities market, where the insider trader operates, is a specialized trading place where financial instruments like stocks, bonds, treasury bills etc. are bought and sold. It is very important to note that, unlike in commodities market where purchases are premise on physical inspection, assessment, and comparison of goods, the investment decision to buy or sell an instrument being traded in the securities market is solely based on information about the issuer and the instrument itself (Ndanusa, 2001, October). To be useful to investors, such information must be correct, complete and up to date.

An investment decision that is premised upon wrong or misleading information would, inevitably, result in loss of money to the investor. It stands to reason therefore, that it is the fellow who has (or claims to have) accurate information about a particular company that will be in vantage position to profitably trade in

[3] Id.

[4] Chapter C20 LFN 2004 of Nigeria.

[5] Mergers and Acquisition hitherto discussed under SS 590, 593 of CAMA 1990 have been repealed and transferred to part XI, SS. 99, of the Investment and Securities Act, Chapter I24 LFN 2004.

[6] Re Bendel Line co. Ltd (1979) FHCR 19.

that company's securities. Thus, securities traders/ investors strive to get the inside information about a company before making a decision to trade in that company's securities. More often than not, they scheme to cultivate the directors, officers, employees, or in some cases, influential members of the company who can give them such '**inside**' information. Realizing the financial implications of corporate information which they held, these insiders soon began a personal practice of trading in the company's securities, with a view to making personal gains, and in breach of their fiduciary obligation not to make personal profits from their use of corporate assets.[7]

The security market, itself, is a highly regulated environment. The securities market is viewed by most Governments as an effective agency for channeling funds into productive enterprises, which would drive economic development and help reduce unemployment. Thus, any act which tends to undermine the integrity of the market (otherwise called market abuses) are usually frowned at, and outlawed for the simple reason that such individual practices are capable of eroding the larger investing public's confidence in the market which is critical to the continuous flow of funds for overall national development.[8] Such acts include concealment of material information, insider trading, market manipulation, artificial price fixing etc.. From the above, one could premise the legal prohibition on insider trading on combination of moral fiduciary, as well as on public policy grounds.

2. EFFECTS OF INSIDER TRADING

The implications on rampant insider trading are that anyone buying or selling shares in the market runs a risk of doing so just before some good or bad news is announced about the company. Sometimes the news will benefit the trader and sometimes not, and it will depend on whether the trader has bought or sold. Conversely, and in the absence of insider dealing, the trader can expect that these pieces of good or bad fortune will average out. In an environment where insider dealing is rife in the market, the non-insider will know that the market prices will

[7] See the case of *United States v O' Hagan,* 521 U.S 642, 655 (1997) where U.S Supreme Court specifically recognized that a corporation's information is its property: "A company's confidential information… qualifies as property to which the company has a right of exclusive use. The undisclosed misappropriation of such information in violation of a fiduciary duty… constitutes fraud akin to embezzlement – the fraudulent appropriation to one's own use of the money or goods entrusted to one's care by another."

[8] The nexus between maintaining good corporate practices, ensuring a healthy and fair securities market and economic prosperity will be better appreciated with U.S experience. The U.S stock market crash of 1929, which led to the Great Economic Depression of the 1930's, was widely attributed to the activities of corporate insiders. The U.S Senate hearings which ensures unearthed flagrant abuses of inside information by several people in fiduciary positions. See U.S Senate Committee Report No. 1455. 73rd congress, 2nd session, 55 (1934).

systematically fall to reflect the true worth of the company and will do so in a way which is unfavorable to the outsiders.

Where regulation is unavailable, there will be an inherent risk in holding shares in companies, which will affect the perception of investors in taking decisions on the prices they are prepared to pay for the company's shares. The situation will, in turn increase companies cost of capital as they will be able to issue shares on less favourable terms than if investors can be assured that insider trading is non-existent in the market.

Furthermore, the use of insider information by the insider is no doubt unfair to those who deal with the insider and the shareholder. It is cheating and dishonesty, since the insider possesses a secret advantage from which he will benefit at the expense of others. The insider may be a top employee or manager or executive or information officer in the company, as to be in a position to dictate or influence when the public disclosure of price-sensitive information is to be made. In that situation, he allows his personal interest and greed to have priority over that of the company. Such unethical conduct brings down not only the reputation of the company concerned but also the security market into disrepute and may shake public confidence in investment shares (Ola, 2002, p.357).

3. CONTROL OF INSIDER TRADING

Given the recognition that it is wrong for a director or any insider to deal in a company's shares having been seized of some development which will affect the price of the shares, and which other members or the general public are not privy, the pertinent question is how to put an end to such ignoble practice. The global condemnation of the malpractice has produced different solutions for its eradication which are as follows.

3.1 The Doctrine of Mandatory Disclosure

In the United Kingdom, a number of approaches to regulate insider trading have been taken. For example the doctrine of mandatory disclosure has long been used to control insider trading. Directors and their family members as potential insiders may be required to disclose dealings in their company's shares on the theory that if they know that the fact of their dealings will be made public knowledge, they will be less likely to trade on the basis of inside information. The doctrine of disclosure is the oldest anti-insider trading technique that was introduced on the recommendation of the Cohen Committee of 1945,[9] which identified insider dealing as the rationale for requiring the disclosure. The committee recommended that "the best safeguard against improper transactions by directors and against unfounded suspicion of such

[9] Report of the Committee on Company Amendment (MD 6659, 1945).

transaction is to ensure that disclosure is made of all their transaction in the shares or debentures of their companies".[10]

3.2 Prohibiting Trading in Shares by Potential Insiders

Another approach is prohibiting trading in shares by potential insiders, irrespective of whether they are in possession of inside information or not. This was also introduced in 1967 on the recommendation of the Jenkins Committee and the recommendation had been replicated in Section 323 of the 1985 Companies Act, and which also creates a criminal offence. Similarly, the Company Securities (Insider Dealing) Act 1985 prohibits an individual connected with a company from trading or dealing on a recognized stock exchange, or through a dealer in securities of that company, if he is in possession of unpublished price-sensitive information concerning the company. He is also subject to penalty if he procures someone also to deal on his behalf and must not communicate the price-sensitive information to any person.

There is also the FSA (Financial Services Act), 2012. The Act sets out strict ground rules for dealing in shares of public companies. The relevant regulatory body is the Financial Services Authority and the Financial Conduct Authority(FCA) is established as the appropriate regulator. That Act also amends the ruling UK statutory arrangements – i.e. the Financial Services and Markets Act 2000. A Code of Market Conduct now exists under the auspices of the FCA.

The Act require, the board of listed companies to adopt a code and to take all proper and reasonable steps to secure compliance with it, not only by directors of the companies but also by the directors of subsidiaries, as well as the companies employees and its subsidiaries who are likely by reason of their office or employment to be in possession of price-sensitive information relating to the companies. Under the Act it is emphasized that directors should not deal in shares during the "closed period" which broadly means the two months period preceding the preliminary announcement of the company's annual results or of the announcement of the half yearly results. Even outside the closed periods, the Act requires a director who wishes to trade in shares to give notice to the board chairman or a committee of directors appointed specifically for that purpose and to receive clearance in advance. The Act provides that clearance must not be given for dealing in any closed period. It also prohibits dealing at any other time if there is in existence unpublished information which is likely to have an effect on the quoted price of the shares.Directors who flout the terms of the Act can be excluded from serving as directors of listed companies for a long time.

In Nigeria, there are similar Codes known as the "Dealing Rules". The Dealing Rules is operated by the Nigerian Stock Exchange. Similarly the Securities and

[10] Ibid at p.6; see also section 324 of the English company's Act 1985.

Exchange Commission (SEC) has its Rules made pursuant to the Investments and Securities Act (ISA). Regrettably, the Dealing Rules is not effectively operated to detect and control insider trading, given the Nigerian factor, where nobody would come out to give information. Enquiries at both the Stock Exchange and SEC met the usual excuse that there has been no confirmed report of insider trading, and that if there was any report, it would be investigated and dealt with. The SEC admitted the rumour of insider dealing in a recent case of shares transfer involving African Petroleum Plc and that the rumour was "thoroughly" investigated and found to be untrue. Their attention was also drawn to the rumoured leak of price-sensitive information on the shares of Nigerian Breweries Plc shortly before its year 2004 annual results were published, and the attendant massive purchase of the shares by insiders. As usual they admitted knowledge of the rumour, but the subsequent investigation did not conclusively prove any wrong doing.

The only instrument used by the Stock Exchange to prevent insider trading under its Dealing Rules is that of "technical suspension". Trading in the shares of any listed company, that is either doing rights issues or offer for public subscription is technically suspended until the allotment results are published and the new shares listed. Under the Dealing Rules, trading in the shares of companies facing acquisition and merger is also suspended during the processes until it is concluded or abandoned. Recently the trading in the shares of Guarantee Trust Bank Plc was technically suspended, when it made an acquisition bid for Inland Bank. SEC also has powers under Section 27 of the I.S.A to suspend the trading in the shares of any listed company in the public interest. There is always cooperation between the Stock Exchange and SEC in the use of the power of technical suspension, because the power of SEC to suspend trading in shares has statutory backing under Section 27 ISA.

There is no doubt that insider trading is rampant in Nigeria and its effect has started to show on the confidence of the public in Nigeria's stock market.

3.3 The Common Law Approach

A third approach is to rely on the common law principles to deal with insider trading. Ordinarily at common law, directors and officers of a company had always been freely permitted to hold and deal in the shares of their company. The only sanction which the common law imposed was to make actionable the use of certain confidential information belonging to the company.

However, if directors make use of information acquired as director for their personal advantage they would have breached their fiduciary duties to the company and be liable to account to it for any profits they had made, whether or not the company suffered loss. The duty is not owed to the directors or shareholders but to the company. In the case of *Percival v. Wright.*[11] The directors had purchased a

[11] (1902) 2 Ch 421.

member's shares in the knowledge that there was a ready buyer for all the shares of the company at a higher price than the directors were to be paid. It was held that the transaction could not be set aside for the directors' failure to disclose the on-going negotiation for the sale of the shares of the company at higher price. It was said that there was no duty to disclose, because there was no fiduciary relationship between the directors and individual shareholders. The director's duty was owed to the company alone. Contrast with the case of Allen v. Hyatt.[12] The directors had profited through shares purchases from members and were held accountable to them because they had purposes to act as agents for the members by inducing the latter to give them purchase options over each member's shares supposedly to facilitate a proposed amalgamation. The distinction is that the court established some special relationship which established a legal duty to disclose all relevant information, because directors have placed themselves in the position as agents, negotiating on behalf of the individual shareholders.

4. CRIMINALISING INSIDER TRADING

Given the global recognition that insider trading in company law is unethical, amounts to cheating by making unjust profit, and sometimes fraudulent, particularly in merger and acquisition situations, the current trend globally is to criminalize insider trading and certain associated acts. Criminal sanctions form the basis of the anti-insider legislation in many parts of the world.

5. CRIMINALIZING INSIDER TRADING IN GREAT BRITAIN

In Great Britain for example, the original general legislation on insider trading was contained in Part V of the Companies Act 1980 which was latter consolidated in the Company's Securities (Insider Dealing) Act 1985. However, the current Principal Act on insider dealing can be found in Pt. V of the Criminal Justice Act, 1993.

5.1 Criminal Justice Act, 1993

The Act[13] defines the main offence it creates when it provides that:

- "An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in securities that are price-affected securities in relation to the information".
- An individual who has information as an insider is also guilty of insider dealing if –

[12] (1914) 30 T 4 R 44.
[13] S. 52 (1) of the Criminal Justice Act 1993 of Great Britain.

- He encourages another person to deal in securities that are (whether or not that others knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (3); or
- He discloses the information, otherwise than in the proper performance of the functions of his employment, office of profession, to another person.
- The circumstances referred to above are that the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.

Section 56 defines insider information as information which:

Relates to particular securities or to a particular issuer or securities and not to securities generally or to issues of securities generally;

- Is specific or precise;
- Has not been made public;
- If it were made public would be likely to have a significant effect on the price of any securities.

The definition of inside information clearly includes information also from outside the company, for example where a proposed government liberalization policy concern a particular sector, as well as, information emanating from within, like say, the company was about to declare a substantial dividend and bonus issue, like it happened with the Nigerian Breweries Plc. in 2004, or there is a imminent takeover or amalgamation with a multinational company, which could have significant effect on the value of the shares of the company.

5.2 Prohibited Act

The Act[14] prohibited the insider from four acts. The first is that there must be no dealing in the relevant securities, i.e those "price-affected" and those which the price will be significantly affected if the inside information is made public. Sections 55 also define dealing as acquiring or disposing of securities.

Secondly, the insider is prohibited from procuring directly or indirectly, the acquisition or disposal of securities by any other person. There will be procurement within the Act, if the acquisition is done by the insider's agent or nominee or a person acting at his or her own direction.

The third prohibition is on the individual encouraging another person to deal with price-affected securities, knowing or having reasonable cause to believe that dealing would take place on a regulated market or through a professional intermediary. The last prohibition, under Section 52 (2) (b) is that the individual must not disclose the information, except in the ordinary performance of his duties, as an employee, office or professional to another person e.g Stockbroker.

[14] In Section 52.

5.3 Criminal Sanction

The criminal sanctions imposed under Section 61 of the Act are, generally on summary conviction, a fine not exceeding the statutory maximum and /or terms of imprisonment not exceeding six months or to both, and on conviction or indictment an unlimited fine and / or imprisonment for not more than seven years. The power given to the judge to impose an unlimited fine presupposes that the intention of the law is to ensure that the insider does not make any profit out of the dealing.

In addition to the criminal penalties, the English courts have used the disqualification sanction under Section 2 of the Company Directors Disqualification Act 1986, which enables a court to disqualify a person who has been convicted of an indictable offence in connection with the management of a company, against some insiders. Thus in R. V. Goodman[15] the Managing Director had disposed of his shares in the company in advance of the publication of bad news about the prospects of the company. The Court of Appeal upheld the Crown Courts decision to disqualify for a period of 10 years, the managing director was convicted of insider dealing.

6. CRIMINALISING INSIDER TRADING IN NIGERIA

In Nigeria, two principal legislation addressed the issue of insider trading in merger and acquisition; and they are the Companies and Allied Matters Act (CAMA) and the Investment and Securities Act (ISA). It is appropriate to first examine the provisions of CAMA , being the enabling provision in the operation of companies in Nigeria.

6.1 Companies and Allied Matters Act (CAMA), Chapter C20 LFN, 2004

Sections 614 to 624 CAMA which falls under part XVII that deals with and criminalized insider trading in Nigeria had been repealed by S.263 (1) of ISA. This part has now been transferred to the Investment and Securities Act for two reasons:

- The Investment and Securities Act came later in time and was more recent than the Companies and Allied Matters Act. The ISA was dated 1999 and 2007 subsequently while CAMA was dated 1990. The provisions of CAMA and ISA are also almost the same all through on the topic which therefore amounts to mere repetition.
- The ISA is also a specific legislation on topics like mergers and acquisitions and securities unlike CAMA.

[15] (1993) 2 All E.R. '89CA.

6.2 Investment and Securities Act (ISA), 2007

Another prominent law that war against insider trading in mergers & acquisitions is the Investment and Securities Act. The ISA 2007 was an improvement on the 1999 Act on issues of mergers, acquisitions and securities with slight differences from the 1999 Act. The relevant sections will now be discussed.

The relevant provisions of the Act in this respect shall now be discussed. Section 111 of the Act defines an insider as a person who is, or at any time in the preceding six months has been knowingly connected to the company. He may be a director, officer or member of that company or a related company, which position gives him access to unpublished price sensitive information about the company and which it would be reasonable to expect a person in his position not to disclose, except for the proper performance of his duty.

6.3 What Acts Are Forbidden to an Insider?

The Act[16] forbids an insider from dealing in the securities of a company if he has information which he knows are **unpublished price sensitive information** in relation to those securities. The Acts[17] forbids any individual from receiving and using such unpublished price sensitive information from an insider, with the proviso that insider must have been connected with the company at any time within the six months preceding the reception of the information by the outsider. This section also forbids the individual who obtains such information from the insider from using it to deal in the securities of another company in so far as the information relates to any transaction between the first company and the latter company.

The Act[18] precludes an individual who is involved, or has been involved in a take-over bid for a company, from using any **unpublished price sensitive information** which he has obtained thereby to trade in the company's securities. He is also precluded from passing this information to another person to use in trading in the company's securities. The provisions of the Act[19] operates to forbid a public officer, or former public officer, (i.e the Director General of the Securities and Exchange Commission or Nigerian Stock Exchange) who by virtue of his position comes into possession of **unpublished price sensitive information** in relation to the securities of a particular company from dealing in that security or, procure any other person to deal in that security or communicate this information to any person whom he reasonably has caused to believe will utilize such information for trading in that company's securities. Interestingly, subsection (4) of this section empowers the Minister of Finance to declare any person connected with a body which exercises public function, and who gains access thereby to such information as public officers.

[16] S. 111, I.S.A.
[17] Id.
[18] Id
[19] S. 112, I.S.A.

The Act[20] however excuses an individual from using such information if such use was not for making profit or the avoidance of loss, either for himself or for another person or, if the person is a receiver, liquidator or trustee in bankruptcy, for entering into a transaction in the course of his duties. It also excuses stockbrokers and other professional financial advices from using the information in the performance of their duties. The Act[21] also absolves the trustee or personal representative of liability in using such information provided that such trustee acted on the advice of a person who is not prohibited by the Act.[22]

Section 114 of the Act provides that any transaction done in contravention of section 111 or 112 of this Act is avoidable at the instance of the Commission. Section 115 of the Act also provides that any person who contravenes any of the provisions of this part of this Act commits an offence and is liable on conviction in the case of a person not being a body corporate, to a fine of not less than N500,000 or an amount equivalent to double the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the provisions of this part; or to imprisonment for a term not exceeding seven years; or in the case of a person being a body corporate, to a fine not less than N1,000,000 or an amount equivalent to twice the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the provisions of this part.

Section 116 (1) provides for criminal liability and states that a person who is liable under this part of this Act shall pay compensation at the order of the Commission or the Tribunal, as the case may be, to any aggrieved person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on his behalf, suffers a loss by reason of the difference between the price at which the securities would have likely been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.

Subsection (2) provides that the amount of compensation for which a person is liable under subsection (1) of this section is the amount of the loss sustained by the person claiming the compensation or any other amount as may be determined by the Commission or the Tribunal.

CONCLUSION AND RECOMMENDATIONS

There is no doubt that the unethical practice of insider trading in company law, particularly during merger and acquisition is a world-wide phenomenon. There

[20] S. 113, I.S.A
[21] S. Id.
[22] S. Id

is also global effort to stamp it out. The various efforts at eradicating it, which started under self regulatory market codes, and the common law doctrine of disclosure have developed to the state where many countries including Nigeria have criminalized the practice in its various ramifications. Insider traders will not only pay fines, disgorge their unjust profits, they will also go to jail. It is generally true that the United States and Britain had been at the forefront of the attack on insider trading by putting in place appropriate legislation and machineries for detecting, investigating and prosecuting offenders. Their machineries had worked effectively and prominent people who ran foul of the law had been dealt with. In the United States, the Security and Exchange Commission (SEC) is the arrowhead of the fight against insider trading. They bring at least sixty cases to court every year and the Commission has very closely been monitoring activities in the market to be able to pursue cases against insiders. Unlike the Nigerian SEC which is static, perceived and unresponsive. Their fight against insider trading is at best pedestrian. The summation is that in spite of the existence of the self-regulating dealing rules of the Stock Exchange and the criminalization of the practice sunder two laws, not much has been done to address the issue in Nigeria. The general explanation of the authorities is that the incidence of insider trading is not rampant. The directors and employees of companies in Nigeria are not ready to blow the whistle on insider traders among themselves. Who will guard the guards?

Despite the global efforts at curbing insider trading, can one say it has abated? I think time will tell. But one thing is certain, in spite of the legal implications and the threat of heavy fines and or long term imprisonment, the temptation and lure to make huge profits will probably still be too much for professional insiders to resist, and the enforcement agencies will continue to have much work to do. The recommendations below will however be helpful.

For SEC to live up to its statutory responsibility of protecting the security market from insider trading, it is recommended that the following steps be urgently taken:

(a) SEC should reorganize its priorities, and reshape its focus as the apex securitiesmarket enforcer if the fight against insider trading is to be taken seriously in Nigeria. Reference could be made to the situation in the United States (U.S.) where investigating and prosecuting insider traders had remained an enforcement priority for U.S SEC for more than 70 years. Recent statistics show that in the 9 year period between 2001 to 2009, it filed charges against over 600 individuals and entities for insider trading violations, and froze millions of dollars illicit trading proceeds.

(b) Apart from monitoring individual compliance, SEC's work should extend to monitoring the entities that should shoulder primary responsibility for supervising professionals that work for them. i.e SEC should monitor the efficacy of internal anti-insider trading rules that exist in companies. For instance, in 2006, the U.S SEC instituted administrative proceedings against Morgan Stanley Inc. For its failure to maintain and enforce adequate written policies and procedures to prevent the misuse of material non-public information by the firms or persons associated with them. Although, there was no evidence that material non-public was misused as a result of that failure, the company agreed to pay $10 million in civil penalties, as well as engage an independent consultant to conduct a review of its policies, practices and procedure and to recommend changes to those policies to prevent the future abuse of such non-public information.[23]

(c) SEC should make regulations mandating Directors, Officers, and those categories of staff that have access, ordinarily, to unpublished price sensitive information to disclose their shareholdings in the company every 6 months. The level of these holdings should be kept under close scrutiny, especially in the few weeks before the Annual General Meeting of the company when inside trading reaches its feverish pitch. It will be quite easy to fish out perpetrators within this period.

(d) SEC should eliminate the information asymmetry between the insider and the investing public. For instance, the accounts and results of quoted companies are usually released to stockbrokers before the general public. It is submitted that this practice may encourage insider trading from the employees of the stock brokers. (Idigbe, 2006, p.70)

(e) Brokers/ Dealer firms should pay particular attention to particular orders from clients in companies, where such clients are Directors, Officer and employees, or are retainers of such companies. Furthermore, the management of such Broking firms is expected to diligently guard all material information about companies which may be in their possession, as to prevent insiders dealings in the securities of such company by their own staff.

(f) Under the ISA, the sanction for the offence of insider trading is either civil, criminal or both. As most allegations of insider dealings are based largely on indirect or circumstantial evidence, the law enforcement system needs to concentrate more on civil penalties in order to enforce the laudable provisions of the ISA. This would, obviously, also help in eliminating the problem that would present by establishing the criminal burden of proof. (Abugu, 2005, p.258)

(g) There is also the pressing need for a closer collaboration between SEC and the Attorney General's office as regards the successful enforcement and prosecution of insider trader. As the law stands now, criminal prosecution is the constitutional responsibility of the Attorney General's office. Where the goals of the two bodies

[23] See Testimony Concerning Insider Trading by Linda Chatman Thomsen (Director of Enforcement, U.S SEC) Before the U.S Senate Committee on Judiciary. Retrieved 2006, September 26 from http://www.sec.gov/news/testimony

diverge, problems arise. As the Attorney General is responsible for the enforcement of all federal laws, not just securities law, enforcement problems will linger if the Attorney General has other pressing priorities other than the prosecution of insider trading.

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