CRIMINALIZATION OF INSIDER TRADING: TO BE OR NOT TO BE?

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Abstract

The illegalization of insider trading in most jurisdictions of the world has not received full acceptance. Whilst some legal and economic scholars are in support of the prohibition of insider trading for amounting to fraud and breach of fiduciary duties, others advocate for decriminalization of the practice arguing that criminalization serves no economic purpose. Much of the scholarly debate about insider trading among economists and lawyers has focused on whether insider trading is economically harmful and whether its prohibition is therefore socially beneficial. Distinguished scholars in law and economics disagree fervently about the economic costs and benefits of insider trading rules. Some argue in favour of the legalization of insider trading because they believe such trading would provide an appropriate form of corporate executive compensation and improve allocative efficiency by transferring important information quickly to the securities markets. In relatively recent times, the scope of persons classified as insider traders or beneficiaries of insider trading for penalty purposes, has been unsettled by the 1997 decision of the US Supreme Court in United States v. O'Hagan. The court unprecedentedly held that an outsider who takes advantage of non-public information to transact could be held liable for insider trading even when he is not an insider in the entity in question. This paper found that both the traditional and economic theories of insider trading concede the reprehensible nature of the practice. The paper recommends the retention of the prohibition of insider trading as it is justified for ethical, corporate and economic reasons.

Keywords: *Insider trading Laws, stocks, decriminalization*

Introduction

Distinguished scholars in law and economics disagree fervently over the economic costs and benefits of insider trading rules.[1] Some argue for the legalization of insider trading because they believe such trading would provide an appropriate form of corporate executive

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[1] A Strudler and EW Orts, 'Moral Principle in the Law of Insider Trading' (1999) 78 *Texas Law Review* 375, 376.

compensation and improve allocative efficiency by transferring important information quickly to the securities markets. Thus, the illegalization of insider trading in most jurisdictions of the world has not received full acceptance.[2]There is no restriction on the right of people to trade in stocks and securities provided there is compliance with extant regulations. There is also no debate about the participation of corporate executives in subscribing to shares of their company. However, there is a huge reservation in managers and top decision-makers of the company concealing certain relevant information regarding the status and prospect of the shares/securities to themselves or their close partners. This is the crux of the law prohibiting insider trading.[3] The law accordingly requires that such information that is influential to the price of the securities be disclosed to all shareholders and prospective subscribers in a transparent and non-discriminatory manner. The rationale is to enable the subscribers to make informed decisions regarding the extent of their involvement in the subscription. This is simply a matter of fairness and equity.

Notwithstanding, as we shall discuss later in this paper not everyone believes that the act of utilizing non-public sensitive corporate information for personal profit should be criminalized or termed insider trading.[4] This school of thought rationalizes insider trading as the natural and incidental benefit accruable to holders of such information, most of whom are high-ranking corporate executives. They further argue that the criminalization of insider trading has no added advantage to the corporation, but rather exposes the corporation and its management to the fluidity and vulnerability of the equity market.

Another interesting perspective on the offence of insider dealing in recent times is the expansion of the concept to those that are 'outside' the corporation and those who played no active role in the purchase or sale of the securities in question. This category of persons include professionals and 'tippees' that divulged non-disclosed information to interested persons, who in turn used them to trade.[5]

This paper will briefly consider a few statutory definitions of insider trading before examining the views of scholars on the subject.

The Nigeria's Investment and Securities Act, 2007[6] defined an insider as any person who is connected with the company in one or more of the following capacities:

a) A director of the company or a related company;
b) An officer of the company or a related company;
c) An employer of the company or a related company;

[2] AC Pritchard and R Thompson, *A History of Securities Law in the Supreme Court* (Oxford University Press 2023) 251.
[3] PJ Henning, 'What's So Bad about Insider Trading Law' (2015) 70 *Business Law* 751, 753.
[4] ibid 759.
[5] JP Anderson, 'Greed, Envy, and the Criminalization of Insider Trading' (2014) *UTAH Law Review* 1, 22.
[6] ISA, 2007, s. 315.

d) An employee of the company involved in a professional or business relationship with the company;
e) Any shareholder of the company who owns five per_cent or more of any class of securities or any person who is or can be deemed to have any relationship with the company or member;
f) Members of the audit committee of a company, and any person who is listed in paragraph (a), who having been connected with any such person or connected with the company in any other way, possesses unpublished price sensitive information about the securities of the company.[7]

Similarly, 'dealing in securities' means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into (a) any agreement for or with a view to acquiring, disposing or subscribing for, or underwriting of securities; or (b) any agreement the purpose or pretended purpose of securing a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities.[8]

Consequently, 'insider trading' or 'insider dealing' phrases, used interchangeably, is the use of inside information that is price sensitive and has not been made available to the public about a company or securities to make a profit or avoid loss through trading activity.[9] It usually involves an insider (director, employee, or professional advisor) or someone connected to such persons trading on information obtained in the course of employment or during their professional relationship with a company and which information, is not available to the broader market. Insider trading also includes instances where one party provides the inside information (commonly referred to as tipping) to other party/parties who trade based on the inside information. It is not confined to companies' shares alone as it can also occur in the market for government securities.[10]

Insider trading occurs 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.[11] Thus, it is insider dealing when directors in charge of the management of a company trade in the company's stocks and bonds based on internal information that is yet to be made available to the shareholders and the investing public.[12] Inside information could include confidential information about a pending merger or acquisition, the award or termination of a

[7] cf, SEC Act, 1988, s.95.
[8] ibid.
[9] WK Wang and MI Steinberg, *Insider Trading* (Oxford Press 2010) 18.
[10] O Akpomudje, Legal Regulation of the Capital Market in Nigeria: Analysis and Prospects for Reform, A thesis submitted for the degree of Ph.D. Lancaster University, September 2017.
[11] LCB Gower and Davisi, *Principles of Modern Company Law*, (7th ed. Asia, Sweet & Maxwell 2003) 751.
[12] B Shiroye, 'Insider Dealing and Corporate Governance: Understanding the Legal Position of Directors' (2022) 13 (1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 90-102.

substantial contract, a major lawsuit, the gain or loss of a major customer or supplier or the occurrence of insolvency.[13]

The phrase being in possession of 'unpublished price sensitive information' suggests that possession of unpublished price sensitive information is required for insider trading liability to attach. It also means information on specific matters relating or of concern (directly or indirectly) to that company, that is, is not a general nature relating or of concern to that company. Similarly, it also means information not generally known to those persons who are accustomed to or would be likely to deal in those securities but which would, if were generally known to them be likely material to affect the price of those securities. Furthermore, for insider trading liability to occur, a necessary element is the defendant's knowledge of the nature of the information, more accurately, the knowledge that the possessed information is unpublished price-sensitive information.[14]

Classification of Insider Trading

The classification of insider trading is determined by the position occupied by the traders/dealers, as well as their role and intention upon the receipt of the undisclosed information. A person, who despite his influential position in the corporation or non-disclosed material information to his knowledge refuses to act on the information, cannot be liable for insider dealing. Hence, the intention of the receiver or decision maker as it relates to the information shapes the style of the classification.

Nwano *et al*[15] classified insider trading to be of two types to *wit* Silent Insider Trading, which merely has an informational advantage that, prompts trading behaviour. The second is called, Manipulative Insider Trading, which on the contrary, information gains not only for informational advantage but also to form biased messages which are likely to affect public opinion since the manipulators have high credibility and good reputation. This implies that the manipulators do not have to be an insider. A manipulator is a credible agent whose reputation derives from his good research and informed prediction.[16]

Similarly, Akpomudje[17] posited that insiders can be classified into two categories, primary and secondary insiders. A primary insider is usually an individual that possesses key information relating to production and stock performance by being a member of the administrative, management or supervisory body of the company. It also includes persons or entities that beneficially own more than 10% of a company's voting shares. Examples of primary insiders include directors, and managers of a corporation. They partake in insider trading when they

[13] TC Nwano *et al*, 'The Principles in Third Party Transactions and Insider Dealings: An Evaluation of Recent Legal Issues' (2013) 10 (1) *Arabian Journal of Business and Management Review (Nigerian Chapter)* 11.
[14] OC Aduma and MN Umenweke, 'The Scope of Insider Trading Liability for Tippees under The Nigeria's Investment and Securities Act' (2020) 2 (1) *IRLJ* 2.
[15] Nwano *et al* (n 13).
[16] ibid.
[17] Akpomudje (n 10) 175-177.

utilize their informational advantage for trade purpose to transfer wealth from outsiders for personal gains or for that of the company in a variable manner. The second category of insider is the secondary insider, who trades on information received from a primary insider. For example, where a corporate insider tips a friend about non-public information that is likely to influence the company's share price and the friend in turn trades with this information.[18]

In the UK, 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 through having access to the information by virtue of their 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, that is, a lawyer, accountant etc., and their employees, an investment analyst, or a civil or public servant.[19]

Further sub-division of insider dealers in Nigeria would show that those prohibited from insider trading include insiders,[20] public officers,[21] 'tippees'[22] and persons contemplating take-over.[23] Similarly, the following acts are prohibited to *wit*, trading when in possession of unpublished price-sensitive information;[24] communicating price-sensitive information;[25] and counselling or procuring dealings in securities.[26]

Why Prohibit Insider Trading?

It has been argued that the problem of insider trading is traceable to issues of conflict of interest. Akpomudje[27] identified three major reasons for widespread insider trading in the Nigerian capital market including corruption, lack of knowledge of the act as well as its consequences and, poorly drafted rules with inadequate enforcement of rules.

According to Shoroye,[28] the separation of ownership and management of the company usually indicates an agency problem, which occurs when a person acts as an agent in the making of important decisions on behalf of another person who is the principal. The agency problem arises because sometimes the agent may be driven to act in his personal interest rather than that of the principal. The motivation for insider dealing is either to make an abnormal profit or avoid loss in the sale or purchase of the company's shares by insiders. The prohibition of insider

[18] See generally, *US v O'Hagan* 521 U.S. 642 (1997); *Regal (Hastings) Ltd v Gulliver* [1942] All ER 378; *United States v Chiarella* (1980) 664 F 2d 12; *SEC v Materia*, (1984) 745 F.2d 197.
[19] AAA Oluwabiyi, 'A Comparative Legal Appraisal of the Problem of Insider Trading in Mergers and Acquisitions, (2014) (2) 1 *Frontiers of Legal Research* 1-15.
[20] ISA, s. 111(1).
[21] ISA, s. 112(1) (a).
[22] ISA, s. 111(2).
[23] ISA, s. 111 (4).
[24] ISA, s. 111(1).
[25] ISA s. 112 (3) (c).
[26] ISA, s. 111(6).
[27] Akpomudje (n 10) 157.
[28] Shiroye (n 12).

trading is orchestrated by moral, social and economic considerations; but, more importantly, the acknowledgement that prosecuting insider trading is fundamental to the creation of a transparent and equal securities market for all participants. In keeping with this trend, various countries of the world have enacted laws to regulate insider trading.[29]

Accordingly, insider trading is prohibited in Nigeria. The statutory provisions currently regulating insider trading in Nigeria are the ISA 2007 and the Securities and Exchange Commission Rules and Regulations 2013. The sections covering insider trading under both Statues took precedence from the Company and Securities (Insider Dealing) Act 1985 of the United Kingdom, Criminal Justice Act 1993 of the United Kingdom and Rule 10 and 10b of the United States of America Securities Exchange Act of 1933 and 1934.[30]

In Nigeria, an ''insider'' under Nigerian statutory regulation encompasses persons who are or can be deemed to have any connection with the company or a member of the company, including persons who, in their professional capacity, obtained unpublished price-sensitive information concerning the securities of the company. Parts XI-XII of the Nigerian Investments and Securities Act 2019, prohibits any person who is an insider of a company from buying, selling, or otherwise dealing in the securities of a company which are offered to the public for sale or subscription if he has information which he knows is unpublished price-sensitive information concerning those securities. The Act, therefore prohibits insider dealing which it defines as where a person who, having some confidential and price-sensitive information not generally available to the public, utilizes such information to buy or sell securities for the benefit of himself.[31]

Furthermore, Nigeria's Financial Reporting Council published the country's latest Code of Corporate Governance in 2018.[32] The Code prescribes the highest corporate standards and professional best practices in terms of corporate ethics and values intended to enhance the integrity, transparency, and accountability of Nigerian companies and their executive management. The Code incorporates the two models of corporate governance and strikes a balance between the interests of both shareholders and stakeholders of the companies to achieve overall standards of fairness and corporate responsibility.

In the United Kingdom, several 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 based on inside information. The doctrine of disclosure is the oldest anti-insider trading technique that was introduced on the

[29] Aduma and Umenweke (n 14) 1-7.
[30] Akpomudge (n 10) 170.
[31] See generally Rule 400 of the Securities and Exchange Commission Rules 2013; The Nigerian Stock Exchange Rule Book 2015.
[32] Shiroye (n 12) 90-102.

recommendation of the Cohen Committee of 1945, which identified insider dealing as the rationale for requiring disclosure.

The US has tightened the noose on insider dealing in the form of stiffer penalties in subsequent statutes such as the Insider Trading Sanctions Act 1984; the Insider Trading and Securities Fraud Enforcement Act 1988; the Securities Enforcement Remedies Act 1990; and the Financial Disclosure Regulation Act 2000. Under these statutes, it is illegal for insiders to trade in a company's shares while in possession of material non-public information. The combined effect of the provisions of these statutes covers derivatives trading, allows for both civil and criminal charges; increases the criminal fines and the maximum jail term for both the company and its employees; and prohibits selective disclosure of corporate information to large shareholders and capital market analysts.[33]

Anti-Insider Trading Arguments

Critics of the free-market pattern, however, find it unfair that insiders should enjoy trading advantages because of their managerial or controlling positions. Singh[34] argued that in a globalized world, the movement of the share prices should be accelerated as such would enable quicker resolution of wealth transfers, which invariably boosts market effectiveness. The concept of a free and efficient market is violated by insider traders when the market is regulated by the holders of inside information. Free competition provides the best economic results; the insider trading will not make the market efficient. This means insider trading is economically inefficient and may damage the reputation of the stock market and particular stock.

Information is the basis or root of stock market functioning. Insider trading leads to a loss of investors' trust in the market and makes it less efficient. There is no doubt that the most important asset of any stock market depends on creditability and transparency. Delayed information or even misinformation would mislead investors into taking inappropriate decisions. A stock notorious for deception information will lose patronage.

Commentators have formulated moral arguments against insider trading. Loss[35] noted that the purpose of the laws regulating securities and exchange is to place the buyer on the same plane, as far as available information is concerned, with the seller. Denying the buyer necessary information about the stock defeats such obligation.

Schotland[36] argues that insider trading would have a negative effect on the stock. He noted that allowing any trading on undisclosed material information makes an improper delay of the disclosure more likely. Hence, he advocated for timely disclosure of information relevant to

[33] I Clacher, D Hillier and S Lhaopadchan, 'Corporate Insider Trading: A literature Review' (2009) 38 (143) *Revista Española De Financiación Y Contabilidad* 373-375.
[34] AK Singh and A Singh, 'Insider Trading Indian Business Organizations' (2016) 17 (2) *Delhi Business Review* 45.
[35] L Loss, 'The Fiduciary Concept as Applied to Trading by Corporate Insiders in the United States' (1970) 33 *Modern Law Review* 34, 36.
[36] RA Schotland, Unsafe at Any Price: A Reply to Manne, Insider Trading and the Stock Market' (1967) 53 *Virginia Law Review* 1425.

the securities, arguing that it is the responsibility of any regulator to discourage motivations for the improper delay, however subconscious they may be. According to him, 'if we abandon restraints on insider trading, we tempt insiders to delay disclosures so that they can buy more shares or arrange finance for more buying; we also invite the timing of disclosure to get maximum market response'.[37]

Furthermore, courts have demanded some degree of equalization of bargaining positions between insiders and outsiders[38] and have determined that if outsiders do not have equal access to information, fairness requires that insiders either disclose the information or refrain from acting on it.[39] It would thus be appropriate for insiders to hoard, manipulate and monopolize information and use it to their advantage.

It is advocated that insiders should either disclose such material information to investors or refrain from training directly or indirectly on the stock. As Levmore posited, in the context of insider trading, fairness is a complex and elusive goal, they always disclose patterns to be able to neutralize the trading advantages of insiders.[40] The injustices that attend the free-market pattern, in which insiders may trade as they wish while withholding information under the guise of corporate good are mischievous and unfair economic policy.

The inefficiencies and injustices that attend the free-market pattern are easily compared to those generated by disclose-or-abstain. It was shown above that the free-market pattern is a poor performer in terms of its ability to meet the fairness goal of equalizing the positions of insiders and outsiders: it allows insiders to profit at the expense of the ignorant parties with whom they trade and from whom they have withheld information.

Strudler and Orts[41] queried why is trading on inside information wrong in some circumstances but not wrong in others. They responded that insider trading is wrong because it is a kind of fraud.[42] Hence, criminalization of insider trading is also good for moral reasons, stressing that even in the absence of a fiduciary relationship, the law should recognize a duty to disclose in certain circumstances when people with material nonpublic information trade with those who lack such information. Karmel[43] argued that despite the large number of articles discussing insider trading, a consensus among commentators has not developed as to why insider trading is unlawful.

It would appear that the criminalization of insider trading is based on the perception that it is fraudulent. This generates difficult problems regarding both how people should treat each other

[37] ibid.
[38] *Speed v Transamerica Corp*., 99 F. Supp. 808, 829 (D. Del. 1951).
[39] *SEC v Texas Gulf Sulphur Co*., 401 F.2d 833, 848 (2d Cir. 1968).
[40] S Levmore, 'Securities and Secrets: Insider Trading and the Law of Contracts' (1982) 68 *Virginia Law Review* 117.
[41] Alan Strudler and Eric W. Orts, 'Moral Principle in the Law of Insider Trading' (1999-2000) 78(2) Texas Law Review 375.
[42] Strudler and Orts (n 1) 375, 376.
[43] RS Karmel, 'Outsider Trading on Confidential Information-A Breach in Search of a Duty' (1998) 20 Cardozo Law Review 83, 83.

in securities transactions and what it means to be a victim of securities fraud. A moral understanding of insider trading as a particular kind of fraud helps in guiding the formulation of appropriate rules for judges, legislators, and administrators to deal with hard cases.

Furthermore, insider trading promotes unethical practices in the stock market. The law is therefore required to protect the autonomy of public securities traders from unfair and wrongful deception. It is agreed that ethics as opposed to economics is the pivotal factor justifying the prohibition of insider trading. Consequently, the issue for determination should answer the question of whether nondisclosure of material nonpublic information deprives a participant in a public securities market of the ability to make an autonomous choice, or whether an inside securities trader uses information that is stolen, converted to improper use, or otherwise morally tainted.

Legalization of insider trading will encourage a breach of fiduciary relationship.[44] This traditional justification appears to have influenced the decision of the US Supreme Court in *US v. O' Hagan.*[45] In this case, the court upheld the conviction of a partner in a law firm for securities fraud when he traded in the stock of the takeover target of his firm's client. The court found the partner to have 'misappropriated' information 'in connection with' trading securities, and he was therefore, liable for securities fraud even though he was an 'outsider' regarding the corporation in whose stock he traded. It would appear that, by this decision of the Supreme Court, the concept of securities fraud had been widened beyond the original perception to include the misappropriation of information.

Justice Ginsburg's majority opinion in *United States v. O'Hagan* promoted the 'misappropriation theory' much when he held that a person commits fraud in connection with a securities transaction whenever he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information.

As expected, the decision in O'Hagan has generated many debates with authors expressing their reservations regarding the expansion of the scope of insider trading. Brudney[46] argued that the decision in Hagan led to more complications in the understanding of insider dealing as an offence adding that O'Hagan generates and obscures several troublesome questions in the tangled jurisprudence of insider trading. Furthermore, Dalley[47] argued that there is a great deal of debate on just what kinds of insider trading to prohibit and that where to draw legal lines remains problematic, especially because of *O'Hagan*'s decision.

[44] Henning (n 3) 751, 776.
[45] *United States v Hogan* 521 U.S. 642 (1997).
[46] V Brudney, 'O'Hagan's Problems' (1997) Supreme Court Review 249, 260.
[47] PJ Dalley, 'From Horse Trading to Insider Trading: The Historical Antecedents of the Insider Trading Debate' (1998) 39 *William & Mary aw Review* 1289, 1293, 1293-94.

The traditional approach to insider trading is that insider trading is wrong because whenever it occurs, the inside trader breaches fiduciary duties owed to the trader's principal, namely, the corporation or the corporate shareholder with whom he engages in a securities transaction. By trading without disclosing material nonpublic information to the principal, the insider violates a duty owed to the principal corporation or its shareholders.[48] The problem is that the US Supreme Court has recognized that 'outsider trading' on material nonpublic information by people who are neither insiders nor tippees may also count as federal securities fraud.[49]

Pro Insider Trading Arguments

Manne, Henry seems to be leading contemporary arguments in favour of insider trading. In response to criticisms against his pro-insider dealing position, he argues that there are still at least two good reasons for defending insider trading aside from the point that ultimately there is no loss to outsiders from the practice. The more controversial of the two arguments is that insider trading provides an appropriate form of compensation for entrepreneurial activity in large corporations. The other argument, that insider trading makes the stock market function more efficiently, is probably the more obvious economic argument.[50] Furthermore, he argues that the second functional relationship between insider trading and an efficient stock market might be termed accuracy. The point most simply stated is that insiders are generally in the best position to weigh new information accurately and assess its future impact on market price. To some degree, however, speed and accuracy become intermingled, for ultimately the proper weight to be attributed to any information becomes evident to others in the market.[51]

The agency problem in the separation of ownership and control of a company would be mitigated if corporate insider directors were allowed to trade and benefit from their activities as this would lead to improved corporate decision-making, resulting in an overall increase in the market value of the company's shares.[52] The issue is whether full disclosure is in any meaningful sense feasible!

Maine answered the question in the negative, especially concerning in-house management news. He argued that in this category occur some of the most significant events ever affecting business. High on the list would be the problem of personal animosities developing within a corporation, which threaten to tear apart a smoothly functioning organization. Certainly, no one seriously proposes public disclosure of such sensitive, and often private, information. The benefit -to competitors would far outweigh any benefits others might receive from the information. Ironically, he noted that the effect of a full disclosure rule in these circumstances is necessarily to maintain an artificial price until the disruption in management has caused

[48] AG Anderson, 'Fraud, Fiduciaries, and Insider Trading' (1982) *Hofstra Law Review* 341, 356.
[49] *Carpenter v. United States* 484 U.S. 19 (1987).
[50] HG Manne, 'Insider Trading and the Law Professors' (1970) 23 (3) *Vanderbilt Law* Review 547-590.
[51] ibid.
[52] S De Groote, L Bruynseels and A Gaeremynck, 'Do Companies Care About Insider Trading Behavior? Evidence from Director Turnover' KU Leuven Working Paper (2019).

severe deterioration in the earnings of the company or some other dramatic event has occurred. During that entire period, the market price of that company's securities could be wrong. Thus, if any insider with material non-public information must immediately disclose and share his knowledge with the world at large, no inefficiencies will arise from lack of information or misinformation; the securities market and the local market will emit correct signals.

Conclusion

It would appear that undisclosed insider dealing is not illegal if the confidential non-public information is not a factor in the decision to trade in the company's shares such as to a pre-existing plan that was made in good faith. This exception to the rule of "abstain or disclose", in addition to the requirement of guilty knowledge, constitutes the major reason for the difficulty in proving insider dealing under the various statutory regulations. The difficulty arises from the incongruous position of directors who are opportuned and potentially disposed to indulge in insider dealing while at the same time, having the responsibility to comply with statutory regulations and implement the company's internal policies relating to the prohibition of insider dealing.

Similarly, the Investment Securities Act, 1999 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 advisors from using the information in the performance of their duties.[53]

Furthermore, to prevent insider dealing, relevant statutory regulations and the company's internal policies need to be fully understood, upheld and applied in the management and operations of the company.[54] Implementation of the principles of corporate governance within the company introduces a culture of adherence to ethics and code of conduct for the board of directors, chief executive officers, accounting officers and auditors. Since access to the company's confidential information underlies insider dealing, the board, in particular, bears the ultimate responsibility to drive and monitor the flow of such information within the company. Finally, Nigerian laws prohibit insider trading by providing penalties for perpetrators.[55]

[53] AA Oluwabiyi, 'A Comparative Legal Appraisal of the Problem of Insider Trading in Mergers and Acquisitions' (2014) 2 (1) *Frontiers of Legal Research* 1-5.
[54] Shiroye (n 12) 90-102.
[55] ISA, ss 111-116. cf, s 92.