INSIDER TRADING WITHIN CORPORATE SYSTEM

OVUNDA V. C. OKENE, PhD, Rivers State University of Science and Technology, Port Harcourt, Nigeria
INTRODUCTION

All shareholders in a corporate market should have equal access and opportunity to all material information. The mischief of trading on such confidential information is that the inside shareholder is in a position of advantage in relation to other shareholders and the general public with whom he trades. While directors and officers of corporate institutions have been traditionally regarded as insiders, the nature of the problem is such that where necessary all others associated with a company should come within the purview of laws regulating insider trading. This has been the modern trend in the United States of America where it might be said in a general way, under the Federal Securities Law, anyone possessing such inside information is liable to be treated as an insider. The aim of this paper is primarily to examine within a moderate compass the topical, nebulous and problematic concept of Insider Trading in Corporate Securities and to assess the mechanism and prospects provided by law to tackle the problem in Nigeria.

DEFINITION

The term “insider trading” may be defined broadly as the purchase or sale of the securities of a company by or on behalf of a person whose relationship with that company is such that he has superior and undisclosed information on the securities; while the other party to the transaction is uninformed. The superior and undisclosed information referred to here is that which may be material in encouraging a decision to buy, sell or retain shares in a particular company. Some of the numerous objections to the practice of insider trading may be stated as follows: It is argued that to allow insiders to trade in the securities of their company as freely as any other person is to make it possible or rather likely, for them to manipulate not only the stock market but also corporate affairs in general. Also the participation of officers and directors in insider trading constitutes an unfair additional remuneration to directors and such officers. In fact Professor William Cary, a former Chairman of the Securities and Exchange Commission in America condemned insider trading when he said

A Manager should receive corporate information not for his own personal emolument, but to assist the corporation in its operations. The use of inside information by a director or other manager to trade in shares is the securing of additional compensation in covert fashion and should be condemned.

Furthermore the practice of insider trading is also said to affect adversely the confidence of investors in the securities of companies thus making it a matter of public concern. It is argued that the practice discourages legitimate investment in corporate shares and allows the fiction of corporate entity to obstruct instead of advancing justice. Closely related to the above is the view that insider trading renders more likely the improper delay of disclosure of vital information about company securities. In fact the whole argument on insider is that the disclosure of information by the insider should take place before the information is traded upon by them. Hence to allow insiders a completely free hand in this form of trading makes the undue delay of disclosure of vital information a greater likelihood. There would follow a complication in the timing of certain events which ought to be disclosed earlier by the directors of a company. For instance a board which can deal freely in the securities of its company may be tempted to delay the recommendation or rejection of a take-over bid if the members of the board stand to gain by such delay through insider trading. Finally, insider trading affects the judgment and recommendations of directors with regard to matters like declaration of dividends and investments in other companies; and it encourages them to indulge in short swing speculation in the securities of their company. Dividends could be raised by directors in order to create a false rise in the value of shares and vice versa. All this is likely to be caused by the prospect of gains in such securities. The above reasons clearly show that the practice of insider trading creates a potential conflict of interest. The moment an insider becomes interested in the...
securities of his company, his own personal interest is naturally bound to play some part in the way he acts to further, if it is still possible, the interests of his company. It does seem therefore, that the conflicts of interest which could arise through insider trading are probably the strongest objection to it. 6

THE LAW IN NIGERIA

When the law relating to insider trading in Nigeria is considered the following facts emerge. There is dearth of judicial authority materially in point in this country or even in England. This is regrettable in view of the issues involved. The reason for the slow development of the law in this sphere of company law is perhaps due largely to the decision of Swinfen Eady 1. in the case of Percival V. Wright, 7 which has been a stumbling block in the way of anyone, shareholders included who might have wished to proceed against a director who purchases his share on the basis of certain undisclosed information. If the undisclosed information had been known to the third party, it would have prevented him from selling to the director at all or, at least, at the price at which he sold his shares. In the circumstances the decision not only denied relief to the injured or aggrieved person but was said to be based on the non-existence of a fiduciary relationship between director and shareholder, a fortiori any other third party for that matter. 8 Percival V. Wright 9 involved an action to set aside a sale of shares to the directors of the issuing company. The plaintiff shareholders had approached the directors and effected a sale to them at a time when the directors were negotiating to sell the company's undertaking to an outsider at a higher price. The takeover was never completed but on ascertaining that these negotiations had taken place the selling shareholders brought the proceedings. In refusing to upset the sale the court made certain findings of fact: at the time the plaintiffs sold their shares no firm offer had been received by the directors; the negotiations for the sale subsequently fell through; it was not satisfactorily established that the board ever intended to sell, there was no unfair dealing or over-reaching by the directors; and the shareholders themselves mad the initial approach to the directors. As Swinfen Eaday 1. observed: 10

The purchasing directors were under no obligation to disclose to their vendors shareholders the negotiations which ultimately proved abortive. The contrary view would place directors in a most invidious position, as they could not buy or sell shares without disclosing negotiations, a premature disclosure of which might well be against the best interest of the company. I am of the opinion that directors are not in that position.

The view of Swinfen Eaday 1. is, in effect the reverse of the holding of the U.S. Second Circuit in S.E.C. V. Texas Gulf Sulphur Co. 11 Percival V. Wright, 12 emphasises the freedom of directors in their transactions with shareholders against the background of the business judgment rule. While Texas Gulf Sulphur expressly upholds the business judgment rule, it emphasises the right of all trading shareholders to equal access to material inside information and consequently limits the power of the directors to trade. It must be noted however that Percival V. Wright deal only with the relationship between directors and the shareholders and is thus not authority as to the position between the directors and the company. The law recognises the existence of a fiduciary duty owed by directors to the company as in the case of Alexander V. Automatic Telephone Co. 13 In this case, the directors had made a call in that class to meet the call. According to Lindley M. R

The court of Chancery has always exacted from directors the observance of good faith towards their shareholders and towards those who take shares from the company and become co-adventurers with themselves and others who may join them. The maxim 'caveat emptor' has no application to such cases, and directors who use their powers as to obtain benefits for themselves at the expense of the shareholders, without informing them of the fact cannot retain those benefits and must account for them to the company, so that all the shareholders may participate in them.
Alexander's case dealt with abuse of director's powers and, it would seem but a short step from there to abuse of inside knowledge. In Regal (Hastings) Ltd v. Gulliver, the House of Lords required directors of a holding company (who had acquired shares in a subsidiary so that certain benefits might accrue to the holding company) to account to the holding company for profits from the sale of their shares. The House was not impressed with the suggestion that as the profits sought could not have been obtained by the company in as much as the company did not have the financial resources to buy the shares in the first place, the directors should be allowed to retain them. The much earlier words of Lord Eldon L.C. in Ex parte James were cited with approval:

the purchase is not permitted in any case, however honest the circumstances. the general interest of justice requiring it to be destroyed in every instance; as no court is equal to the examination and ascertainment of the truth in much the greater number of cases.

The observations of James L.J. in Parker v. McKenna were also referred to:

this court ... is not entitled, in my judgment to receive evidence or suggestion or argument, as to whether the principal did or did not suffer any injury in fact, by reason of the dealing of the agent, for the safety of mankind requires that no agent shall be able to put his principal to the danger of such an inquiry as that.

In the case of the proposed Grimshaw Windor Merger, certain directors of the offeror company bought shares in the offeree company at 35p per share and these stood at 47p after the merger. The panel ordered the directors to repay this profit to the offeror company. Presumably this was because they could have sold the shares to an outsider for 47p. These decisions and a number of others that have followed it point to cases as far back as eighteenth century as establishing a rule of uncompromising rigidity that under no circumstances may an insider make fiduciary profit from his position. The judicial approach adopted in these cases is, of course, basic to the very concept of fiduciary responsibility. It is submitted that, if, in a particular situation, it would not be beyond the realms of possibility that by taking another line of action, the directors or other fiduciaries could have enabled the company to receive the profit that they had made. As one leading commentator puts it: 19

To allow directors to decide that the company shall not accept the opportunity and then to accept the opportunity themselves might impose too great a strain on their impartiality.

LEGISLATION

Fortunately, there has been recent enabling legislation which places an embargo on the practice of insider trading in Nigeria and in fact counters the apparent effect of Percival v. Wright. This, in our view is a very statutory development. The first of these laws is the SECURITIES AND EXCHANGE ACT 1990. This replaces the SEC Decrees of 1979 as amended in 1981 and the capital Issues Act 1973 which were thereby repealed. Section 6 SECA 1990 provides essentially, the functions of the Commission i.e. the Commission shall, notwithstanding anything to the contrary in the Companies Act 1968 or the Nigerian Enterprises Promotion Act 1977 be charged with the duty of -

a) determining the amount of, the price and the time of which securities of a company are to be sold to the public either through offer for sale or subscription;
b) registration of all securities proposed to be offered for sale to or for subscription by the public or to be offered privately with the intention that the securities shall be held ultimately other than by those to whom the offers were made;
c) maintaining surveillance over the securities market to ensure orderly, fair and equitable dealings in securities;
d) registering stock exchanges or their branches, registrars, investment advisers, securities dealers and their agents and controlling and supervising their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;

e) protecting the integrity of the securities market against any business arising from the practice of insider trading.

Another pertinent provision in the Act is Section 7 which vests in the Securities and Exchange Commission the powers to grant approval before offer of shares and debentures for sale by companies, thus S.7(1) No Securities of any enterprise in which alien’s participate whether constituted as a public or private or unlimited liability company or partnership, and no securities of any public company, shall be issued sold or transferred without the prior approval of the commission with respect to:

a) the timing and the securities are to be sold;
b) the timing and amount of sale

c) in the case of a company whose securities have been granted a quotation in any stock exchange, the timing and amount of any subsequent issue or supplementary offers for sale and the price at which the securities shall be sold;
d) whether the initial or subsequent issue or sale of the securities issued by the enterprise shall be restricted or made public and when such an enterprise shall seek quotation on the stock exchange.

POWERS TO INVESTIGATE

The SEC has overriding powers to conduct investigation to determine whether there has been or there is about to be a violation of the Act. This authority includes power to compel production of books and records from any person or company. Indeed section 15(1) grants the Commission authority to examine the records and affairs of and to call for information from and on any person or company directly or indirectly covered by the provisions of the Act. And by S.15(2), if from such investigation it is found that there is an attempt to thwart the provisions of the Act or any rules and regulations made thereunder, the Commission is empowered to declare the irregular transactions null and void and to take appropriate measures to rectify such irregular transactions. SEC may take any of the following actions in respect of any violation of the Act or its regulation -

a) Apply to any Federal High Court for injunction against the person:
b) Refer the evidence to the Attorney-General of the Federation for necessary criminal proceedings or
c) Apply to the Federal High Court for a writ of mandamus commanding compliance by the person.

Insider trading, for the purposes of the SEC Act, occurs where a person or group of persons who are in possession of some confidential and sensitive information, not generally available to the public, utilise such information to buy or sell securities for the benefit of himself, itself or any person. It remains only to add that, even in the privatisation exercise the SEC functions to "ensure widespread and geographical ownership of shares in the spirit of egalitarianism.

COMPANIES AND ALLIED MATTERS ACT 1990

Another statute which checks the practice of insider trading in Nigeria is the Companies and Allied Matters Act 1990. Section 614(2) of the Act aforementioned defines who is an insider for the purposes of the Decree. It provides to the effect that an individual is an insider if he is, or at any time during the preceding 6 months has been knowingly connected with the company. And he is deemed to be so connected, but only if, he is a director or an officer employee of the company or related company which in either case may reasonably be expected to give him access to information which, in relation to securities of either company, is unpublished price sensitive information and which it would be reasonable to expect him
He is not to disclose except for the proper performance of his functions. Section 615(2) of the Act then goes on to say that an individual who is an insider of a company shall not buy or sell or otherwise deal in the securities of the company which are offered to the public for sale or subscription if he has information which because of his connection with the company he is not expected to disclose except for the proper performance of his functions and he knows the published price sensitive information in relation to those securities. By Section 615(3) the prohibition extends not only to dealings in the securities of the company which he is an insider but also to dealings in the securities of another company if his knowledge relates to any transaction (actual or contemplated) involving that company and his company or involving one of those companies and the securities of the other. While so prohibited he must not produce or counsel any other person to deal in the securities or communicate the relevant information to any other person if he knows the latter (the "tippee") will make use of the information to deal in the securities on a stock exchange. In every case, however, the insider is not prohibited from dealing or passing on information if he does so otherwise than with a view to making a profit or avoiding a loss (whether for himself or another person) by the use of that information or if he enters into a transaction in the exercise in good faith of his function as trustee or personal representative. Further from the tenor of the provisions the relevant inside information is the unpublished price sensitive information. This is defined as information to any securities of a company which relates to or is of concern (directly or indirectly) to that company not being of a general nature and is not generally known to those persons who are accustomed or would be likely to deal in those securities but which would, if it were generally known to them, be likely materially to affect the price of those commodities. It is to be observed that the Decree's requirement of disclosure (and therefore, of prohibition where disclosure is not possible) is limited to instances where its effect on the price of the company's securities would be 'material'. Unfortunately no statutory definition of what would constitute a material effect is offered. The problem of definition is therefore left to the courts.

EFFECT OF CONTRAVENION

The statutory sanctions are civil liability and criminal prosecution. This is however without prejudice to section 619 which says that no transaction shall be void or voidable by reason only that it was entered into in contravention of section 615 or 616 of the Act. Section 620 provides to the effect that an insider who contravenes any provisions of section 615 or 616 shall have to compensate any person for all direct loss suffered by that person as a result of the transaction, or if a company, account to the company for the direct benefit or advantage received or receivable by the insider as a result of the transaction. Penalties for contravention is provided in section 621 which says that an individual who contravenes the provisions of sections 615 or 616 of this Act shall be guilty of an offence and on conviction liable to imprisonment for 2 years or a fine of N5,000 or to both such fine and imprisonment.

COMPARATIVE VIEW: UNITED STATES BACKGROUND

Up to the end of the first three decades of this century, American statutory law lagged behind the English Companies Acts in respect of provisions dealing with the sale and distribution of securities. Hitherto, in the U.S. the subject of companies securities had been dealt with in various ways by state laws usually referred to as the Blue Sky Laws. However, it was becoming increasingly clear by the end of the first quarter of this century that these statutes, greatly varying in scope and effectiveness, could not cope with the problems posed by the operation of a national and inter-state business such as the one concerning securities. This unsatisfactory situation as seen as the stock market collapse between 1929 and 1932, resulted in the passing of the securities Act 1933 to regulate the inter-state issuance of securities to the public. This was followed in 1934 by the Securities Exchange Act, which created the Securities Exchange Commission (SEC) and provides for the 'policing' under its continuous disclosure requirements of corporations whose security are traded on the Stock Exchange, or, in the case of large non-listed
corporations on the 'over-the-counter' market. It is in this area of the Federal Securities Laws that the greatest development in the control of insider trading have been made. What are probably the three most important of these laws will be considered here. In his message to Congress with respect to the proposed Securities Act of 1933, President Roosevelt observed:

This proposal adds to the ancient rule of caveat emptor, the further doctrine let the seller also beware. It puts the burden of telling the whole truth on the seller.

This philosophy of disclosure is also reflected in the Securities Act of 1934.

1) RULE 10b-5: Rule 10b-5 was adopted by the SEC to implement section 10(b) of the 1934 Act, which prohibits the use of manipulative and deceptive devices in the sale or purchase of securities in contravention of SEC regulations. The Rule provides in part:

It shall be unlawful for any person, directly or indirectly ... to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading ... in connection with the purchase or sale of any security.

The Rule applies to securities issued by all companies in the United States, listed or unlisted provided that there is a sufficient jurisdictional basis for the application of the Rule, that is, that there must be some use of the mails or of "a means or instrumentality of inter-state commerce or of a facility of a national securities exchange, in connection with the purchase of sale." While the Supreme Court of the United States decided in Erie Railroad Co. v. Tompkins that there is no general federal common law, there is no doubt that case by case developments arising from the application of Rule 10b-5, have resulted in Federal standards as to the use of inside information in dealing with securities and the dissemination of corporate information. Moreover, while the courts have been conscious of the parallel between the Rule and Common Law fraud and negligence, they have also been fully aware that neither concept is fully descriptive of the conduct proscribed by the Rule. The decision of the Federal Court of Appeals in SEC v. Texas Gulf Sulphur Co. It was noted that the relevant standard of conduct 'encompasses negligence as well as active fraud; and while some form of scienter or fraud is involved this may be 'lack of diligence, constructive fraud or unreasonable or negligent conduct. In Texas Gulf Sulphur, certain directors and employees of the Texas Gulf Sulphur Company, who had possession of information relating to the discovery of high grade ore by the company, bought the company's shares on the market, were granted stock options by the company though the board was not apprised of the discovery and recommended the shares to others (tippees), all before the information was publicly disseminated. A misleading press statement was also issued by the company prior to the public announcement. When the discovery of the ore was announced, the market price of the shares increased. The Commission brought proceedings against the company and the directors and employees referred to, for violation of section 10 and Rule 10b-5, seeking injunction and disgorgement or profits from transactions in shares purchased between the time they first received material information on the discovery and the time it was released to the public generally. The Commission was successful on appeal to the second circuit, the matter being remanded to the District Court for determination of the nature of the remedies to be imposed. The circuit court held that the timing of the release to the public is a question involving the business judgment of the corporate officers entrusted with the management of the corporation, but that until the public release is made, 'insiders can neither trade in the corporation's securities nor pass the inside information on to others.

According to the court:

Whether predicted on traditional fiduciary concepts ... or on the 'special facts' doctrine ..., the Rule is based on policy of the justifiable expectation of the securities market place that all investors trading on impersonal Exchanges have relatively equal access to material information, ... The essence of the Rule is that
anyone who, trading for his own account in the securities of a corporation has 'access directly or indirectly to information intended to be available only for a corporate purpose and not for the personal benefit of anyone' may not take advantage of such information knowing it is unavailable to those with whom he is dealing, i.e. the investing public.

Matter of Cadv, Roberts & Co. 41

Insiders. as directors or management officers are of course, by this rule, precluded from unfairly dealing but the rule is also applicable to one possessing the information who may not be strictly termed 'an insider' within the meaning of section 16(b) of the Act, Cadv. Roberts, (supra). Thus anyone in possession of material inside information must either disclose it to the investing public, or, if he is disabled from disclosing in order to protect a corporate confidence, or he chooses not to do so, must abstain from trading in or recommending the securities concerned while such inside information remains undisclosed.

Thus special obligation have traditionally been imposed on corporate insiders such as directors, officers and controlling shareholders. It is clear from Texas Gulf Sulphur Co case that the courts will extend the fiduciary obligation to others through the application of Rule 10b-5 where the circumstances warrant. As one writer puts it:42

...The question arises as to who is subject to the duty. The cautious answer is anyone, not just an insider in the traditional sense, who is knowingly in possession of material inside information. The actual determination of the scope of the duty will turn in large measure on the courts conception as to what is fair in the circumstances and is not to be limited by stereotyped categories of fiduciary obligations.

Thus, the term 'insider' has been held to include accountants 43 Brokers, 44 Secretaries 45 and Engineers.f In introducing its consideration of what constitutes 'material insider information' the court observed that 47.

An insiders duty to disclosure of information or his duty to abstain from dealing in his company's securities arises only in those situations which are essentially extraordinary in nature and which are reasonably certain to have a substantial effect on the market price of the security if the extraordinary situation is disclosed.

Section 16 of the Securities Exchange Act 1934

The second Federal Law provision restricting insider trading is section 16 of the Securities Exchange Act of 1934. Section 16(a) provides for early disclosure to the SEC of ownership of equity securities that have been registered under the 1934 Act (so what they may be traded on the Stock Exchanges or on the inter state over-the-counter market), by the beneficial owners of more than 10 percent of any class of such equity securities in a company, and also by directors or officers of the company. It further requires that changes in ownership by such persons in any month be reported to the SEC. Releases covering these matters are published each month by the Commission and are a matter of public record. Section 16(b), on the other hand relates to the so called 'short swing profits' may be these persons. It provides that if a director, officer or holder of more than 10% of any class of equity securities purchases and sells, or sells and purchases, securities of his company within a period of six months he is liable to his company for his profits. This is so, irrespective of whether in engaging in the transaction he possessed or used inside information not available to the general public, or whether the other party to the transaction suffered any loss or damage or indeed is the plaintiff seeking recovery on behalf of the company.48 It is to be observed that under section 16(b) the liability concerns specifically a director, officer or 10% holder of equity securities, but not the company's engineer, lawyer or other expert who, is not a director, or anyone of a number of persons who...
be deemed the 'insider' for other purposes. The liability here is absolute as it does not depend on the use of inside information to trade in company securities. The attitude of the courts in applying section 16(b) is well expressed in Petteys v. Butlers.

The courts have recognised the board remedial purposes behind and when a transaction is capable of insider abuse they have liberally construed the rule and applied it without hesitation and without regard to good faith.

TAKE-OVER BIDS

Finally, another Federal legislative development in the United States has been in relation to take-over bids (as they are called in the United States 'tender offers'). In 1968, legislation was passed adding to the 1934 Act new rules in relation to cash take-over bids, share for bids already covered by the 1933 Act. Prior to the passing of the Act, considerable criticism had been directed at the conduct of cash take-over bids, particularly in regard to the lack of information made available to the stockholder of a 'target company' to assist them in making an informed decision as to whether or not they should sell. In the words of Manuel F. Cohen, at that time Chairman of the Securities and Exchange Commission with regard to the bills before both Houses of Congress, which led to the 1968 amendment:

Investors should be informed of the identity, background, future plans and other material information about anyone seeking to acquire control of their company before they sell securities to that person. This is necessary if public investors are to stand on an equal footing with the acquiring person in assessing the future of the company and the value of its shares. Furthermore, the bills recognise that the need of investors for full and complete information in arriving at a decision to sell securities is just as great as when they are arriving at a decision to buy securities.

The terms of section 14(e) of the 1968 Act are substantially the same as those of section 10 of the 1934 Act and Rule 10b-5 whose effect is to render unlawful and forbid such matters as the latter covers. In connection with any tender offer or request or invitation for tenders, or any soliciting of security or shares in opposition to or in favour of any such offer, request or invitation.

CONCLUSION

It is rather apparent that corporate jurisprudence abhors insider trading. Suffice it to say that the appeals to commercial morality and search for, in the words of Professor Loss, 'Market egalitarianism' form the basis of legal limitation on insider trading. Moreover, it has been suggested that the prohibition of insider trading may significantly reduce (a) the rate at which stock prices reflect charges in the intrinsic value of the corporation and (b) the closeness with which stock prices approximate the intrinsic value of the corporation. It could also happen that stringent prohibition of insider trading and consequent liability on insider may lead to an unwillingness on the part of higher management to participate in share incentive schemes, and a nervousness on the part of institutional investors who might become fearful of being suspected of possessing superior information. But, surely, enlarged legal controls must be justified not merely on notions of morality, but also by the financial pragmatism behind Professor Loss's assertion that the very preservation of any capital market depends on liquidity which rests in turn on investor's confidence that current quotations accurately reflect the objective value of his investment. It is submitted that the extensive provisions of both the Companies and Allied Matters Act 1990 and the Securities and Exchange Commission Act 1988 will necessarily shore up the confidence in investors. However we must wait for our courts' reaction to these laws. We are fortunate in having American experience to draw from.
In fact, the rapid development in the U.S. Securities Laws over the past years and the experience gained by the SEC in its enforcement of them must give considerable assistance to those responsible for enforcing the laws in Nigeria. Finally, the CAMA 1990 and SEC Act 1988 deserve to be welcomed as a serious contribution to this commercially emotive subject which inspite of its topicality has hitherto received no public investigation and control. After all good business ethics ought to be supported and reinforced by legal sanctions.

ENDNOTES/REFERENCES

1. See G.A. Olawoyin, Status and Duties of Company Directors, University of Ile Press, 1977 p.144. This paper was initially a Seminar paper presented at LL.M class 1989/90 session. Special thanks are due to Dr. (Mrs) M.Y. Okorodudu-Fubara and Classmates for suggestions which improved the original text.

2. See In Re Federal Water Services Corporation 18 SEC 231 (1945) pp.248-251. where the various possibilities of Insider Manipulation of Corporate Affairs are set out in detail.

3. Corporate Standards and Legal Rules (1962)50 Cal.L.R. 408 at p.415

4. See Wilgus, 'Purchase of Shares of Corporation by a Director from a Shareholder' (1910)8 Mich.L.R. 279.

5. See Crilly, Securities Regulation: Insider Status in Legal Fiction and Financial Fact - A proposed Revision to Section 16(b) (1962)50 Cal.L.R. Rev. pp.500-510

6. Cf. Manne, Insider Trading and the Stock Market (1966), p.8 where he agrees that insider trading could place directors in conflict of interest with shareholders, but argues that the prohibition of all insider trading is not the most appropriate sanction for this "undesirable conduct".

7. (1909)2 Ch. 421
8. Olawoyin op.cit.p 145
10. (1902)2 Ch. 421-426

11. 40 I F 2d 833 (2d Civ.1%8). This case shall hereafter be simply referred to as Texas Gulf Sulphur.
13. (1900)2 Ch. 134
14. (1967)2 Ac. 134
15. (1803)8 Vers 337 at 347
16. 10 Ch. App. 96 at 124
19. Gower, op. cit p.537
20. ANow cap.406 (hereinafter called "SECA")
21. This has been repealed and now replaced by the Companies and Allied Matters Act 1990 popularly called CAMA.
22. See Section 28(2)(3) & (4) Criminal Sanction for Violation is provided in Section 26 of the Act
23. Section 29
24. Cited in M.T. Okorodudu-Fubara, A Legal Appraisal of the Privatisation of Public Enterprises, p.47
25. CAMA 1990 Section 615(8)
26. Ibid, Section 616(3)(c)
27. Ibid, Section 617(a) and (b)
28. Section 614(2)(i) and (ii)
29. See the meaning given by the American Courts. See infra
30. Olawoyin, op. cit. p. 148
Ibid. The name is said to derive from bubble companies which were offering to the public nothing more concrete than a piece of the hocus-pocus.

31. This term refers to transactions in corporate securities effected through brokers outside the organized stock exchange


34. (1938) 304 US 64

35. Sec Louis Loss, "Insider Trading (1970)33 MLR 34 at 44.

36. 401 F. 3d 833 (2d Cir. 1968)

37. "... Knowledge of the Falseness of the impression Produced by the statement or Omissions made ..."

See Myzch V. Fields (1968) 390 US 901

38. Op. cit supra

39. The District Court ordered the defendants to pay into an escrow fund the difference between the cost of their respective purchases and the mean average price of the stock on the New York Stock Exchange on the day after the company publicly announced its discovery. See SEC V. Gulf Sulphur Co. (supra)

40. 401 F. 3d 833 at 848.

41. 40 SEC 907 at 912 (1961)

42. W.I. DeLaney, "Rule 10b-5 A Recent Profile" 25 Bus. Law 1355 at 1360

43. E.L. Green Co. V. Childree 185 F. Suppl.95 (1960)


45. SEC V. Texas Gulf Sulphur. supra

46. Cady Roberts & Co. p. 912

47. Texas Gulf Sulphur. supra

48. Olawoyin, op. cit p.152

49. ibid

50. (1967)385 US 1006

51. Public Law 90-439. 82 Stat. 454 (Commonly called the Williams Act)


53. E.L. Wright. ibid

54. E.L. Wright op. cit. p.220

55. (1970)33 MLR 35

56. See Roberts F. Rooney in Maine (00) Economic Policy and the Regulation of Corporate Securities. p.114


58. (1970)33 MLR 36