TOWARDS INVESTOR CONFIDENCE: INSIDER TRADING LAWS AND ITS IMPLICATIONS ON MARKET EFFICIENCY*

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INTRODUCTION

> *An investor's informational disadvantage vis-à-vis a misappropriator with material, nonpublic information stems from contrivance, not luck; it is a disadvantage that cannot be overcome with research or skill.*[1]
>
> *- Justice Ginsburg*

Throughout the years, history has witnessed the evolution of an increasingly complex securities network and its attendant effects on the economy. Fiscal policies and regulation have taken center-stage in ensuring economic development. Investor confidence and market performance have played a significant role in sustaining or stifling expansion. Manipulations in an otherwise fair market have however, caused distortions in the financial system. Such practices led to the simultaneous decline of credit security and investor confidence. Effective regulation, therefore, has been considered essential to the maintenance of a highly sound and reliable securities industry.[2]

Insider trading as a precursor of such distortions has been proscribed in most jurisdictions. In the Philippines, Republic Act 8799 or the Securities Regulation Code serves as the blueprint for prohibiting insider trading. It provides that "it shall be unlawful for an insider to sell or buy a

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[1] United States v. O' Hagan, 521 U.S. 642 (1997).

[2] INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (hereinafter "IOSCO"), OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION, 5-6 (2003), *available at* http://www.iosco.org/about/or http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf.

security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public".[3] The same Code likewise imposes additional regulations, exemptions, and liabilities thereto.[4] While the current Philippine Law has been generally regarded as adequate in prohibiting insider trading, its enforcement is not quite as satisfactory. In a country assessment conducted by the World Bank, it was noted that the implementation of insider trading laws in the country was only partially observed.[5] This becomes more manifest given the dearth of Philippine jurisprudence involving the said subject. Consequently, the imperative nature of insider trading prohibition demands an examination of the law's adequacy and execution.

Recognizing that the study of the law should not be done in a vacuum, this paper will explicate on the legal and judicial antecedents of insider trading not only locally but also abroad. The evolution of both statute and case law in select foreign jurisdictions would be given due emphasis. The Philippine prohibition on insider trading would then be contextualized amidst contemporary legal developments around the world. Accordingly, this paper would address the insider trading quandaries that multi-service providers, cross-border transactions, and technology present.

A discourse on the said law however, cannot be divorced from the fiscal and economic market that supports it and vice-versa. As the stock market is continually utilized not only as a capital raising venture but likewise as a source for liquidity, a plunge in its confidence levels poses a threat to investor security. This results in an incessant decline in trade activity which ultimately reflects negatively on a country's market performance.[6] An economic milieu for an analysis of insider trading laws and its dynamics on investor confidence is consequently inevitable. The paper will therefore utilize the economic framework of efficient markets as a framework for the thesis of insider trading prohibition and enforcement as a vehicle for investor confidence and market security.

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[3] SEC. REG. CODE, § 27(1).

[4] *See infra.*

[5] WORLD BANK, REPORT ON THE OBSERVANCE OF STANDARDS AND CODES, CORPORATE GOVERNANCE COUNTRY ASSESSMENT: PHILIPPINES 23 (2006), *available at* http://www.worldbank.org/ifa/rosc_cg_phl_07.pdf.

[6] Interview with Edwin Shea Pineda, Senior Economist, University of Asia and the Pacific, Ortigas Center (Jan. 21, 2009).

The objectives of this paper rest on a three-fold dimension:

1.) To determine the ramifications of insider trading laws and enforcement on market efficiency;
2.) To present an analysis of insider trading laws and jurisprudence amidst a backdrop of an internationally converging market; and
3.) To address the contemporary issues plaguing the prohibition against insider trading.

To tackle such objectives, this paper will draw sources from both local and foreign laws, jurisprudence, commentaries, and data. Consultations from experts on the economic and financial disciplines would likewise be integrated. Finally, surveys would be conducted on the investing and non-investing public. As financial markets continually impinge on the economy, it is crucial that the predicament of insider trading be tackled. While the threat of recession ceaselessly bares its venom, it is with vigilance that every aspect of market stability or the lack thereof be immediately resolved.

I. STATEMENT OF FACTS

In the Philippines, jurisdiction over the enforcement of insider trading laws is lodged with the Securities and Exchange Commission (SEC). This is evident from Section 4.1 of the Securities and Regulation Code which provides that "this Code shall be administered by the Securities and Exchange Commission..."[7] as well as with Section 5.1(f) thereof which states that the SEC can "impose sanctions for violations of laws, rules, regulations and orders issued pursuant thereto."[8] In line with its mandate, the Commission has monitored and fined a significant number of corporations in the year of 2007 for violation of reportorial requirements. The licenses of a number of corporations were likewise revoked, while others had an order of revocation lifted in their favor as evident from the following graph:

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[7] SEC. REG. CODE, § 4.1.
[8] SEC. REG. CODE, § 5.1(f).

Company Monitoring, 2007[9]

Number of corporations monitored	13,142
Number of certificates of incorporation revoked	1,156
Number of corporations fined	4,759
Number of corporations whose Orders of Revocation were lifted	217

The Compliance Department meanwhile acted on complaints initiated chiefly by the general public. A number of complaints likewise were referred from the various departments of the SEC and other government agencies:

Breakdown of Complaints Acted Upon[10]

NATURE	FREQUENCY	PERCENTAGE
Complaints from		
• the public	230	65.34%
• local/foreign law enforcement agencies	51	14.49%
• SEC Departments/ Officers	71	20.17%
TOTAL	352	100%

Despite these however, it is uncertain whether or not the laws on insider trading are actually rigorously enforced. In 2007, only "17 investigation reports were evaluated by the Department."[11] Most of these pertained only to unregistered securities and misrepresentation cases, viz:

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[9] Securities and Exchange Commission (hereinafter "SEC"), *Observing Best International Practices and Standards for Monitoring Regulatory Compliance*, 2007 SEC Annual Report 25, *available at* http://203.167.80.132/revoked/SEC%20Annual%20Report%202007.pdf.

[10] *Id.* at 30.

[11] *Id.*

Results of Investigation[12]

Category	Description	No.
Investigation Report Evaluated		
Complaint Affidavits	Unregistered securities	1
	Falsification	2
Administrative Petition for Revocation of Certificate of Registration	Serious misrepresentation	1
	Fraud in the procurement of certificate of registration	3
	Fraud in the procurement of certificate of registration*	1
	Non-submission of reportorial requirements	1
Penalties Settlement Offer Accepted	Unregistered securities	7
Cease and Desist Order	Offering of unregistered securities	1
Total		17

*description repeated in the Securities and Exchange Commission 2007 Annual Report

Though these numbers are not conclusive, it is evident that no investigation for insider trading was commenced during the said year. This is in marked contrast with the United States Securities and Exchange Commission which in 2007 alone prosecuted seven cases in insider trading:

Performance Measure[13]

Distribution of Cases across Core Enforcement Areas (Target met)

DESCRIPTION: Effective deterrence of securities fraud requires that the cases filed by the SEC have adequate reach across all core enforcement program areas. The mix and types of cases vary from year to year based upon the conditions of the markets and changes in financial instruments being used. The SEC's enforcement program seeks to maintain a presence and depth so that no single area dominates its case mix, nor is underrepresented. This measure evaluates whether the Commission maintains an effective distribution of cases so that no category exceeds 40 percent of the total.

CORE ENFORCEMENT PROGRAM AREAS	PERCENTAGE OF CASES					
	FY03	FY04	FY05	FY06	FY07 PLAN	FY07 ACTUAL
Financial Disclosure	29%	28%	29%	24%	<40%	33%
Investment Advisers/ Investment Companies	11	14	16	16	<40	12
Broker-Dealers	20	22	15	13	<40	14
Securities Offerings	16	15	9	11	<40	10
Insider Trading	7	7	8	8	<40	7
Market Manipulation	5	6	7	5	<40	5
Other	12	8	16	23	<40	19
Total	100%	100%	100%	100%	100%	100%

ANALYSIS OF RESULTS: The agency will continue to maintain a presence in all program areas with no category exceeding 40 percent of the total amount of cases brought in any one year. The exact percentage may vary depending on the circumstances and priorities unique to that year.

While these figures can be taken as a sign that cases of insider trading have been completely suppressed in the Philippines, reality is more in accord with the conclusion that the law is not effectively imposed. Studies undertaken by both the World Bank[14] and the International Monetary Fund (IMF) reveal that the enforcement thereof is only partially implemented.[15] It is likewise stressed that "the regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program."[16] Despite these however, little improvement, years after the conduct of the studies, seem to have been effected. Consequently, the adequateness of the law and its enforcement mechanisms demand to be addressed.

II. STATEMENT OF ISSUES

This paper will analyze the importance of the effectual implementation of insider trading laws on market efficiency. The effectivity of the law and the enforcement thereof will likewise be tackled. Thus, in the course of exploring these concepts, the following issues will be resolved:

1. Whether or not insider trading laws promote market efficiency?;
2. Whether or not the contemporary security market demands further developments in insider trading laws?; and
3. Whether or not both a local and global perspective for insider trading enforcement is necessary?

III. THE STOCK MARKET AND INVESTOR CONFIDENCE: ENSURING INFORMATION SYMMETRY AND MARKET EFFICIENCY

An investigation of insider trading laws and its enforcement would be effectively facilitated through the knowledge of the market wherein it is predominantly traded. Thus, an integrated history of the various stock markets around the world would greatly enhance the understanding of the ramifications of insider trading in an otherwise efficient market. The consequences of the exploitation of material information on the pricing mechanism of shares likewise cannot be ignored. The fragile yet fundamental relationship between these precepts underscores the

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[14] *See supra* note 5.

[15] INTERNATIONAL MONETARY FUND & THE WORLD BANK, FINANCIAL SECTOR ASSESSMENT PROGRAM: PHILIPPINES, IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION 25 (2002), *available at* http://www.imf.org/external/pubs/ft/scr/2004/cr0462.pdf.

[16] *Id.* at 24.

significance of insider trading laws and its enforcement on the stock market industry.

A. Historical Antecedents of the Stock Market

The genesis of the contemporary stock market can be attributed to the English joint-stock companies of the sixteenth century together with the gradual increase of national debt.[17] Numerous shipping and trade companies pooled together massive amounts of assets to finance their expeditions. Transactions involving shares of stock surfaced as a means to raise capital. By 1688, fifteen joint-stock companies were actively involved in trading their shares of stock.[18] Meanwhile, the English monarchy engaged in large-scale borrowing to ensure liquidity. Instruments called "tallies" were issued by the Crown to represent their loans. These debentures were traded by "tally-brokers" who simultaneously dealt with shares issued by various joint-stock companies.[19] Fraud and manipulation however were far from being unheard of during the 1690s. "The line between commendable self-interest and arrant fraud was frequently crossed: sham companies were launched for the enrichment of projectors, share prices were manipulated, and false rumors were circulated."[20] The term stockjobbing emerged, which was "synonymous with speculation as well as the trade in shares... [in addition to] the act of blowing up shares above their true value while simultaneously running down a company's prospects."[21] Such transactions led to the enactment of "An Act to Restrain the Number and Ill-Practice of Brokers and Stockjobbers in 1697."[22] The purpose of the said law can be easily gleamed from its preamble which provides that:

> ...Whereas Brokers and Stock-Jobbers, or pretended brokers, have lately set up and carried on most unjust Practices and designs, in selling and discounting , of Talleys, Bank Stock, Bank Bills, Shares, and Interests in Joint Stocks, and other Matters and Things, and have and do, unlawfully combined and confederated themselves together, to raise or fall from time to time the value of such Talleys, Bank Stocks and Bank Bills, as may be most convenient for their private interest and advantage: which is a very great abuse of the said Ancient Trade and Employment, and is extremely prejudicial to the private

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[17] EDWARD MORGAN & WILLIAM ARTHUR THOMAS, THE STOCK EXCHANGE: ITS HISTORY AND FUNCTIONS 11 (1962).

[18] *Id.* at 16.

[19] *Id.* at 19.

[20] EDWARD CHANCELLOR, DEVIL TAKE THE HINDMOST: A HISTORY OF FINANCIAL SPECULATION 48 (2000).

[21] *Id.*

[22] MORGAN & THOMAS, *supra* note 17.

> credit of this Kingdom and to the Trade and Commerce thereof, and if not timely prevented, may Ruin the Credit of the Nation and endanger the Government itself.[23]

To facilitate its objective, the law similarly restricted the number of brokers to one hundred. The law also mandated that brokers be registered at the Royal Exchange and at Guildhall with all their respective transactions recorded therein.[24] A year later, brokers began congregating in Jonathan's Coffee Shop in London. Stock and commodity prices were circulated inside the area and trading activity began in earnest. The traders eventually constructed their own building which they dubbed as "The New Jonathan's". This was later renamed as the "Stock Exchange", the forerunner of the current London Stock Exchange.[25]

Decades later, in 1973, regional exchanges in Britain and Ireland were incorporated with the Stock Exchange. Reforms were soon undertaken and firms were allowed to operate dually. [26] Via the Companies Act of 1985, the exchange was converted into a private limited company. In 1991, it was officially christened the London Stock Exchange with the shareholders eventually selecting to be a public limited company. The EDX London emerged in 2003 in order to engage in the "international equity derivative business."[27] A merger in 2007 was finally concluded between the London Stock Exchange and Borsa Italiana.[28]

In the United States, the financial market has its origin in the national debt incurred in behalf of the revolutionary war of the 1790's. This prompted the government to release eighty million dollars in bonds which signaled the beginning of the United States financial market.[29] After a lapse of two years, twenty-four stockbrokers signed the Buttonwood Agreement. Ratified under a buttonwood tree located in Wall Street, the agreement marked the alliance of its signatories into an investment community.[30] In 1817, traders officially organized the New York Stock and Exchange Board.

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[23] *Id.*, *quoting* An Act to Restrain the Number and Ill-Practice of Brokers and Stockjobbers, preamble.

[24] *Id.* at 24.

[25] London Stock Exchange, *Our History, at* http://www.londonstockexchange.com/about-the-exchange/company-overview/our-history/our-history.htm (last visited Dec. 29, 2009).

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] New York Stock Exchange Euronext (hereinafter "NYSE Euronext"), *American Stock Exchange Historical Timeline, available at* http://www.nyse.com/about/history/1089312755484.html **or** http://www.nyse.com/pdfs/AmexTimeline.pdf (last visited Dec. 29, 2009).

[30] Daily Stocks, *Definition of Buttonwood Agreement, at* http://www.dailystocks.com/glossary_words/BUTTONWOOD%20AGREEMENT.htm (last visited Dec. 29, 2009).

They commenced holding office in Wall Street and eventually adopted their own Constitution.[31] In 1863, the New York Stock and Exchange Board became known as the New York Stock Exchange.[32]

Meanwhile, other traders chose to do business on the streets. Such brokers became known as the "curbstone traders" who transacted on oil, railroad, and turnpikes shares. On 1911, the New York Curb Market was inaugurated with a marked increase in the volume of foreign shares traded. The New York Curb Market was ultimately renamed the American Stock Exchange.[33]

In 1923, the New York Stock Exchange established the anti-fraud bureau. A bull market reigned for six years only to be followed by the historic October 24 market crash indicating the beginning of the great depression. This prompted the enactment of the Securities Act of 1933 and the establishment of the Securities and Exchange Commission a year later.[34] Another bull run heralded the end of the great depression while the New York Stock Exchange adopted in 1959 a policy discouraging trade transactions between listed companies and their directors and officers.[35] These reforms yielded higher trading volumes throughout the years while the New York Stock Exchange continued to restructure its internal policies and technical equipment.[36] In 2007, a merger was concluded between the New York Stock Exchange and Euronext NV, from which the New York Stock Exchange Euronext was born.[37] In 2008, the American Stock Exchange joined the New York Stock Exchange Euronext group.[38]

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[31] NYSE Euronext, *Timeline: 1653-1859, at* http://www.nyse.com/about/history/timeline_chronology_index.html (last visited December 29, 2009).

[32] NYSE Euronext, *Timeline: 1860-1899, at* http://www.nyse.com/about/history/timeline_1860_1899_index.html (last visited December 29, 2009).

[33] *See supra* note 29.

[34] NYSE Euronext, *Timeline: 1920-1939, at* http://www.nyse.com/about/history/timeline_1920_1939_index.html (last visited December 29, 2009).

[35] NYSE Euronext, *Timeline: 1940-1959, at* http://www.nyse.com/about/history/timeline_1940_1959_index.html (last visited December 29, 2009).

[36] *See* NYSE Euronext, *Timeline: 1980-1999, at* http://www.nyse.com/about/history/timeline_1980_1999_index.html (last visited December 29, 2009). Changes include number of trading hours, voting rights policies, circuit breakers, off-trading sessions and technological upgrades ie. fiber-optics, wireless data systems, 3-D trading floor.

[37] NYSE Euronext, *Timeline: 2000-Today, at* http://www.nyse.com/about/history/timeline_2000_Today_index.html (last visited December 29, 2009).

[38] *See supra* note 29.

As for the Philippines, the history of its stock market can be traced to "W. Eric Little, Gordon W. Mackay, John J. Russell, Frank W. Wakefield, and W.P.G. Elliot,"[39] five businessmen who on August 8, 1927 organized the Manila Stock Exchange with the purpose of increasing trade activity. The Exchange was first established in Manila, moved to Binondo and eventually settled in the City of Pasig. Meanwhile, the Makati Stock Exchange was instituted on May 27, 1963 by Miguel Campos, Bernard Gaberman, Aristeo Lat, Eduardo Ortigas, and Hermenegildo B. Reyes. These two exchanges operated simultaneously for a period of about thirty years.[40]

The presence of two exchanges however caused some degree of uncertainty between existing and prospective investors. Conflicting investment procedures as well as different prices for the same shares of stock generated confusion. This paved the way for the consolidation of the Makati Stock Exchange and Manila Stock Exchange into the Philippine Stock Exchange (the Exchange) in 1992. Two years later, the Securities and Exchange Commission issued a license to the Philippine Stock Exchange to operate as a securities exchange.[41]

During 1998, the Exchange was granted by the Commission self-regulatory status, enabling the former to promulgate its own regulations with the authority to impose corresponding sanctions thereon.[42] This empowered it to take an active role in the prevention of market irregularities and distortions. Through the surveillance and regulation databases of the MakTrade system, the Exchange was able to monitor asymmetrical and dubious transactions. An online disclosure system was likewise established to ensure that all information from listed companies is promptly and accurately transmitted.[43]

To stimulate the competitiveness of the market, the Philippine Stock Exchange created the Floor Trading and Arbitration Committee as well as the Compliance and Surveillance Group. The former recommends "appropriate trading and settlement rules"[44] in addition to monitoring the transactions in the Exchange. Trading personnel are regulated and trade

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[39] Philippine Stock Exchange Inc. (hereinafter "PSE"), Knowing the Philippine Stock Exchange, A Guide for Investors, Investor's Primer 2: The Philippine Stock Exchange Inc., *at* http://fglinc.tripod.com/knowstockex.htm (last visited Dec. 29, 2009).

[40] *Id.*

[41] *Id.*

[42] PSE, *Corporate Overview*, *at* http://www.pse.org.ph/ (last visited December 29, 2009).

[43] *Id.*

[44] PSE, *FAQ's*, *at* http://www.pse.org.ph/ (last visited December 29, 2009).

activities scrutinized via a surveillance terminal.[45] On the other hand, compliance with the imposed regulations is supervised by the Compliance and Surveillance Group.[46]

From an examination of the history of various exchanges, it is readily apparent that the performances of stock markets are undeniably related to the availability of capital. Investors on the other hand, rely on timely and appropriate disclosures to determine the volume and position of their investments. Insider trading however distorts the availability of information so crucial to the investing public.

B. Insider Trading and the Theory of Efficient Markets

In the seminal case of *Strong v. Repide*, the Supreme Court of the United States recognized the legal duty of an insider to disclose information which would ultimately affect the price of shares of stock.[47] In the said case, the defendant owned majority of the shares of what was then known as the "friar lands". Knowing that a sale of such lands to the Philippine Government was imminent, he undertook to purchase the shares of stock held by the plaintiff through an agent. The shares in question were sold by the plaintiff to the defendant's agent, unaware that an agreement with the Government was about to be concluded. In view of the circumstances mentioned, the Supreme Court held that the defendant had the duty to disclose the information pertaining to the sale of lands, it being material to the value of such shares. The Court furthermore acknowledged that had the information been timely revealed, the plaintiff would have sold the shares at a much higher price.[48]

Even as far back as 1909, the *Strong v. Repide* case illustrates the importance of the timely revelation of material information. Such a disclosure ensures that the current and probable price of the shares of stock sufficiently reflects the performance of the corporation to which it is attributed. As such, investor confidence in the market is cemented, there being an assurance that the pricing mechanism is sufficiently accurate. Insider trading however encourages the prevalence of asymmetrical information as insiders exploit their privileged positions to earn huge profits. As the theory of efficient markets would illustrate, such a practice most

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[45] *Id.*
[46] *Id.*
[47] Strong v. Repide, 41 Phil 947 (1909); 213 U.S. 419 (1909).
[48] *Id.*

assuredly wreaks havoc on the performance of an otherwise proficient market.

The theory of efficient markets mandates that the prices in a given market must "fully reflect all available information."[49] Efficient markets are vital as they "allow firms to make appropriate decisions regarding the allocation of resources and assure the investors that the prices they are paying for assets are meaningful indications of the assets' actual value."[50] Thus, prices which are not fully reflective of all available information distort the efficiency of a specified market.

Applied to the contemporary stock market, the efficient market theory delves on three forms of hypotheses: the weak-form, the semistrong-form, and the strong-form.[51] The weak form hypothesis suggests that "stock prices already reflect information that can be derived by examining market trading data such as history of past prices, trading volume, or short interest."[52] The semistrong-form version asserts that the stock price must absorb all public information including a corporation's prospects.[53] Information on "past prices, fundamental data on the firm's product line, quality of management, balance sheet composition, patents held, earning forecasts and accounting practices"[54] must therefore be included. The last form of hypothesis provides that "stock prices reflect all information relevant to the firm, even including information available only to company insiders"[55] It is this last form of hypothesis against which insider trading laws are anchored on. As company insiders together with their cohorts undoubtedly have material information, insider trading laws seek to prevent the former from exploiting such information and unjustifiably profiting from them.

The efficient market theory, as applied to the stock market, finds its basis on the nature of stock prices as mirroring a random walk.[56] Predictions on favorable future stock performance almost instantaneously result to current positive performance.[57] The figure presented below illustrates[58] how the market reacts on takeover attempts:

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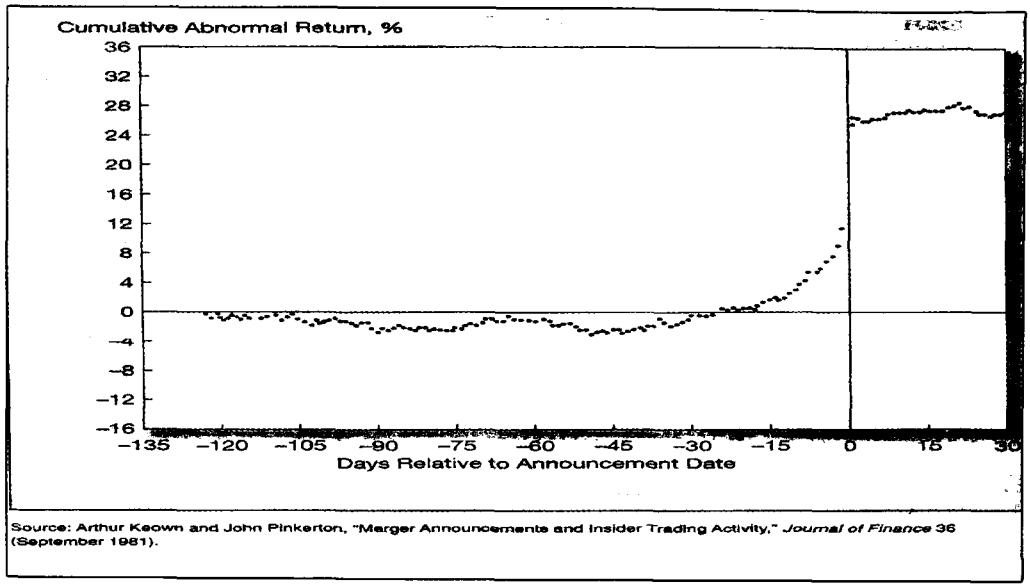
[49] STEVEN LANDSBURG, PRICE THEORY AND APPLICATIONS 293 (7th ed. 2008).
[50] *Id.*
[51] ZVI BODIE, ET AL., INVESTMENTS 373 (6th ed. 2005).
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.* at 371.
[57] *Id.* at 370.



Source: Arthur Keown and John Pinkerton, "Merger Announcements and Insider Trading Activity," *Journal of Finance* 36 (September 1981).

The share prices of the 194 firms with takeover attempts patently jumped on the very day that the information on the takeover became public, in anticipation of the takeover premium to be paid. No remarkable change in prices however occurred after the announcement date which clearly indicates that the current price visibly reflects the disclosed information.[59] Consequently, if majority of the investors predicted that stock prices were likely to go up in a couple of days, immediate buy orders would drive the prices of shares upwards even prior to the assumed date.[60] This occurrence results in the randomness of stock prices. New information must therefore "be unpredictable; if it could be predicted, then the prediction would be part of today's information. Thus stock prices that change in response to new unpredictable information also must move unpredictably."[61] As such, market inefficiency results from the capability to predict information beyond that already at hand as this is not reflected in the stock's current price.[62] Information available only to insiders and the concomitant stock transactions utilizing such data therefore leads to market inefficiency as only a number profits from the undisclosed information.

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[58] *Id.* at 371, *quoting* Arthur Keown & John Pinkerton, *Merger Announcements and Insider Trading Activity: An Empirical Investigation*, 36 J. FIN. 855 (1981).

[59] *Id.* at 372.

[60] *Id.* at 370.

[61] *Id.*

[62] *Id.* at 371.

Realizing the adverse impact that asymmetrical information creates on an otherwise efficient market, states around the world sought to regulate the securities market. Governments devised various mechanisms to ensure that the interests of firms and the investing public would be protected. Thus, apart from enacting a myriad of securities law, regulators were established with the task of enforcing such laws.

C. Regulators and Restoring Market Integrity

Regulators emerged to guarantee the integrity of security markets. In the United Kingdom, the Financial Services Authority (the Authority) was organized to monitor and oversee the financial market. Its key objectives are summarized into "promoting efficient, orderly and fair markets; helping retail consumers achieve a fair deal; and improving business capability and effectiveness." [63] The Authority adopts a risk-based strategy in identifying potential issues in the market, allowing it to identify and assess perceived threats.[64] It has a broad array of powers which include rule-making authority,[65] ability to issue prohibition orders,[66] and ability to impose penalties in cases of market abuse.[67] The Financial Services Authority likewise has investigation powers over suspected Financial Services Act violators.[68]

In the United States, the Securities and Exchange Commission seeks "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[69] Timely disclosure of material information is given a central emphasis as security laws in the country are anchored on the notion that "all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it."[70] The United States Securities and Exchange Commission has rule making powers[71] in order to implement legislation enacted by the United States Congress. It furthermore has the powers to suspend unlisted trading privileges,[72] suspend trading itself,[73] and issue

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[63] Financial Services Authority, *What We Do, at* http://www.fsa.gov.uk/Pages/About/What/index.shtml (last visited Dec. 29, 2009).

[64] COLIN CHAPMAN, HOW THE STOCK MARKETS WORK 207 (2005).

[65] U. K. Financial Services and Markets Act of 2000, part X, § 138.

[66] part V, § 56.

[67] part VIII, § 123.

[68] CHAPMAN, *supra* note 64, at 208.

[69] US SEC, *The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation, at* http://www.sec.gov/about/whatwedo.shtml (last visited Dec. 29, 2009).

[70] *Id.*

[71] U.S. Securities Exchange Act of 1934, 48 Stat. 881, § 12(e)-(f-D) among others.

[72] § 12(f-2A).

emergency orders.[74] Enforcement of security laws and issuances are exercised through the Division of Enforcement which is authorized to collect evidence, conduct investigations, and institute suits against violators.[75]

For its part, financial markets in the Philippines are regulated by the Philippine Securities and Exchange Commission (the SEC/ the Commission). It seeks to "strengthen the corporate and capital market infrastructure of the Philippines, and to maintain a regulatory system based on international best standards and practices that promotes the interests of investors in a free, fair and competitive business environment."[76] The SEC is authorized by the Securities and Regulation Code to exercise a multitude of powers including that of formulating policies[77] and issuing opinions[78] for the securities market; approving, revoking, or suspending licensing applications;[79] monitoring, suspending and taking over exchanges;[80] regulating compliance with security laws and imposing the corresponding sanctions thereon;[81] and issuing subpoena duces tecum and ordering the seizure of documents under investigation.[82] To further strengthen the SEC and give it the much needed flexibility in its enforcement function, a catch-all provision is provided by the law, viz:

> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.[83]

As regulators strive to maintain an efficient and competitive financial market, the prevalence of insider trading continues to pose a threat to its integrity. The increasing sophistication and interdependence of markets around the world likewise present additional problems for regulators. The evolution of laws and jurisprudence in various countries and how the Philippines respond to the call for insider trading prohibition will be discussed in the succeeding sections.

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[73] § 12(k-1).
[74] § 12(k-2).
[75] *See supra* note 69.
[76] SEC, *Mission, at* http://www.sec.gov.ph/ (last visited Dec. 29, 2009).
[77] SEC. REG. CODE, § 5(b).
[78] § 5(g).
[79] § 5(c).
[80] § 5(e).
[81] § 5(d)-(f).
[82] § 5(l).
[83] § 5(n).

IV. COMBATING INSIDER TRADING: LAWS AND JURISPRUDENCE

A. Historical Antecedents of the Stock Market

1. United States

The foundation of insider trading liability which is the duty to "disclose or abstain," is based on the common law tradition of England.[84] Insider trading was prohibited as it frustrated "the justifiable expectation of the securities marketplace that all investors trading on impersonal exchanges have relatively equal access to material information."[85] In the United States, the Supreme Court in the 1909 case of *Strong v. Repide*[86], found a director of a Philippine corporation liable for trading while failing to disclose information affecting the value of the corporation's shares. This was decided by the said Court while the Philippines was still under the United States regime. Oddly though, this is the only case in the Philippines wherein a person was held liable by the Supreme Court for insider trading. Notably, this case preceded the enactment of the United States Securities Act of 1933 and the Securities Exchange Act of 1934. As a result of the United States stock market crash of 1929, the United States Congress enacted the abovementioned laws to curtail the abuses in the financial market.[87]

In the Matter of Cady, Roberts & Co.[88] discussed exhaustively the duty to disclose or abstain. The Securities and Exchange Commission of the United States not only extended the notion of an insider but likewise applied the obligation of disclosure to existing stockholders and the buying public. The obligation of disclosure was held to include those individuals who were privy to the internal affairs of a company due to the extraordinary relationships that they enjoy with the corporation.[89] The later case of *SEC v. Texas Gulf Sulphur Co.*,[90] cemented the principle that the duty to disclose embraces persons other than directors, officers, and controlling shareholders of the corporation. The Court of Appeals pronounced that anyone

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[84] STUART J. BASKIN, INSIDER TRADING, 1992 UNITED STATES SECURITIES AND INVESTMENTS REGULATION HANDBOOK 375 (1992).

[85] Securities and Exchange Commission (S.E.C.) v. Texas Gulf Sulphur Co., 401 F.2d 833, 848 (2d Cir. 1968), 394 U.S. 976 (1969).

[86] 213 US 419 (1909).

[87] Thomas Newkirk & Melissa Robertson, Speech by SEC Staff: Insider Trading – A U.S. Perspective at the 16th International Symposium on Economic Crime, Jesus College, Cambridge, England (Sep. 19, 1998) *available at* http://www.sec.gov/news/speech/speecharchive/1998/spch221.htm.

[88] Fed. Sec. L. Rep. (CCH) ¶ 76,803, 81,015 (Nov 8, 1961).

[89] *Id.*

[90] 401 F.2d 833 (2d Cir. 1968).

possessing material, nonpublic information should reveal the information or otherwise restrain from trading.

This principle was however, abandoned in the subsequent case of *Chiarella v. United States,*[91] which was the first criminal prosecution under the laws on insider trading.[92] The defendant Chiarella was employed in a financial printer commissioned for printing deal announcements. Chiarella used the information in these announcements to determine the names of the target companies and purchased their shares before the publication would increase their prices.[93] The lower court convicted him based on his failure to either 1) disclose the information to the share holders of the companies or to 2) abstain from trading. In effect, the lower court imposed an all encompassing obligation to "disclose or abstain" on everyone holding inside information.[94] Chiarella was convicted even though "he was neither an insider nor a recipient of information from the target company".[95] The Supreme Court of the United States however reversed the decision and held that the possession of nonpublic information did not make trading illegal per se. It was noted that to amount to insider trading, it is required that the trader either owe a fiduciary obligation or derivatively assume the responsibility of his tipper. The actuality that a trader was in a favourable position would not ipso facto translate into a fraudulent transaction.[96]

Three years after the *Chiarella* decision, *Dirks v. SEC*[97] was decided wherein the Court made it clear that the government's enforcement powers were limited as the duty to disclose or abstain was restricted to those who have a fiduciary duty.[98] The *Dirks* case was considered significant as it referred to the issue of the liability of "tippees".[99] Tipping is defined as "the passing on of information by an insider to a second party, the tippee, so that the tippee can trade"[100]. This was prohibited under Section 10(b) to the same extent as direct trading. In the *Dirks* case, the Court held that the duty of tippees to disclose or abstain from trading depends on whether the tipper has himself breached a fiduciary duty to the corporation's shareholders by divulging the information to the tippee. In this case, Dirks, a broker, was told by a former officer of a corporation about a massive fraud involving the

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[91] 445 U.S. 222 (1980).
[92] *See* BASKIN, *supra* note 84, at 376.
[93] *See* Chiarella v. United States, 445 U.S. at 224.
[94] U.S. v. Chiarella, 588 F.2d 1358, 1364 (2d Cir. 1978), judgment *reversed by Chiarella*, 445 U.S. 222.
[95] BASKIN, *supra* note 84, at 377.
[96] *See* Chiarella v. United States, 445 U.S. at 235.
[97] 463 U.S. 646 (1983).
[98] *See* BASKIN; *supra* note 84, at 377.
[99] *See* Newkirk & Robertson, *supra* note 87.
[100] BASKIN; *supra* note 84, at 377.

same corporation which Dirks then revealed to his clients. While the SEC concluded that Dirks abetted securities fraud by conveying the information to his clients without public disclosure, the Supreme Court held otherwise. The Court compared this to *Chiarella* noting that the theory of the present case was of little differentiation from the access-to-market-information test in *Chiarella*.[101] In the same case, Justice Powell created the concept of "constructive insiders" in what eventually was to be referred to as "*Dirks* footnote 14". He defined them as "outside lawyers, consultants, investment bankers or others – who legitimately receive confidential information from a corporation in the course of providing services to the corporation". [102] In effect, the fiduciary obligation of an insider is imposed on these individuals as long as there is a necessity to keep the information classified.

As highlighted by *Chiarella* and *Dirks*, the classical insider trading theory failed to consider the possibility whereby an individual may misappropriate confidential information and illegally employ it to his benefit. The provisions of the law failed to take account of those situations wherein the trader owed no duty at all to the corporation. A need to develop a different approach became necessary, which eventually came to be known as the misappropriation theory.[103] While this was touched on in *Chiarella*, the theory was ultimately not utilized in the ruling of the said case. This instead became the focal point in the case of *United States v. Carpenter*.[104] This case differed from the previous ones as the information was traced from a newspaper which neither traded nor received information from the corporations involved. The case revolved around a conspiracy between a *The Wall Street Journal* reporter and a broker. The reporter tipped information to be published in his financial column "Heard on the Street" in advance to the broker and shared in the profits the latter gained. While there was no inside information included in the columns, the government still argued that the disclosure violated the newspaper's conflict of interest policy amounting to a breach of duty.[105] The Second Circuit affirmed the convictions of the reporter and his associates on the presumption that the reporter had indeed misappropriated material, nonpublic information in violation of an employer-imposed fiduciary duty of confidentiality.[106] The Supreme Court however deadlocked on this phase rendering the theory's validity uncertain.

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[101] *Id.*

[102] *See* Newkirk & Robertson, *supra* note 87.

[103] Linda Thomsen, Speech delivered by SEC Staff: Opening Remarks to the Securities Industry and Financial Markets Association Regulatory Symposium on Insider Trading, at New York (May 19, 2008) *available at* http://www.sec.gov/news/speech/2008/spch051908lct.htm.

[104] 484 U.S. 19 (1987).

[105] *See* BASKIN; *supra* note 84, at 378.

[106] United States v. Carpenter, 791 F.2d 1024, 1031 (2d Cir. 1986).

While the Court unanimously agreed that Carpenter, the reporter, engaged in fraud, they were divided as to whether he indeed engaged in securities fraud.

Generally, the misappropriation theory has gained acceptance in the courts of the United States. However, in 1995 and 1996, two federal district city courts rejected the theory.[107] In 1997, the Supreme Court reversed one of the decisions abovementioned and adopted unanimously the misappropriation theory in *United States v. O' Hagan.*[108] O' Hagan was a partner in a law firm which was retained to represent Grant Met Corporation in an impending tender offer for Pillsbury Company's common stock. O' Hagan, upon discovering the deal, began acquiring these options which he sold for over $4 million after the tender offer. O' Hagan's contention was that because neither he nor his firm owed any fiduciary duty to Pillsbury, no fraud was committed in the acquisition of Pillsbury's stock.[109]

The Supreme Court found against O' Hagan and upheld his conviction due to the misappropriation theory, thus:

> The "misappropriation theory" holds that a person commits fraud "in connection with" a securities transaction, and thereby violates 10(b) and Rule 10b-5, when he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information. Under this theory, a fiduciary's undisclosed, self-serving use of a principal's information to purchase or sell securities, in breach of a duty of loyalty and confidentiality, defrauds the principal of the exclusive use of the information. In lieu of premising liability on a fiduciary relationship between company insider and purchaser or seller of the company's stock, the misappropriation theory premises liability on a fiduciary-turned-trader's deception of those who entrusted him with access to confidential information...[110]

Additionally, the Court also elucidated the two reasons for prohibiting insider trading as embodied in Rule 10b-5. First, the Court emphasized that prohibiting insider trading is "well-tuned to an animating purpose of the Exchange Act" which is "to insure, honest securities markets and thereby promote investor confidence".[111] While the informational

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[107] *See* United States v. Bryan, 58 F.3d 933, 944 (4th Cir. 1995); United States v. O'Hagan, 92 F.3d 612 (8th Cir. 1996).

[108] 117 S. Ct. 2199 (1997).

[109] *See* Newkirk & Robertson, *supra* note 87.

[110] United States v. O' Hagan, *supra* note 108, at 2207.

[111] *Id.* at 2210.

disparity in securities was unavoidable, the Court ratiocinated that investors would probably "hesitate to venture their capital in a market where trading based on misappropriated nonpublic information was unchecked by law."[112] Second, the Court recognized the "information as property" rationale expressing that the confidential information of a company constitutes property which it has the right to exclusively enjoy.[113]

SEC v. Falbo[114] delved on a case of an electric contractor who was employed to renovate the executive offices of a corporation and who at the same time is married to its executive secretary. It was proven that he utilized information from his wife and those gathered in the course of his employment to purchase the shares of the said corporation which was about to engage in a tender offer. He likewise passed substantial material information to an associate. He, together with his friend, was subsequently found liable for insider trading.[115]

One of the most high-profile cases in the United States is that of Michael Milken, a director at Drexel Burnham and Lambert. He was indicted on 98 counts of racketeering and securities fraud and eventually pleaded guilty to six securities and reporting violations.[116] He however, neither pleaded guilty nor was ever convicted of insider trading. He was later sentenced to 10 years of imprisonment but was able to only serve for a reduced period of two years.

2. Europe

While the United States had laws and jurisprudence on insider trading as early as the 1930s, Europe began efforts to ban insider trading only in the late 1970s. The European Community Directive Coordinating Regulations on Insider Trading ("EC Directive") was adopted in 1989 although deliberations for such were instituted a decade before. After the New York scandal involving Milliken and Boesky as well as in Europe

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[112] *Id.*

[113] *Id.* at 2208.

[114] (S.D.N.Y.) Fed. Sec. L. Rep. (CCH), Issue No. 1837, (Sep. 2, 1998).

[115] Anne Flannery & Rachelle Barstow, Insider Trading Cases: Settlement Criteria and Recent Developments, at the Fourth Annual Securities Litigation and Regulatory Practice Seminar, Institute of Continuing Legal Education in Georgia, at 11, (Oct. 8, 1998), *available at* http://www.morganlewis.com/pubs/58F01D62-AC6F-4C41-A5FBF15306E0FBBF_Publication.pdf.

[116] Kurt Eichenwald, *Milken Defends 'Junk Bonds' As He Enters His Guilty Plea*, NEW YORK TIMES BUSINESS SECTION, Apr. 25, 1990, *available at* http://query.nytimes.com/gst/fullpage.html?res=9C0CEFD71E3DF936A15757C0A966958260.

involving the Guinness brewing group, Europe recognized the importance of a European-wide prohibition against insider trading.[117]

Jurisprudentially, it is difficult to trace the developments of insider trading in Europe. First, the insider trading laws of each country which were written along the lines of the Directive, still require further development. Second, either the member countries of the EC have no insider trading legislation or they have clearly divergent statutes. Third, the statutes are far from self-enforcing. Several countries, like Germany and Italy, have difficulty integrating the laws into their culture which have "traditionally viewed insider trading as an acceptable practice."[118] This predicament is perfectly illustrated in France wherein there has only been a single Frenchman who was sentenced to jail for committing insider trading.[119]

3. Japan

In Asia, specifically Japan, it was not until 1988 that the ministry announced that it would consider enacting a law that would define and prohibit insider trading. This can be attributed to the fact that insider trading had never been a cause for punishment or censure in the country. It was observed that the relationship between investment houses and corporate clients has grown extraordinarily close during the 1980s.[120]

The Japanese Securities and Exchange Act was patterned from the US Securities Act of 1933 and the Securities Exchange Act of 1934. Article 58 of the Japanese Securities and Exchange Act was established with a similar rationale to that of Article 10(b) of the US Insider Trading Regulations. As a consequence of insider trading regulations being strengthened in foreign jurisdictions, the Securities and Exchange Act was amended in Japan. Under the amended Act, material facts constituting insider trading were defined in material terms.[121]

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[117] *See* Newkirk & Robertson, *supra* note 87, at 34.

[118] *Id.* at 37-38.

[119] Peter Gumbel, *Europeans Get Serious About Insider Trading*, FORTUNE MAGAZINE, Jul. 2, 2008, *available at* http://money.cnn.com/2008/07/01/news/international/Europe_insider_trading_Gumbel.fortune/index.htm?postversion=2008070208.

[120] MARTIN MAYER, MARKETS: WHO PLAYS, WHO RISKS, WHO GAINS, WHO LOSES 157-58 (1988).

[121] TOSHIHIKO KATO, *Japanese Securities Markets and Global Harmonization, in* 1992 REGULATING INTERNATIONAL FINANCIAL MARKETS: ISSUES AND POLICIES 132-33 (1992).

Under this law, only a number of legal actions have been filed in Japan. This can be ascribed to several factors, one of which is the different culture of Japan as far as legal proceedings are concerned. The Japanese Act is also notably dissimilar from its United States counterpart which does not provide for the definition of insider trading but instead utilizes judicial precedents. The distinctive feature of the Japanese law on insider trading which seeks to prevent illegal trading prior to completion likewise decreases the possibilities of prosecution.[122]

In 2006 however, the country has adopted a new law known as the Financial Instruments and Exchange Act which abolished the Securities and Exchange Act. In the two years that the law has taken effect, there have been a substantial number of cases instituted against persons for violating the said law. In 2006, Yoshiaki Murakami, one of Japan's best-known fund managers was arrested for an insider trading case. Murakami denied liability and insisted that he was not aware that his actions amounted to insider trading.[123] In November of 2008, an employee of Nomura Securities Co. and his associate both pleaded guilty at the Tokyo District Court after being charged with violating the Financial Instruments and Exchange Law.[124]

4. Philippines

In the Philippines, the 1909 *Strong* case, as previously discussed, is the pre-eminent case on insider trading. The more recent BW scam however illustrates perfectly how insider trading and stock manipulation can occur in Philippine shores. Regarded as the "most devastating of all scams that left the Philippine Stock Exchange on the brink of collapse,"[125] the case of BW Resources Corporation is the most infamous example of insider trading in the country. In the said case, investor Dante Tan heavily traded on BW shares throughout the 5, 250% rise in its value. He however failed to disclose to the Philippine Stock Exchange that he is a majority stockholder of the said corporation and thus, an insider. A series of around 130 buy and sell transactions were made by Tan which earned him a hefty profit of twenty million dollars in a span of six months.[126] At present, there has been

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[122] *Id.*

[123] The Associated Press, *Japan Fund Manager Admits Insider Trading*, WCCO BUSINESS SECTION; Jun. 5, 2006, *available at* http://wcco.com/business/Japan.Insider.Trading.2.268564.html.

[124] Kyodo News, *Pair Plead Guilty to Insider Ttrading*, THE JAPAN TIMES, Nov. 12, 2008, *available at* http://search.japantimes.co.jp/cgi-bin/nn20081112f2.html.

[125] M. Calderon, *Government Seeks to Reopen Case versus Dante Tan, at* http://www.yehey.com/finance/level3.aspx?id=53287.

[126] Cesar Bacani & Antonio Lopez, *Manila Struggles to Get Over the BW Fiasco*, ASIAWEEK, Mar. 3, 2000, *available at* http://www-cgi.cnn.com/ASIANOW/asiaweek/magazine/2000/0303/biz.bw.htmlAsiaweek.

no case decided on by the High Court finding a person liable of insider trading. Despite this, the Court has touched on a number of relevant concepts connected to it in jurisprudence.

In the case of *Philippine Stock Exchange v. Court of Appeals,*[127] the Supreme Court adopted the Securities and Exchange Commission (SEC)'s definition of materiality. In addition to this, the Court likewise confirmed that the SEC is the body primarily tasked to determine whether or not securities, including a corporation's shares of stock, may be traded or not in the stock exchange. The Court explained that this power is in line with the "SEC's mission to ensure proper compliance with the laws, such as the Revised Securities Act and to regulate the sale and disposition of securities in the country", citing *Securities and Exchange Commission v. Court of Appeals.*[128]

More recently, in 2008, the Court discussed extensively certain concepts related to insider trading. The suit of *SEC v. Interport Resources Corporation* is a case in point.[129] Interport Resources Corporation (IRC) acquired 100% of the entire capital stock of Ganda Energy Holdings, Inc. (GEHI) through a Memorandum of Agreement executed between IRC and Ganda Holdings Berhad (GHB). The SEC contended that it had received reports that IRC was unable to make timely public disclosures of its negotiations with GHB and that some of its directors heavily traded on shares utilizing insider information. After notice to the IRC, the Chairman of the SEC issued an order holding that indeed the IRC violated the Rules on Disclosure of Material Facts. The respondents filed an Omnibus Motion contending that the SEC had no authority to investigate the subject matter as under Section 8 of Presidential Decree No. 902-A, the Prosecution and Enforcement Division (PED) of the SEC was given jurisdiction for such matters. An Order was then issued prohibiting the SEC from instituting any civil, criminal or administrative action against the respondents. The SEC appealed this decision.[130]

The Supreme Court held for the SEC. It clarified that while the case was pending in the Court, the Securities and Regulation Code (SRC) took effect. Section 76 of the SRC expressly repealed Section 8 of PD 902-A. This, in effect, abolished the PED. Respondents argued also that Sections 8, 30 and 36 of the Revised Securities Act, the precursor of the SRC, required

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[127] G.R. No. 125469, 281 SCRA 232, Oct. 27, 1997.

[128] G.R. No. 106425, 246 SCRA 738, Jul. 21, 1995.

[129] Securities and Exchange Commission v. Interport Resources Corp., G. R. No. 135808, 567 SCRA 354, Oct. 6, 2008.

[130] *Id.* at 3-11.

implementing rules and regulations in order to be effective. The Court disagreed with this contention.[131] The Court also dispelled respondents' argument that the SRC repealed the abovementioned sections of the Revised Securities Act, thus:

> While the absolute repeal of a law generally deprives a court of its authority to penalize the person charged with the violation of the old law prior to its appeal, an exception to this rule comes about when the repealing law punishes the act previously penalized under the old law.[132]

The Court ultimately held that a criminal case may still be filed against the respondents since the sections contained in the old law are substantially contained in the provisions of the new law, the Securities and Regulation Code.[133]

B. Laws on Insider Trading

1. United States

The primeval rule on insider trading in the United States is contained in Sec. 10-b of The Securities Act of 1934, as amended which provides:

> [I]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange -
>
> To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.[134]

Observably, the provision was too broad a prohibition that would be vulnerable to misinterpretation. The United States Securities and Exchange Commission endeavored to respond to this indistinct definition

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[131] *Id.* at 20-28.
[132] *Id.* at 66.
[133] *Id.* at 67.
[134] U.S. Securities Exchange Act of 1934, 48 Stat. 881, § 10(b).

through the SEC Rule 10b-5: Employment of Manipulative and Deceptive Practices which reads:

> [I]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) 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, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.[135]

In the year of 2000, the SEC issued Rule 10b5-1 which aimed to define what constitutes illegal insider trading for implementing SEC enforcement actions. As evident in jurisprudence, the interpretation as to what constitutes insider trading has been indefinite. The dichotomy between what was actually prohibited between actual use vis-à-vis mere possession of inside information rendered the law vague. This was addressed by the rule as an individual could now be liable by the mere possession of inside information as opposed to the previous actual use requirement.[136]

2. Europe

As previously stated, the EC Directive was adopted only in 1989. The law defines inside information as "information of a precise nature about the security or issuer which has not been made public which, if it were made public would have a significant effect on the security's price."[137] It prohibits insiders from doing certain acts such as taking advantage of insider information[138] and tipping or using others to take advantage of inside information.[139] It likewise requires the issuers to inform the public immediately if there are significant circumstances that may affect the price of

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[135] US SEC Implementing Rule 10b-5.

[136] Allan Horwich & Andrew Klein, *A Primer on SEC Rule 10b5-1: Affirmative Defenses For Insider Trading*, at 25 (Nov. 10, 2003), *available at* http://www.schiffhardin.com/binary/klein-primer_sec10b5-1.pdf.

[137] Council Directive 89/592 Coordinating Regulations on Insider Trading, 1 Common Mkt. Rep. (CCH) ¶ 1761, art. 1.

[138] art. 2.

[139] art. 3.

the securities.[140] The member countries of the Directive are required to apply the prohibitions to actions taken within its territory with regard to securities traded on any members' market,[141] to designate an enforcement authority with appropriate powers,[142] to coordinate with one other in the investigation efforts by the exchange of information,[143] and to enact legislation complying with the Directive. Each member country would have the discretion to decide on penalties for insider trading.[144]

After the latest controversy in Europe pertaining to the EADS investigations, a number of Paris lawmakers have articulated the need for stricter sanctions in the law, particularly increasing the maximum period of the sentence to three years. Britain has likewise intimated adopting measures that were successful in the United States such as giving adequate security for whistleblowers and providing a mechanism of plea-bargaining for the defendants.[145] It is to be emphasized that the concerns sought to be addressed by these jurisdictions centered on the prosecution of violators and the concomitant appropriate penalties prescribed for each.

3. Japan

As previously discussed, the Financial Instruments and Exchange Act amended Japan's earlier law, the Securities and Exchange Act. The new law was directed at "establishing a cross-sectional framework of a wide range of financial instruments and services,"[146] enhancing requirements for disclosure, increasing the maximum criminal penalties against market frauds, expanding its scope, and "providing organizational structures for self-regulatory functions of exchanges in the form of stock corporations".[147] The penalties for insider trading were manifestly increased. Penalty for imprisonment was increased from three to five years while the fine was increased from ¥3 million to ¥5 million for individuals and from ¥300 million to ¥500 million for corporations.[148]

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[140] art. 7.
[141] art. 6.
[142] arts. 8, 9.
[143] art. 10.
[144] art. 13.
[145] *See supra* note 119.
[146] Financial Services Agency, Japan, *New Legislative Framework for Investor Protection - "Financial Instruments and Exchange Act"*, at 2 (Jun 21, 2006), *available at* http://www.fsa.go.jp/en/policy/fiel/20060621.pdf.
[147] *Id.*
[148] *Id.* at 21.

4. Philippines

As early as 1916, the Philippines already passed a statute to regulate the issuance and sale of securities. This was Act No. 2581 (An Act to Regulate the Sale of Certain Corporation Shares, Stocks, Bonds and Other Securities) or what was commonly known as the "Blue Sky Law". As Act No. 2581 was insufficient, Commonwealth Act No. 83 (An Act to Regulate the Sale of Securities, To Create A Securities and Exchange Commission, To Enforce the Provisions of the Same, and To Appropriate Funds Therefore) was promulgated. As the law was likewise regarded as inadequate, the Batasang Pambansa enacted Batas Pambansa Blg. 178 (the Revised Securities Act of the Philippines).[149]

Due to the prevalence of various speculative schemes concocted by investors and promoters, the Securities Regulation Code (SRC) was passed on September of 2000.[150] It was observed that the two recent laws have short titles as opposed to their predecessors. The rationale attributed for such is to "signalize the main objective of the legislation".[151]

Noticeably, the SRC aims in its declaration of state policy to "minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market".[152] In contrast, the Revised Securities Act did not contain any declaration of state policy and proceeded to the definition of terms.[153] This signifies that the SRC was drafted to target and solve specific quandaries in securities law. It reflects the aim of the SRC to protect the investing public. In fact, the provisions of the SRC as a whole are directed towards such a goal. The main thrust therefore of the law, is to generate and establish investor confidence and with it, "the state policy of promoting capital market development could be achieved".[154]

The main provision on insider trading contained in the Philippines' Securities Regulation Code is Section 27 which defines the unlawful acts that would constitute insider trading[155] as well as concepts relevant to its

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[149] Anna Leah Fidelis Castaneda, *From Merit to Disclosure Regulation: The Shifting Bases of Philippines Securities Law*, XLII ATENEO L.J. 290, 296 (1998).

[150] MARY ANN OJEDA, SECURITIES REGULATION CODE (REPUBLIC ACT NO. 8799) WITH ANNOTATIONS 1 (2002).

[151] RAFAEL MORALES, THE PHILIPPINE SECURITIES REGULATION CODE (ANNOTATED) 1 (3rd ed. 2005), *citing* JUAN RIVERA, THE CONGRESS OF THE PHILIPPINES 491-496 (1962).

[152] SEC. REG. CODE, § 2.

[153] *See* Batas Blg. 178, 78 OG 6437 (Nov. 1982).

[154] MORALES, *supra* note 151, at 9.

[155] SEC. REG. CODE, §§ 27.1, 27.

definition such as "material non-public information"[156] and "securities of the issuer sought or to be sought by such tender offer".[157] As a general rule, the law provides "that it is unlawful for an insider to sell or buy a security of the issuer while in possession of material information with respect to the issuer or security that is not generally available to the public."[158] It then enumerates the exceptions, thus:

> (a) The insider proves that the information was not gained from such relationship; or (b) If the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information.[159]

It should be noted that in this definition, the law makes mention of "material non-public" information which it defines in the subsequent subsection, viz:

> (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.[160]

The problem lies in the second circumstance given in the section as what would be considered by a reasonable person important carries an element of subjectivity.[161] What may be important to consider for one person may be irrelevant to another. The SEC, in its Implementing Rules and Regulations (IRR), addresses this predicament in SRC Rule 14 – Amendments to the Registration Statement and Prospectus, thus:

> 1. "(F)or purposes of this Rule, material information shall include, but not limited to, the following:
>
> > A. Any event or transaction which increases or creates a risk on the investments or on the securities covered by the registration;

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[156] § 27.2.
[157] § 27.4(b).
[158] § 27.1.
[159] § 27.1.
[160] § 27.2
[161] *See* MORALES, *supra* note 151, at 201-02.

> B. Increase/decrease in the volume of the securities being offered at an issue price higher/lower than the range set and disclosed in the registration statement and which results to a derogation of the rights of existing security holders, as may be determined by the Commission;
>
> C. Major change in the primary business of the registrant;
>
> D. Reorganization of the company;
>
> E. Change in the work program or use of proceeds;
>
> F. Loss, deterioration of substitution of the property underlying the securities;
>
> G. Significant or ten percent (10%) or more change in the financial condition or results of operation of the registrant unless a report to that effect is filed with the Commission and furnished the prospective purchaser;
>
> H. Classification, de-classification or re-classification of securities which results to derogation of rights of existing security holders, as may be determined by the Commission."[162]

In the same IRR, however, the SEC cautioned that the enumeration is not exclusive.[163] While it attempts to assist the public in understanding the concept of nonpublic material information, the non-exclusivity of the list also presents certain difficulties. Further, the IRR while providing this list of what may constitute material information, defines material information in a separate Rule as "any fact/information that could result in a change in the market price or value of any of the issuer's securities, or would potentially affect the investment decision of an investor".[164]

The subsequent subsection deals with the tipper-tippee relationship and reads:

> [I]t shall be unlawful for any insider to communicate material non-public information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information

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[162] SEC. REG. CODE Amended Implementing Rules and Regulations (2004), Rule 14.
[163] Rule 3(1)(I).
[164] Rule 3(1)(I).

> knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.[165]

As quoted, the person who receives the material non-public information or the "tippee" from an insider or the "tipper" becomes an insider himself as he falls under the subsection 3.8 of the SRC which enumerates who are insiders. A tippee, in the enumeration, would most likely qualify as a "person who learns such information by a communication from any of the foregoing insiders."[166] This provision is a new one which was not contained in the Revised Securities Act. While the Securities Regulation Code removed the requirement that the tippee has knowledge that the tipper is an insider, it is still inherent in the new definition as the tipper would have to impress upon the tippee that he is an insider in order to induce the latter to deal with such security.[167] Seemingly, the provision, in order to hold a tippee liable, only necessitates that 1) the tippee obtains the information from an insider; 2) the information is material and non-public and 3) the tippee actually buys or sell such securities. Oddly, the laws of the United States make it more stringent for a tippee to be liable as they entail that the (1) tipper possessed material, non-public information concerning the issuer, (2) tipper divulged this information to tippees, (3) tippees obtained the corporation's stock while in possession of the information disclosed by the tipper, (4) tippees knew or should have known that tipper violated a relationship of trust by communicating information, and (5) tipper obtained advantage from the disclosure.[168] Curiously, despite these stringent standards, prosecution of insider trading cases in the United States has not been substantially mired. In fact, in that jurisdiction, tippers are liable solidarily for the profits obtained or losses avoided by their tippees.[169]

Finally, the Securities and Regulation Code likewise deals on instances wherein a tender offer has commenced or is about to commence for:

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[165] SEC. REG. CODE, § 27.3.

[166] *See* MORALES, *supra* note 151, at 203.

[167] *Id.* at 204.

[168] United States Securities Exchange Commission v. Blackwell, 477 F. Supp. 2d 891, Fed. Sec. L. Rep. (CCH) ¶ 94189 (S.D. Ohio 2007).

[169] Elizabeth Williams, *Recipients of Corporate Information Other than Directors, Officers, Substantial Shareholders, or Associated Professionals as Subject to Liability for Trading on Material, Nonpublic Information, Sometimes Referred to as "Insider Trading," Within § 10(b) of the US Securities Exchange Act of 1934 (15 U.S.C.A. § 78j(b))—and SEC Rule 10b-5 Promulgated Thereunder—Making Unlawful Corporate Insider's Nondisclosure or Manipulation of Information to Seller or Purchaser of Corporation's Stock*, 14 A.L.R. Fed. 2d 401).

> (i) Any person (other than the tender offeror) who is in possession of material non-public information relating to such tender offer, to buy or sell the securities of the issuer that are sought or to be sought by such tender offer if such person knows or has reason to believe that the information is non-public and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and
>
> (ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 27.4 (a)(i).[170]

In consideration of the SRC, there have been several changes in the provision on insider trading as opposed to the Revised Securities Act in order to strengthen its prosecution. This is evident from a reading of the old provision, viz:

> [I]t shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special significance with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from an insider or otherwise.[171]

As can be gleaned from the aforesaid provision, the old law requires that the insider has knowledge of the material nonpublic information or that the other party obtained the information from a known insider. This created much difficulty as knowledge is a state of the mind which would be difficult to prove in an actual case enforcing the provision.[172] In the SRC, the provision does away with the knowledge predicament and instead creates a presumption of insider trading, thus:

> A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8 or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material nonpublic information if transacted after such

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[170] SEC. REG. CODE, § 27.4(a)(i)(ii).
[171] Batas Blg. 178, 78 OG 6437 (Nov. 1982), § 30.
[172] Interview with Atty. Francis Lim, President, PSE, Ortigas City, Jan. 8, 2009.

> information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information.[173]

Consequently, the prosecution would only need to prove two things for the presumption to apply: First, that the person is an insider or a relative of the insider in the degrees specified by the law. Second, that there was a purchase or a sale transacted after material nonpublic information came into existence but prior to dissemination of the information to the public.[174] The burden of proof is therefore shifted to the purchaser or seller to establish that "he was not aware of the material nonpublic information at the time of the purchase or sale."[175]

C. Comparative Discourse

As previously discussed, there are two theories available on insider trading. These are the classical theory, which limited the application of the provision to those who are strictly insiders and the misappropriation theory, which extends the ambit of the law to trading by outsiders. The latter theory provides that the law is violated when a person:

> (1) misappropriates material, nonpublic information, (2) by breaching a duty arising out of a relationship of trust and confidence, and (3) uses that information in a securities transaction, (4) regardless of whether he owed any duty to the shareholders of the traded stock.[176]

It would seem that based on the current laws of the Philippines, it follows the misappropriation theory as it includes outsiders as those who are liable under the law.

It must likewise be noted that the laws of the Philippines and Japan are largely based on the United States' Securities and Exchange Act. It is evident that the basis of liability for insider trading in these countries today is possession and not use. The mere showing that an insider had knowledge of particular information and that he or she traded before public disclosure would hold him liable for insider trading. On the other hand, the EC Directive of Europe, does not require that the insider trader breach a fiduciary duty to the source of information for him to be held liable. In

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[173] SEC. REG. CODE, § 27.1.

[174] Lim, *supra* note 172, explaining Sec. 27.

[175] *Id.*

[176] United States Securities Exchange Commission v. Clark, 915 F2d 439, (CCH) Fed Sec. L Rep ¶95501 (CA9 Wash. 1990).

effect, it is analogous to the United States' prohibition against transacting on the basis of nonpublic information pertaining to a tender offer as provided for in Section 14(e) of the Securities Exchange Act of 1934.[177]

As may be gathered, it is apparent that the insider trading laws of different countries are somewhat similar to each other. In fact, some countries culled their laws from existing regulations of other countries as in the case of the Philippines which based its laws on that of the United States'. It may however be said that while the differences in enforcement may be blamed on the laws' inadequacy or the lack thereof, it may likewise be attributed to other contributing factors.

V. INTEGRATING THEORY WITH PRACTICE: DATA ANALYSIS

While theory and the law provide the necessary framework for understanding the debacle of insider trading, an analysis thereof cannot be detached from the actual financial market which it seeks to regulate. As such, it is necessary to contextualize the law as written with its concrete application in the capital industry today. An integration of theory and practice would reveal that the conundrum of insider trading necessitates not just responsive laws but effectual enforcement as well.

A. Methodology

To comprehend the mechanism governing the financial industry, a study using the multiple method approach was utilized. Such a technique employs methodological pluralism wherein "more than one method of research [is used] in order to build up a fuller and more comprehensive picture of social life."[178] The quantitative and qualitative methods were combined in order to "produce extracts of verbatim conversation that gives life to the 'why' and 'how' of the patterns and trends revealed by the statistics produced by official reports or questionnaires."[179] Thus the logic for combining both methods is "to capitalize on the strengths of the two approaches and to compensate for the weakness of each approach."[180]

For the quantitative aspect, a survey was conducted on both the investing and non-investing public. A sample size of thirty was chosen for

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[177] *See* Newkirk & Robertson, *supra* note 87.

[178] STEVE CHAPMAN& PATRICK MCNEILL, RESEARCH METHODS 22 (3rd ed. 2005).

[179] *Id.* at 22-23.

[180] KEITH PUNCH, INTRODUCTION TO SOCIAL RESEARCH QUANTITATIVE AND QUALITATIVE APPROACHES, 240 (2nd ed. 2004).

each category as thirty cases have been considered the minimum for data analysis.[181] Respondents were selected from an age bracket of above twenty-five years while economic backgrounds range from the middle class to the upper middle class strata of society. Categorization was made to limit the sample to those who have the capacity and/or impetuous to invest in the stock market industry.

As for the qualitative phase, unstructured interviews were utilized due to the sensitive nature of insider trading as a topic. The method is centered on the interviewee to "provide an opportunity for respondents to say what they want rather than what the interviewer might expect thus, this type of interviewing may be more likely to get at sensitive information difficult to reach using other methods."[182] To ensure a comprehensive outlook on the subject, interviewees were chosen from the various fields of economics, securities, and enforcement in the country specifically:

a.) Dr. Peter Lee U, Dean of the University of Asia and the Pacific, School of Economics;
b.) Mr. Edwin Shea Pineda, Senior Economist of the University of Asia and the Pacific;
c.) Atty. Francis Lim, President of the Philippine Stock Exchange Inc;
d.) Atty. Carol Lerma-Kant, Assistant Director of the Broker Dealer Division of the Market Regulation Department of the Securities and Exchange Commission;
e.) Mr. Vicente Graciano Felizmenio, Officer-in-Charge of the Market Regulation Department of the Securities and Exchange Commission;
f.) Atty. Oliver Leonardo, Chief Counsel-Broker of the Dealer Division of the Market Regulatory Division of the Securities and Exchange Commission.

While the data might have certain limitations due to the small number of respondents, it nevertheless presents a cross-sectional analysis on the subject. Accuracy is likewise maintained through the multiple method approach wherein results are compared and checked with the others. Thus, the study can be of further use for subsequent research on the topic.

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[181] DEAN CHAMPION, BASIC STATISTICS FOR SOCIAL RESEARCH 89 (1970).
[182] CHAPMAN & MCNEILL, *supra* note 178, at 58.

B. Results

1. Interviews

Chosen from diverse fields in the financial and economic industries, the respondents gave varied perceptions on the topic of insider trading laws and their concomitant enforcement. For a structured analysis on the subject, the presentation of data will first begin with the economists, followed by the Philippine Stock Exchange Management, and the regulators.

The economists emphasized on the need for an efficient market. Mr. Edwin Pineda, senior economist from the University of Asia and the Pacific stated that to produce a mature capital market, three things are essential: "1) a thriving stock exchange market, 2) a thriving bond market, and 3) a thriving commercial banking sector."[183] He stated that in the Philippine context, only the third exists due to the indifference of the common Filipino to the stock and bond industry.[184] Dr. Peter Lee U, the Dean of Economics from the same University added that the financial landscape in the country is highly concentrated. Only a handful of firms dominate the industry while only a few players regularly invest. [185] Because of these factors, both of the economists were in agreement that investor confidence should further be strengthened in the country. While they doubt that the laws on insider trading are completely implemented, they note that the current administration of the Philippine Stock Exchange and the Securities and Exchange Commission have been quite firm in mandating company disclosures. Nevertheless, they recommended that the laws be further improved and its provisions more severely enforced. They emphasized that as insider trading treads on the issue of fairness, it is imperative that investors perceive that the Philippine market is competitive and efficiently valued.[186]

The management of the Philippine Stock Exchange Inc. (the Exchange) accentuated on the current disclosure and enforcement mechanism of the Exchange against insider trading. Atty. Francis Lim, President of the Philippine Stock Exchange Inc., emphasized on the Exchange's internal disclosure rules and stated that listed companies are

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[183] Pineda, *supra* note 6.

[184] *Id.*

[185] Interview with Dr. Peter Lee U, Dean of Economics, University of Asia and the Pacific, Ortigas City, Jan. 21, 2009.

[186] Pineda, *supra* note 6; Lee U, *supra* note 185.

required to timely reveal material information.[187] Regulations preventing key corporate officials from selling shares of stock prior to disclosure were similarly established to prevent insider trading. Atty. Lim likewise stated that the modern surveillance and monitoring equipment of the Exchange deter the commission of insider trading. Radical price and volume movements are spotted by the said apparatus and unusual trading activity are immediately recorded in the system. Corporations and brokerage firms are then required to instantly disclose the reason for such occurrences. Violators, if any, are penalized and referred to the Securities and Exchange Commission for appropriate action.[188]

The Securities and Exchange Commission highlighted the role of the Commission in protecting the common investor. Atty. Carol Lerma-Kant, Assistant Director of the Broker Dealer Division of the Market Regulation Department stressed that in developing markets, regulation is essential to guard the general public from the manipulative practices of crooked individuals. As such the Commission has continually upgraded its standards to comply with international best practice methods to ensure efficient regulation.[189] However, it was also conceded that the Commission lacks several enforcement powers granted to regulators in foreign jurisdictions. Legislation has yet to provide disgorgement powers to the Commission as well as the authority to institute civil proceedings against violators.[190] Also it was stated that the Philippine Stock Exchange must continue to work with the Commission in enforcing the prohibition against insider trading. As such the Commission stressed that continuous improvement in the Exchange's monitoring system must likewise be made.[191]

2. Survey of Investors[192] (see Annex A)

There were 30 investors who responded to the survey. Most of them have been investing in the stock market for 1-6 months[193] while majority of them only invest in 10-25 stocks monthly.[194] It was also discovered that

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[187] Lim, *supra* note 172.

[188] *Id.*

[189] Interview with Atty. Carol Lerma-Kant, Assistant Director of the Broker Dealer Division of the Market Regulation Department, SEC, Mandaluyong City, Jan. 20, 2009.

[190] Interview with Atty. Oliver Leonardo, Chief Counsel-Broker of the Dealer Division of the Market Regulatory Division, SEC, Mandaluyong City, Jan. 20, 2009.

[191] Interview with Mr. Vicente Graciano Felizmenio, Officer-in-Charge of the Market Regulation Department, SEC, Mandaluyong City, Jan. 20, 2009.

[192] *See* Annex C Survey for Investors.

[193] *Id.* at Table 1.

[194] *Id.* at Table 2.

majority of the respondents invest only less than 10,000 pesos per month on the stock market.[195]

The investors perceive stocks as a long-term investment rather than a mechanism for quick profit.[196] More than half of the respondents invest only in Philippine stocks[197] and prefer such stocks over foreign ones[198] citing various reasons such as "better knowledge of market dynamics"[199], "access to available information"[200] and familiarity "with the companies and the demographics hue."[201] Surprisingly, a few respondents expressed concern for the country as a reason for investing as they see this as a way "to help the economy"[202] and "encourage more market movements in the Philippines."[203] Those who showed inclination towards foreign stocks expressed that these offer "more choices, greater profit potential"[204] and "are more transparent with their company's portfolio".[205] The stability of the foreign market as opposed to the Philippine market was also cited as a reason.[206]

Most of the investors were convinced by friends, family, and financial experts to participate in the stock market.[207] Information on the stocks they invested in was mostly retrieved from friends, other brokers, financial experts and the news.[208]

As to the query when the investors obtained the information regarding the stocks they would invest on, the results were relatively close. While most of them received the information after media reports, the answers of "before it is made public" and "after company disclosures were not far from behind.[209]

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[195] *Id.* at Table 3.
[196] *Id.* at Table 4.
[197] *Id.* at Table 5-a.
[198] *Id.* at Table 8-a.
[199] *Id.* at Table 8-b.
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.* at Table 9.
[208] *Id.* at Table 11.
[209] *Id.* at Table 12.

Majority of the respondents alleged that they were familiar with the concept of insider trading[210] and their definitions mostly approximated that of the law's.[211] Only a few respondents believed that insider trading was not prevalent in the Philippines.[212] Reasons cited for the incidence of insider trading in the Philippines were mostly based on reports, stories from friends, the cultural phenomenon in the Philippines, and the fact that the stock market is controlled by only a few individuals.[213] This was likewise cited as the case for the incidence of insider trading all over the world.[214] A number of the investors, however, believed that the occurrence of insider trading abroad is lesser as opposed to that of the Philippines.[215]

The answers to the question as to whether the respondents would still invest in the stock market if insider trading was not prohibited were divided.[216] Those who would still invest ratiocinated that they had "enough information to survive even without the law",[217] "believed in survival of the fittest"[218] and one qualified his or her statement that he or she would still do so if he or she is engaged in insider trading as well.[219] Those who did not want to invest considered the value of fairness and the resulting "lack of integrity in the system"[220] which would pose more risks to the investors and subject the stock market to more manipulation.[221]

Only one respondent believed that the laws on insider trading are being enforced effectively.[222] Most attributed the inefficiency of enforcement to the "lack of will and implementation"[223] as well as the lack of public knowledge and awareness that the act is prohibited. Many of the respondents expressed pessimism by stating that very few laws are properly enforced in the country and a lot of people get away with doing prohibited acts.[224]

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[210] *Id.* at Table 14-a.
[211] *Id.* at Table 14-b.
[212] *Id.* at Table 15-a.
[213] *Id.* at Table 15-b.
[214] *Id.* at Table 16-a.
[215] *Id.* at Table 16-b.
[216] *Id.* at Table 17-a.
[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] *Id.*
[221] *Id.*
[222] *See Id.* at Table 18-a.
[223] *Id.* at Table 18-b.
[224] *Id.*

3. Survey of Non-investors[225] (See Annex B)

There were 30 non-investors who responded to the survey. Majority of those who participated did not have plans of investing in the stock market[226] mentioning several reasons such as lack of funds and lack of interest.[227] Those interested in investing cited the good or reasonable return that the stock market would bring.[228] Most of those inclined to invest however, allotted only less than P10, 000[229] and less than 10 stocks to invest in monthly.[230] As with the investors, most of the non-investors cited long-term investment as their reason for trading in the stock market.[231] The respondents also did not have plans on investing in the foreign stock market[232] citing lack of knowledge and lack of funds as their reasons.[233]

Majority of those who wished to participate in the stock market were convinced by friends, relatives and financial experts.[234] Some were likewise motivated by the media.[235] Most of the respondents admit, however, that their information regarding the stocks to invest on were inadequate[236] as there is a lack of materials that could guide a layman in understanding where to infuse their funds in.[237] Information regarding the stocks they would probably invest in were mostly obtained from friends, relatives, and the news.[238]

As to when they got the information for such stocks, a good number of the respondents replied that they had access to information after media reports. None of the respondents answered that they had information regarding the stocks before they were made public.[239]

Majority of the respondents answered that they knew what insider trading is,[240] yet only a few provided explanations.[241] Out of those who

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[225] *See* Annex D Survey for Non-investors.
[226] *Id.* at Table 1-a.
[227] *Id.* at Table 1-b.
[228] *Id.*
[229] *See Id.* at Table 3.
[230] *Id.* at Table 2.
[231] *Id.* at Table 4.
[232] *See Id.* at Table 5-a.
[233] *Id.* at Table 5-b.
[234] *Id.* at Table 9.
[235] *Id.*
[236] *See Id.* at Table 10-a.
[237] *Id.* at Table 10-b.
[238] *Id.* at Table 11.
[239] *Id.* at Table 12.
[240] *Id.* at Table 14-a.
[241] *Id.* at Table 14-b.

defined insider trading, several respondents expressed uncertainty as to the meaning of the term.

Despite the number of respondents who were not aware of insider trading, majority of the respondents felt that insider trading was prevalent in the Philippines and around the world.[242] A number of the non-investors who believed it was rampant in the Philippines heard or knew of instances of insider trading.[243] A lot surmised that it was based on the Filipino culture and fast money that could be obtained through this prohibited practice.[244] As to its incidence around the world, many expressed that insider trading may be limited to only a number of countries and that its prevalence abroad is a lot less compared to the Philippines.[245] Those who believed it was common around the world said that there are many high-profile cases on insider trading.[246] Some also expressed the opinion that the existence of a law prohibiting such act proves the widespread practice of insider trading.[247]

Finally, a large number of non-investors would not trade in the stock market[248] if insider trading were not prohibited citing fairness considerations.[249] Many were also not interested in stocks and as such did not care whether the act was made legal or not.[250] Only two respondents believed that the laws on insider trading are being enforced effectively.[251] Those who believed otherwise blamed the high incidence of corruption in the country and a weak enforcement body.[252] Despite its illegality, some believed that a lot of people still practice insider trading. Many believed that the laws in general are not being enforced effectively in the Philippines.[253]

C. Discussion of Results

Information threshed out from the interview and the survey concurred in several points. The interviewees expressed the lack of interest of Filipinos in general to the stock market which could explain the lack of interest in enforcing the law against insider trading. This was likewise

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[242] *See Id.* at Table 15-a, Table 16-a.
[243] *Id.* at Table 15-b.
[244] *Id.*
[245] *See Id.* at Table 16-b.
[246] *Id.*
[247] *Id.*
[248] *See Id.* at Table 17-a.
[249] *Id.* at Table 17-b.
[250] *Id.*
[251] *See Id.* at Table 18-a.
[252] *Id.* at Table 18-b.
[253] *Id.*

displayed in the whopping number of non-investors who had no interest at all in trading in the stock market. It was also observed that among the investors, a minimal capital was allotted to the investment of stocks. However, there were a few who viewed investing in the stock market as a long-term investment which needed little time and effort for the capital to grow.

A number of the interviewees also expressed the exclusivity of the Philippine stock market, capturing it in the term of an "old boys' club". It would seem that the public in general is uninterested in investing as they are not members of the select few who have adequate information to enable them to invest. It is expected that because of this, the public is wary of disposing of capital as they have no access to information that they might need to make the most out of their investment. This was confirmed by the results in the survey when it addressed the situation of investing despite the legality of insider trading. The investors were split in half in deciding whether or not to invest and a few of those willing to invest admitted that they had sources which would help them raise funds even if insider trading was not prohibited. The non-investors, on the other hand, were wary of this condition and majority opted not to invest.

The interviewees also addressed the issue of whether insider trading involves equity considerations as it does not afford the public an even playing field. This was likewise dealt with when most of the non-investors refused to invest if the prohibition against insider trading was removed. More than the instability of the market, the respondents considered the unfair advantage to others with access to non-public information.

The interviewees were all in accord in stating that the absence of insider trading prohibitions would lead to market instability, a situation that would be detrimental for a less developed stock market such as what is found in the Philippines. While the general public was more concerned with the equity side of insider trading, more than a few respondents answered that this would pose a danger to the efficiency of the market as well.

The interviewees, in general, believed that the enforcement of the law is adequate as the surveillance division of both the PSE and SEC have been adamant in pursuing those who violate the prohibition on insider trading. This was contrary to the view of the general public that the laws are not being enforced effectively. The SEC officials conceded that such inadequacy in enforcing the law stems from the fact that the powers and

jurisdiction of the SEC is limited when it comes to prosecuting and penalizing the offenders.

Finally, there were several respondents who did not know what insider trading was, specially the non-investors. Those who claimed that they were aware of the term had difficulty in clearly defining and explaining it. This corresponded to the interviewees' belief that in the Philippines, there is a dearth of knowledge on the matter. This could be attributed to the lack of knowledge of laws in general and the lack of the will of the people to abide by such rules. The results therefore indicated that contemporary problems in the issue of insider trading undoubtedly exist and necessitated a more effective enforcement mechanism from the regulator.

VI. BEYOND THE FACADE: CONTEMPORARY ISSUES IN INSIDER TRADING

The evolution of financial markets worldwide is a testament to the need for a continuous re-evaluation of insider trading laws. Decades old economic factors upon which previous legislation were based might no longer be in existence. Technology previously lodged in yesterday's imagination is currently making the headlines. As such, contemporary issues in insider trading reveal the necessity for the law's further development along with the need for a more dynamic system of enforcement.

A. The Multi-Service Dilemma

The dilemma of insider trading is aggravated by the services offered by a number of financial firms. Universal banks for instance are authorized by the General Banking Law of 2000 to exercise the functions of an investment house as well as "invest in non-allied enterprises."[254] It may likewise "act as a financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;"[255] in addition to "...act[ing] as a managing agent, adviser, consultant or administrator of investment management / advisory / consultancy accounts."[256] The flow of information however that are received in the course of performing these commitments may be utilized by insiders to reap instantaneous profit. Data obtained by an investment advisory division of a bank may be passed on to its financial agent/business division

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[254] Rep. Act No. 8791, § 23 (2000). This is the General Banking Law of 2000.
[255] § 53(2).
[256] § 53(4).

prior to public disclosure. This in turn may be exploited by the clients of the latter department by purchasing or liquidating the shares of stock of the corporation-client of the investment advisory department. The conflicting nature of the legal obligations inherent in such a scenario can be summed up as thus:

> (1) The duty owing to the first client to maintain the confidentiality of the inside information in question; (2) The duty owing to the second client to disclose that information to enable the latter to make a reasonable investment decision on the basis of all information then available and (3) the duty... to either disclose that information or abstain from trading on, or recommending the subject securities.[257]

The evolution of Philippine securities statutes and the enforcement thereof would consequently have to face the impending conflict permeating such scenarios. While these are yet to be exemplified through Philippine jurisprudence, the Securities and Exchange Commission of the United States has already preceded against a number of multi-service firms. The seminal case of *In re Merrill Lynch, Pierce, Fenner and Smith, Inc* is a case in point. In here, the Douglas Aircraft Company obtained the services of Merrill Lynch, a multi-service financial firm to act as an underwriter. In the course of transacting its business, Merrill Lynch acquired information that the earnings of its client were actually lower than previously disclosed. The financial firm began to divest itself of Douglas Aircraft securities and likewise informed its investment clients who also began liquidating their holdings. The end result was that Merril Lynch and its clients were able to avoid potential losses by selling Douglas Aircraft securities prior to the public disclosure of the firm's decreased earnings.[258] Due to these transactions, Merril Lynch was ordered by the Securities and Exchange Commission to establish inter-department regulations known as "Chinese Walls" to remedy conflict of interest situations. It likewise entered into a settlement with the Commission to prevent further liability.[259]

The case of *Securities and Exchange Commission v. First Boston Corporation* similarly exhibited the conflict of interest dilemma marring multi-service firms. First Boston Corporation obtained through its corporate

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[257] Napoleon Poblador, *Chinese Walls in Light of the Insider Trading and Securities Fraud Enforcement Act of 1988*, 70 PHIL. L.J. 356, 359 (1996).

[258] Christopher Gorman, *Are Chinese Walls the Best Solution to the Problems of Insider Trading and Conflicts of Interest*, IX(2) FORDHAM L.J CORP & FIN 475, 483 (2004), *citing* In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 43 U.S. S.E.C. 933 (1968) *available at* http://law.fordham.edu/ihtml/page3g_nob.ihtml?imac=1264&pubID=600&articleid=2483.

[259] *Id.*

finance division information that a client was about to publicly announce a $1.2 billion increase in its reserves. This news was conveyed to an analyst who then disseminated the information to certain individuals. A broker thereafter began trading the shares in issue with the concomitant effect of First Boston itself acquiring substantial profits. As a consequence thereof, First Boston was fined a sizable sum as a penalty and ordered to divest itself of its earnings due to violating insider trading laws.[260]

The issue of insider trading however encompasses not only the various divisions of a multi-service firm but likewise cuts across international borders. The increasing sophistication of technology enables the easy dissemination of material information throughout the world. Corollary to this, the trading linkages among financial markets enable transactions to be undertaken at a global level. These taken together culminate in a massive crisis of Global Insider Trading.

B. The Global Insider Trading Quandary

With the advent of technology emerged the convergence of the financial markets. On-line transactions which were unconceivable decades ago are now easily achieved through a myriad system of computer software and application. Vast arrays of communication equipment enable information and stock trade demands to be relayed with minimal effort throughout the world. As such, foreign investors easily trade in the securities market of one country to another.

In the Philippines, foreign transactions in the Philippine stock exchange are substantially significant as illustrated in the succeeding table from the aforementioned exchange:

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[260] US SEC, *Fifty- Second Annual Report, at* 11 (1986), *citing* Securities and Exchange Commission (SEC) v. First Boston, Litigation Release No. 11092 (May 5, 1986), 35 SEC Docket 1157, *available at* http://www.sec.gov/about/annrep.shtml or http://www.sec.gov/about/annual_report/1986.pdf.

SELECTED PSE MARKET INDICATORS[261]

MARKET INDICATOR	2003	2004	2005	2006	2007	2007 vs. 2006 % CHANGE
PSE INDEX (PSEi), YEAREND CLOSE	1,442.37	1,822.83	2,096.04	2,982.54	3,621.60	21.4%
TOTAL VALUE TRADED (in billion Php)	145.37	206.57	383.52	572.63	1,338.25	133.7%
AVERAGE DAILY VALUE TRADED (in billion Php)	0.59	0.84	1.56	2.31	5.48	136.6%
FOREIGN BUYING (in billion Php)	86.17	121.88	206.88	348.97	680.33	95.0%
FOREIGN SELLING (in billion Php)	89.97	104.05	183.35	280.48	624.76	122.7%
NET FOREIGN BUYING (in billion Php)	-3.80	17.84	23.53	68.49	55.57	-18.9%
SHARE OF FOREIGN INVESTORS IN TOTAL TRADING	60.6%	54.7%	50.9%	55.0%	48.8%	-11.3%
CAPITAL RAISED (in billion Php)	6.72	2.05	51.88	57.23	90.13	57.5%
INITIAL PUBLIC OFFERINGS (in billion Php)	0.19	1.11	29.83	19.01	18.91	-0.6%
ADDITIONAL LISTINGS (in billion Php)	1.53	0.94	22.06	38.20	71.23	86.5%
MARKET CAPITALIZATION, YEAREND	2,973.83	4,766.26	5,948.38	7,172.87	7,978.54	11.2%
DOMESTIC FIRMS (in billion Php)	1,313.52	1,629.12	2,129.60	3,352.03	4,267.75	27.3%
FOREIGN FIRMS (in billion Php)	1,660.31	3,137.15	3,818.79	3,820.84	3,710.79	-2.9%
NO. OF LISTED COMPANIES, YEAREND	235	234	236	239	244	2.1%
DOMESTIC	233	232	234	237	242	2.1%
FOREIGN	2	2	2	2	2	0.0%
NO. OF LISTED ISSUES, YEAREND	316	313	309	313	314	0.3%
DOMESTIC	314	310	307	311	312	0.3%
FOREIGN	2	2	2	2	2	0.0%

In fact, from the years 2003-2006 foreign trade exceeded that of local investors. In the year of 2007, while local investors slightly overtook foreign investments the latter still constituted 48.8% of the market share.[262]

Though it is a vital economic policy to encourage foreign investment, instances of insider trading can occur through cross-border transactions. Such activities are difficult to investigate, much less prosecute due to the issues of jurisdiction and bank secrecy laws permeating the situation. Also, while judgments in favor of the government may be obtained, the execution thereof may be problematic particularly in instances where the defendant is a national of another country. As the succeeding cases would show, enforcement of insider trading laws amidst a cross-border environment would be difficult absent any cooperation among the various jurisdictions involved.

In the case of *Securities and Exchange Commission v. Certain Unknown Purchasers of the Common Stock of Santa Fe International Corporation*, securities issued by the Santa Fe International Corporation were bought by unknown purchasers through secret accounts emanating from Switzerland.[263] The acquisition was highly suspicious due to the large amount of securities

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[261] PSE, *Reaching New Heights*, 2007 ANNUAL REPORT 8, *available at* http://www.pse.org.ph/html/AboutPSE/pdf/2007PSEAnnualRpt.pdf.

[262] *Id.*

[263] US SEC, *see supra* note 260, at 12, *citing* Securities and Exchange Commission v. Certain Unknown Purchasers of the Common Stock of Santa Fe International Corporation, Litigation Release No. 11012 (Feb. 26, 1986), 35 SEC Docket 207.

obtained prior to the public disclosure of a merger. Information regarding the transaction was acquired from Swiss Officials only upon the invocation of the 1977 Treaty on Mutual Assistance on Criminal Matters between the United States and the Swiss Confederation.[264] It was subsequently discovered that the purchasers included nationals of "Lebanon, Lichtenstein, England, Iraq and Kuwait, including a high-ranking Kuwaiti official."[265] As it was revealed that a corporate director was the source of the merger information, a settlement in favor of the Commission was made to the tune of $7.8 million.[266]

The suit of *Securities and Exchange Commission v. Banca Della Svizzera Italiana et al* similarly demonstrates global insider trading. Prior to a public announcement for an imminent tender offer for the shares of St. Joe Corporation, Banca Della Svizzera Italiana, a Swiss Bank, purchased several call options on St Joe's shares by means of its United States securities accounts.[267] The investigation was highly protracted due to the reluctance of Swiss banking officials to reveal the identity of their clients. When a United States Court ordered the disclosure of the identity of the bank's clients, it was discovered that an Italian national, Mr. Giuseppe B. Tome traded on the basis of inside information. He was found liable for an estimated sum of $5.8 million.[268]

Cross-border insider trading is likewise exemplified by the infamous case of *Securities and Exchange Commission v. Dennis Levine et al.* Here Dennis Levine, a renowned investment banker, profited by about $12.6 million through the utilization of "material nonpublic information about actual or proposed tender offers, mergers and other business combinations."[269] Levine traded by means of "two Panamanian companies allegedly under his control, and a Swiss citizen who acted as a broker for Levine's trades through a Bahamian subsidiary of a Swiss Bank."[270] When the Banks were finally compelled to divulge information regarding the transactions, Levine

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[264] *Id.*

[265] Commissioner Joseph Grundfest, *To Catch a Thief, Recent Developments in Insider Trading Law and Enforcement*, Speech delivered at The National Investor Relations Institute, New York Chapter, Grand Hyatt Hotel, New York, New York, at 9 (Jun. 20, 1986), *available at* http://www.sec.gov/news/speech/speecharchive/1986speech.shtml **or** http://www.sec.gov/news/speech/1986/062086grundfest.pdf.

[266] *Id.*

[267] US SEC, *see supra* note 260, *citing* Securities and Exchange Commission v. Banca Della Svizzera Italiana et al, Litigation Release No. 11120 (Jun. 9, 1986), 35 SEC Docket 1525.

[268] *Id.*

[269] US SEC, *see supra* note 260 at 10, *citing* Securities and Exchange Commission v. Dennis Levine et al, Litigation Release No. 11095 (May 12, 1986) 35 SEC Docket 1212.

[270] *Id.*

was ordered to disgorge $11.6 million and barred from engaging in the securities trade.[271]

One of the most recent cases of global insider trading is that of *Securities and Exchange Commission v. Christian de Colli.* In this case de Colli, a resident of Italy, purchased several shares of common stock and call options of DRS Technologies (DRS) prior to the publication of a Wall Street Journal article regarding advanced merger negotiations between DRS and Finmeccanica.[272] After the article was released, share prices of DRS substantially increased. De Colli, as a result thereof, profited by about $2,161,818.42. Investigation revealed that the older brother of De Colli was employed by Finmeccanica. The New York brokerage account utilized by De Colli was also opened only one day prior to the acquisition of DRS shares.[273] Suit was instituted by the Commission against De Colli. As the latter failed to answer, default judgment was obtained against him. De Colli was ordered to disgorge the profit he made and also to pay a penalty in the same amount along with their corresponding interests.[274] To ensure partial execution, the court decreed that the remaining shares in De Colli's United States account be liquidated and all his funds therein be forfeited.[275] The amount adjudged against De Colli however exceeded the funds in his securities account as the latter contained only about $2, 605, 240. 40.[276]

The dawn of Internet technology equally facilitated global insider trading by means of the World Wide Web. Computer files including restricted databases have been the object of interest for software technicians and hackers out to obtain material information. The suit of *Securities and Exchange Commission* v. *Lohmus Haavel & Viisemann, et al* is a case in point. Defendants in this suit are Lohmus Haavel & Viiseman (LHV), an investment bank located in Estonia along with two Estonian bank employees.[277] The defendant-employees opened an account in Business Wire, a web-based information provider. A "spider" was thereafter released by the accused in the Business Wire website which enabled them to access restricted company data prior to their public disclosure. Shares of various

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[271] *Id.*

[272] US SEC, Securities and Exchange Commission v. Christian de Colli, Litigation Release No. 20819 (Dec. 2, 2008), Civil Action No. 08-CIV-4520 (S.D.N.Y. May 15, 2008), *available at* http://www.sec.gov/litigation/litreleases/2008/lr20819.htm (last visited December 29, 2009).

[273] *Id.* at 2-3.

[274] *Id.* at 5.

[275] *Id.* at 5-6.

[276] *Id.* at 4.

[277] US SEC, Securities and Exchange Commission v. Lohmus Haavel & Viisemann, et al., Litigation Release No. 19450 (Nov. 1, 2005), Civil Action No. 05-9259 (S.D.N.Y. Nov. 1, 2005) Complaint for the Plaintiff, available *at* http://www.sec.gov/litigation/litreleases/lr19450.htm (last visited Dec. 29, 2009).

American companies were subsequently traded through on-line brokers based on the United States for the defendants' benefit.[278] A combined profit of about $7.8 million resulted from these transactions.[279] When sued for violating security laws, the defendant Lepik consented to disgorge $551, 998 and pay a penalty of about $15, 000.[280] Meanwhile, the defendants LHV and Peek agreed to disgorge $13, 000,000 in profits and pay a penalty and fine amounting to $2, 000,000.[281]

The conundrum however with situations such as above, when juxtaposed with the Philippine context, is the ambiguity of the case falling under the traditional definitions[282] of insider trading. While the law speaks of material information being utilized by an insider or a third person receiving it from the former, it is uncertain whether or not a "hacker" can be considered an insider. The accessed database from which software technicians obtain their information is likewise not included in the law's enumeration of insiders.[283] Future developments of Philippine securities law would therefore have to deal with the problems brought about by technology. The task however would have to confront the blurring lines between the source of material information and the duty to disclose which were similarly problematic for the American Securities and Exchange Commission:

> With these technology changes come new legal issues. A computer expert can hack into corporate databases and trade on the basis of what he finds there, often without being detected. Put aside for the moment the issue of how technologists will defend against these attacks, and ask how insider trading law will deal with them. The hacker owes no duty to the hacked company's stockholders, nor does he owe a duty to a law firm, consultancy, financial printer or any employer from whom he spirits information. And if traditional notions of duty can't deal with him, what is the common law to do? Create a new kind of duty? Impute to the hacker an existing insider's duty? Or is this simply too far a stretch for our insider trading law's flexibility?...

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[278] *Id.* at 2.

[279] *Id.* at 11.

[280] US SEC, Securities and Exchange Commission v. Lohmus Haavel & Viisemann, et al., Litigation Release No. 19810 (Aug. 22, 2006), C.A. No. 05-9259-RWS (S.D.N.Y.), *Court Enters Final Judgement by Consent Against Defendant Kristjan Lepik, available at* http://www.sec.gov/litigation/litreleases/2006/lr19810.htm (last visited Dec. 29, 2009).

[281] US SEC, Securities and Exchange Commission v. Lohmus Haavel & Viisemann, et al., Litigation Release No. 20134 (May 31, 2007), Civil Action No. 1:06-CV-1260 (S.D.N.Y.), *Court Issues Final Judgement by Consent Against Defendants Oliver Peek and Lohmus, Haavel & Viseman, available* at http://www.sec.gov/litigation/litreleases/2007/lr20134.htm (last visited Dec. 29, 2009).

[282] *See* SEC. REG. CODE, § 27.

[283] *See* SEC. REG. CODE, § 3.8.

> Did the trader have an actionable duty to anyone? We can argue about that one. But duty is not what the statute requires. Duty is a subset of the statutory requirement of deception. So in this case, we alleged that the trader had engaged in deception by, among other things, using the spider to fool the newswire service into believing he was authorized to access the information on its servers. I expect we'll to see more cases like this and that these cases will be the source of more case law.[284]

With the rapid convergence of financial markets coupled with the exponential escalation of technology, the task of regulators worldwide is far from undaunting. Apart from the increasing complexity of financial transactions, the enforcement of insider trading laws is influenced by a myriad of factors which at times call for global action. Nevertheless, fundamental to the successful crusade against insider trading is the role that regulators play. The predicament of the regulator therefore is likewise a predicament of the law's effectivity.

C. The Predicament of the Regulator

As previously noted, the Securities and Exchange Commission is tasked with the enforcement of insider trading laws.[285] The Commission however is confronted with certain limitations which hinders it from effectively performing its mandate. Central to these issues is the insufficiency of civil remedies as well as the absence of disgorgement provisions.

Of primary import is the void in the Commission's authority to institute civil proceedings against the violators of insider trading. This is manifest from section 61.1 of the Securities Regulation Code which provides that:

> Any insider who violates Subsection 27.1 and any person in the case of a tender offer who violates Subsection 27.4(a)(i), or any rule or regulation thereunder, by purchasing or selling a security while in possession of material information not generally available to the public, shall be liable in any suit brought by any **investor** who, contemporaneous with the purchase or sale of securities that is the subject of the violation, purchased or sold securities of the same class.[286] (emphasis added)

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[284] Thomsen, *supra* note 103.
[285] *See supra* note 7.
[286] SEC. REG. CODE, § 61.

A cursory reading of the provision above instantly reveals that only an investor can institute civil proceedings against violators. This however is quite problematic given that the word "investor" can be very broad. The number of investors in the Philippine Stock Exchange for instance is more than substantial, with the value turnover of investments amounting to 1.34 trillion pesos in 2007 alone.[287] To therefore pinpoint who purchased particular shares of stock contemporaneously with the insider would necessitate costly and complicated information gathering. Brokerage firms might likewise be hesitant to divulge the identity of their clients as well as their respective transactions.[288] Additionally, the investors themselves are not always too eager to institute protracted civil proceedings against insider-traders. Thus, the Securities and Exchange Commission is left with almost no civil recourse against the law's violators.

This is in marked contrast with the enforcement mechanism in the United States which allows the U.S. Securities and Exchange Commission to institute civil proceedings against violators, viz:

> 1. Whenever it shall appear to the Commission that any person has violated any provision of this title or the rules or regulations thereunder by purchasing or selling a security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) while in possession of material, nonpublic information in, or has violated any such provision by communicating such information in connection with, a transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options or security futures products, the Commission--
>
> > A. may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by the person who committed such violation; and
> >
> > B. may, subject to subsection (b)(1) of this section, bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by a person who, at the time of the violation, directly or indirectly controlled the person who committed such violation.[289]

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[287] *See supra* note 261.

[288] Felizmenio, *supra* note 191.

[289] U. S. Securities and Exchange Act of 1934, § 21A.

Consequently in contrast with the United States, the Philippine civil remedy is placed on a standstill as the latter's implementation virtually depends on the investors. Without the power to initiate proceedings, the Commission would just have to wait until private individuals decide to litigate. Such a solution however does no good for the supposed dynamic enforcement of the law.

Another obstacle to the proper execution of the law is the inexistence of disgorgement powers bestowed on the Commission. "Disgorgement is a broad civil enforcement remedy that enables the SEC to recover profits from violators of the securities laws."[290] Its effectivity as an enforcement mechanism lies in its ability to "increase the overall level of deterrence by increasing the total amount of funds paid by (the) law'(s) violators."[291] In the United States, the Securities and Exchange Commission is given ample authority to institute disgorgement measures against infringers of security statutes.[292] Money obtained from such proceedings is placed in a fund for victims of security fraud by virtue of the Sarbanes-Oxley Act of 2002.[293] The Philippine legislature however is yet to authorize the Philippine Securities and Exchange Commission to institute such actions. As such, the Commission is deprived of an effective enforcement weapon in its quest against insider trading.

The campaign against insider trading is fraught with various challenges that demand immediate attention. While the Securities and Exchange Commission might be more than willing to engage into battle, legislative and administrative fiat is necessary to strengthen its weapons of enforcement. Key players in the financial market must likewise realize that the crusade is not the regulator's alone but ultimately that of the entire industry.

VII. WEAVING LEGISLATION AND ENFORCEMENT: A RECOMMENDATION

The success of the struggle against insider trading lies on the seasonable expansion of the law and its dynamic enforcement. Such a

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[290] Nicolai Law Group P.C., *Subject: SEC Disgorgement Actions (Mar. 1, 2000) at* http://www.niclawgrp.com/memos/200003.html (last visited Dec. 29, 2009).

[291] Letter from Robert Lande, American Anti-Trust Institute to Sec. Donald Clark, Federal Trade Commission (Mar. 29, 2002), *Re: Commission's Request for Comments On The Use Of Disgorgement in Antitrust Matters, available at* http://www.ftc.gov/os/comments/disgorgement/landeroberth.htm (last visited December 29, 2009).

[292] U. S. Securities and Exchange Act of 1934, §§ 21A(d,3), 21B(e).

[293] U. S. Sarbanes-Oxley Act of 2002, § 308.

method necessitates an intricate collaboration among the legislator, the regulator, the exchange, and the investing public. With the innate complexity of financial systems, the central linkages permeating the system must all be strengthened and reinforced.

A. Groundbreaking Legislation

First, Congress must mandate that multi-service providers establish chinese walls to prevent the misuse of material information. Chinese walls are "policies and physical apparatus designed to prevent the improper or unintended dissemination of market sensitive information from one division of a multi-service firm to another... and trading procedures and reviews designed to prevent and detect illegal trading."[294] To ensure its effectivity, minimum standards in the imposition of chinese walls must be provided for. While the current implementing rules of the Securities and Exchange Commission provide for its establishment, the rule as written provides no standard for its implementation:

> Any broker dealer which assumes more than one function whether as a dealer, adviser, or underwriter, or which engages in market making transactions, shall maintain proper segregation of those functions within the firm to prevent:
>
> a. The flow of information between the different parts of its organization which perform each function; and
> b. Any conflict of interest which may result.[295]

Also, no clear sanctions for the non-compliance thereto are imposed. As a consequence, the effectivity of the regulation as currently worded is seriously in doubt. To remedy the situation, Congress must penalize non-conformance with the regulation. Mandatory minimum standards in the establishment of chinese walls must likewise be imposed. Such standards may include:

> (1) substantial control (preferably by the compliance department) of relevant interdepartmental communications; (2) the review of employee trading through the effective maintenance of some combination of watch, restricted, and rumor lists; (3) dramatic improvement in the memorialization of Chinese Wall procedures and

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[294] Division of Market Regulation, U.S. SEC, Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information, at 2-3 (Mar. 1990), *available at* http://www.sec.gov/cgi-bin/txt-srch-sec?section=Entire+Website&text=chinese+walls&sort=rank or http://www.sec.gov/divisions/marketreg/brokerdealerpolicies.pdf.

[295] SEC. REG. CODE Amended Implementing Rules and Regulations (2004), Rule 34.1.

> documentation of actions taken pursuant to those procedures; and (4) the heightened review or restriction of proprietary trading while the firm is in possession of material, nonpublic information.[296]

Second, Congress must address the growing complexity of financial markets. Issues brought about by technology and capital convergence must be met. Thus, Congress should give significant attention to the dilemma of software raiders. Hackers who utilize nonpublic information must be considered by future legislation as insiders to make them susceptible to insider trading laws. Also, treaties and statutes addressing global insider trading should be ratified. Congress must ensure that bank secrecy laws and other confidentiality policies would not serve as a shield for security raiders. Consequently anti-money laundering laws must be strengthened and employed in order to prevent the "cleansing" of illicit funds acquired through insider trading.

Third, the legislative process must be maximized in order to reinforce the laws against insider trading. Laws enabling the Securities and Exchange Commission to institute civil suits against violators must be enacted. Accordingly, the Commission must be given sufficient personality to file civil actions with no joinder of investors required. Adequate alternative remedies must likewise be granted to the Commission. As such, disgorgement provisions must be incorporated in existing and future legislation.

Legislation, to be effectual must be sufficiently enforced. Thus, imperative to its success is a vibrant enforcement mechanism geared to implement its provisions. While the law serves as the blueprint for concrete action, a dynamic system of execution gives life to what was once merely encapsulated in elaborate words.

B. Dynamic Enforcement

First, the Securities and Exchange Commission must exploit all avenues available for information sharing. The importance of gathering adequate information is recognized by the International Organization of Securities Commissions, viz: "The Authorities recognize the importance and desirability of providing mutual assistance and exchanging information for the purpose of enforcing, and securing compliance with, the Laws and

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[296] *See supra* note 294, at 18.

Regulations applicable in their respective jurisdictions."[297] Being a member of the said organization,[298] the Philippine Securities and Exchange Commission must vigorously endeavor to enter into memorandums of understanding with other member commissions to obtain security-related information on a global level. Such information may include "Notification of remote members/participants joining/leaving the market; transaction information (*e.g.*, details of a trader's positions, large positions, related OTC and cash positions, trading by an issuer's significant shareholders and officers); Specific trading limits, such as price and position limits and any changes thereto; and Reports of abusive practices and illegal behavior, including insider trading activity involving remote market participants."[299] Thus, collaboration with various international commissions is essential in obtaining crucial information necessary in insider trading investigations.

Second, the Securities and Exchange Commission must work closely with the Philippine Stock Exchange in surveillance and monitoring activities. The Exchange is currently equipped with an automated surveillance system which monitors unusual trading volume during business hours.[300] It likewise has its own rules mandating disclosure of material information[301] and a division tasked with ensuring compliance thereto.[302] Information generated from these sources must be maximized by the Commission in investigating probable violations of insider trading laws. The Commission must likewise encourage the Exchange to continually upgrade its surveillance machinery to facilitate insider trading investigations. As the identities of share owners do not instantaneously appear in the Exchange's surveillance system, its software must be improved. Investigations therefore would not run the risk of being hampered by evidence lost due to time spent unearthing sources of questionable transactions.[303]

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[297] IOSCO, Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, at 3 (May 2002), *available at* http://www.iosco.org/search/search_results.cfm?criteria=CONCERNING%20CONSULTATION%20AND%20COOPERATION&moreResults=publicdocs or http://www.iosco.org/library/pubdocs/pdf/IOSCOPD126.pdf.

[298] IOSCO, *Ordinary Members* (2009), *at* http://www.iosco.org/lists/display_members.cfm?CurrentPage=8&orderBy=jurSortName&alpha=None&memID=1&rows=10 (last visited Dec. 29, 2009).

[299] Technical Committee of the IOSCO, Multi-Jurisdictional Information Sharing for Market Oversight, at 12 (February 2007) *available at* http://www.iosco.org/search/search_results.cfm?criteria=CONCERNING%20CONSULTATION%20AND%20COOPERATION&moreResults=publicdocs or http://www.iosco.org/library/pubdocs/pdf/IOSCOPD232.pdf.

[300] Lim, *supra* note 172.

[301] PSE Revised Disclosure Rules, § 4.1-4.2.

[302] Lim, *supra* note 172.

[303] Felizmenio, *supra* note 191.

Finally, the Securities and Exchange Commission must solicit the cooperation of issuers and brokerage firms in combating insider trading. As the issuers are the first source of information, the Commission must ensure that such companies have adequate internal policies prohibiting the unlawful utilization of material information. Brokerage firms must likewise be required to divulge potential fraudulent transactions with minimal time involved. Revelation of the firm's clients when demanded by the Commission must be also be made within a maximum time period.

Through the elaborate intermarriage of responsive legislation and dynamic enforcement, the challenges posed by insider trading can be met. While the future of financial markets is far from predictable, Congress must always be vigilant in ensuring that the law responds to the times. The regulator for its part must remain steadfast in its mandate towards ensuring compliance with the law. As traditional methods may at times be outdated, the regulator must not balk from utilizing contemporary enforcement techniques. Thus, both the law and the regulator must be ready to respond to the gauntlet posed by an increasingly complex financial industry.

VIII. ADDRESSING THE CONTEMPORARY MARKET: A CONCLUSION

> *We have always known that heedless self-interest was bad morals; we now know that it is [also] bad economics.*
>
> *- Pres. Franklin D. Roosevelt*[304]

It is undisputable that investor confidence plays a crucial role in ensuring a nation's economic stability. For developing countries such as the Philippines, the continuous influx of capital is particularly more essential. As investment facilitates economic growth, it is indispensable that both local and foreign investors be encouraged to venture into Philippine shores. Thus, laws that keep the financial sector efficient are necessary complements to the country's investor stimulus programs.[305]

The prohibition against insider trading is one of such laws. Geared to encourage market efficiency, insider trading laws endeavour to ensure a fair and competitive financial sector. While current laws strive to combat the

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[304] Pres. Franklin D. Roosevelt, quote available at *A Brief History of Socially Responsive Investing, at* http://www.goodmoney.com/srihist.htm (last visited Dec. 29, 2009).

[305] Lee U, *supra* note 185.

conundrum of insider trading, the journey remains far from complete. A highly evolving securities network demand that legislation sufficiently adapt to the needs of the industry. As convergence characterizes contemporary markets, the Philippines must be ready to address both local and international concerns. Thus, legislation must not only be tough but also flexible, imbued with salient features to ensure that while the investor is protected, there is much incentive left for growth.

The Securities and Exchange Commission for its part must give life to the vision encased in the law's words. The law's provisions must be dynamically enforced with the regulator equipped with sufficient arsenal to last a protracted battle. As such, enforcement should transcend traditional dogmatic frameworks and alternatively explore other contemporary avenues for regulation. Consequently, the goals enshrined in existing legislation must not remain ephemeral euphemisms but instead be given fruition through vibrant and proficient enforcement.

Though the challenges posed by tomorrow's financial markets remain enormous, the Philippines must constantly be prepared to uphold the industry's integrity. Insider trading as one of the market's predilections must therefore be eliminated and confined to the analects of yesterday. While the tribulations of the past can no longer be erased, the dawn of the future presents a multitude of opportunities for change. Ultimately the vitality of the law and the dynamism of its enforcement generate much hope that the quest against insider trading may end in a milestone of success.

-o0o-

ANNEX A

Control Number: _____

Please check the line corresponding to your answer/s.

I. BACKGROUND INFORMATION

1. How long have you been an investor? (locally)
__1 – 6 months ___1 – 3 years ___5 – 7 years
__6 months – 1 year ___3 – 5 years ___7 – 9 years

2. How many stocks do you invest in monthly? (locally)
___less than 10 ___ 25- 50
___10 – 25 ___ 50 above

3. How much do you invest in monthly? (locally)
___less than 10,000 ___25,000 – 50,000 ___100,000 – 500,000
___10,000 – 25,000 ___50,000 – 100,000 ___above 500,000

4. Why do you invest in the stock market?
___quick profit ___others (please specify) _____
___long-term investment

5. Do you invest in stocks abroad?
___yes ___no
Why?
_____
_____
_____

6. What foreign stocks do you invest in? _____
Why?
_____
_____
_____

7. From what country are these foreign stocks? _____
Why there? _____
_____
_____

8. Would you invest more in Philippine stocks or in foreign stocks? _____
Why?
_____

II. TRADING PROPER

9. Who/What convinced you to invest in the stock market? (you may check more than 1)

___friends
___relatives
___other brokers
___financial expert
___issuer
___director/officer
___majority stockholder
___government employee
___politician
___company employee
___news
___fundamentals
___others (please specify) ___

10. Do you get adequate information on the stocks that you invest in?

___yes ___no

Please explain: _____

_____

_____

11. From who/what do you get these information? (you may check more than 1)

___friends
___relatives
___other brokers
___financial expert
___issuer
___director/officer
___majority stockholder
___government employee
___politician
___company employee
___news
___fundamentals
___others (please specify) ___

12. When do you get the information regarding the stocks you would invest in?

___before it is made public
___after media reports
___after company disclosures
___others (please specify) ___

13. Do you think that directors, officers, majority stockholders, government employees, company employees have more knowledge/information regarding stocks?

___yes ___no

Please explain: _____

_____

_____

14. Do you know what insider trading is?

___yes ___no

Please explain: _____

15. Do you think insider trading is prevalent in the Philippines?
___yes ___no
Please explain: _____
_____
_____

16. Do you think insider trading is prevalent in the world?
___yes ___no
Please explain: _____
_____
_____

17. Would you continue to invest in stocks if insider trading is not prohibited?
___yes ___no
Please explain: _____
_____
_____

18. Do you think that the laws on insider trading are enforced effectively?
___yes ___no
Please explain: _____
_____
_____

ANNEX B

Control Number: _____

Please check the line corresponding to your answer/s.

I. BACKGROUND INFORMATION

1. Do you plan to invest in the Philippine stock market?
___yes ___no (proceed to question 5)
Why?_____
_____

2. How many stocks do you plan to invest in monthly?
___less than 10 ___ 25- 50
___10 – 25 ___ 50 above

3. How much do you plan to invest in monthly?
___less than 10,000 ___25,000 – 50,000 ___100,000 – 500,000
___10,000 – 25,000 ___50,000 – 100,000 ___above 500,000

4. Why do you plan to invest in the stock market?
___quick profit ___others(please specify) _____
___long-term investment

5. Do you plan to invest in stocks abroad?
___yes ___no (please proceed to question 14)
Why? _____
_____
_____

6. What foreign stocks do you plan to invest in? _____
Why? _____
_____
_____

7. From what country are these foreign stocks? _____
Why there? _____
_____
_____

8. Would you invest more in Philippine stocks or in foreign stocks? _____
Why? _____

II. TRADING PROPER

9. Who/What convinced you to invest in the stock market? (you may check more than 1)

___friends
___relatives
___other brokers
___financial expert
___issuer
___director/officer
___majority stockholder
___government employee
___politician
___company employee
___news
___fundamentals
___others (please specify) ____

10. Did you get adequate information on the stocks that you plan to invest in?

___yes ___no
Please explain: _____
_____
_____

11. From who/what do you get these information? (you may check more than 1)

___friends
___relatives
___other brokers
___financial expert
___issuer
___director/officer
___majority stockholder
___government employee
___politician
___company employee
___news
___fundamentals
___others (please specify) ____

12. When did you get the information regarding the stocks you would invest in?

___before it is made public
___after media reports
___after company disclosures
___others (please specify) ____

13. Do you think that directors, officers, majority stockholders, government employees, company employees have more knowledge/information regarding stocks?

___yes ___no
Please explain: _____
_____
_____

14. Do you know what insider trading is?
___yes ___no
Please explain: _____

15. Do you think insider trading is prevalent in the Philippines?
___yes ___no
Please explain: _____

16. Do you think insider trading is prevalent in the world?
___yes ___no
Please explain: _____

17. Would you invest in stocks if insider trading is not regulated?
___yes ___no
Please explain: _____

18. Do you think that the laws on insider trading are enforced effectively?
___yes ___no
Please explain: _____

ANNEX C

SURVEY FOR INVESTORS

Table 1. - How long have you been an investor? (locally)

1 - 6 months	9
6 months - 1 year	3
1 year - 3 years	6
3 years - 5 years	4
5 years - 7 years	2
7 years - 9 years	5
More than 10 years	1

Table 2. - How many stocks do you invest in monthly?

Less than 10	18
10 – 25	10
25 – 50	1
50 above	0

Table 3. - How much do you invest in monthly? (locally)

Less than 10,000	11
10,000 - 25,000	6
25,000 - 50,000	4
50,000 - 100,000	3
100,000 - 500,000	1
Above 500,000	3

Table 4. - Why do you invest in the stock market?

Quick profit	9
Long-term investment	21
Others	
Before, there was higher yield	1
Capital preservation	1
Dividend Yield	1

Table 5-a. - Do you invest in stocks abroad?

Yes	8
No	22

Table 5-b. - Why?

YES	NO
Diversification	No knowledge of stocks abroad/familiarity with the market – 4
Good returns	Too much hassle
Fun	Don't use computer
Profitability	Lack of opportunity/ inaccessibility
A whole lot safer and less prone to manipulation and insider trading	No access
Easier on-line and responsive customer support	I do not have extra cash to invest abroad
Because the markets abroad are more liquid and stable	Global financial meltdown concerns
	I don't trust in the stability of the US dollar
	Too risky, pegged to currencies which I have no control
	My capital is not sufficient
	Not interested in foreign market
	Not much update on foreign stocks, not available for me

Table 6-a. - What foreign stocks do you invest in?

DOW	3
NASDAQ	1
ASX	1
HANG SENG	1
CATERPILLAR	1
CITIBANK	1
GOLDMAN SACHS	1
S and P	1
Health & tech stocks	1
Mutual funds (Vanguard)	1
Citigroup	1
McDonalds	1
Microsoft	1
Bank of America	1
Apple	1
Berkshire Hathaway	1

Table 6-b. – Why?

General	DOW and S&P	Mutual funds
Yield	Stability	I don't know enough about stocks

Table 7-a. - From what country are these foreign stocks?

US	8
Hongkong	1
Australia	1

Table 7-b. – Why there?

US	Australia	Hongkong
Valuation and yield	Valuation and yield	Valuation and yield
Easier. On-line and responsive customer support		
Where else?		
Because they are the leader in capital markets		

Table 8-a. - Would you invest more in Philippine stocks or foreign stocks?

Philippine stocks	11
Foreign stocks	5
Others	
Not sure	1
Both	1
Probably in the future I will invest in Stocks	1

Table 8-b. – Why?

Philippine stocks	**Foreign stocks**	**Both**
Better knowledge of market dynamics	I'd have more confidence on foreign stocks for long term investments. They are more transparent with their company's portfolio. Here, we're just looking at the numbers and the whispered tips from our brokers.	Makes sense
Low PE, Fundamentals, insulation from global recession	More choices, greater profit potential	
Access to available information	More stable (comparatively)	
To help the economy		
Encourage more market fluctuations in the Philippines		
I can monitor it		
I am a Filipino and I live and work here		
Dollar to peso value		
I am a new investor		
Because I am more familiar with the companies and demographics hue.		

Table 9. - Who/What convinced you to invest in the stock market?

Friends	14
Relatives	11
Other brokers	6
Financial expert	11
Issuer	4
Director/officer	5
Majority stockholder	3
Government employee	2
Politician	2
Company employee	2
News	6
Fundamentals	7
Others Nobody, the stocks just yield dividends Accountant	 1 1

Table 10-a. - Do you get adequate information on the stocks that you invest in?

Yes	20
No	10

Table 10-b. – Why?

YES	NO
Want to be sure that my stocks are doing well	They just look promising
Research reports	Rely mostly on recommendations of broker/trustee/manager
Due diligence	Change of address, some communications were not delivered to my new mailing address
If you define general knowledge and hearsay information from the people in my answer above is adequate, then yes	I just watch the news and read the papers
Need	I invest just to keep my money from idling out. For income, I still rely on my desk job, hence I don't pay attention to my stocks.
Annual reports	Although newspapers abound, I am too busy to check regularly
My friends are mostly directors	I just rely on what other people tell me
from prospectus and updates online	I am still researching media where I can access good information
I think my brokers sufficiently informs(sic) me	
Websites, newspapers, newsletters	

Table 11. – From whom/what do you get these information?

Friends	16
Relatives	8
Other brokers	10
Financial expert	10
Issuer	5
Director/officer	4
Majority stockholder	2
Government employee	2
Politician	2
Company employee	2
News	13
Fundamentals	7
Others	
Nobody	1
Internet	1

Table 12. – When do you get the information regarding the stocks you would invest in?

Before it is made public	11
After media reports	14
After company disclosures	13
Others	0

Table 13-a. - Do you think that directors, officers, majority stockholders, government employees, company employees have more knowledge/information regarding stocks?

Yes	26
No	3
Others	1

Table 13-b. – Why?

YES	NO
They have company info since they are in the company itself	
Access to information is inherent in their work	
Market making information	
Inside information	
They know more about the corporation	
They want to protect their investment interests	
It is inherent in their positions	
They have connections	
It is their work. They've got to know more about it	
It's their job	
They have access to privileged information that can help one in making an informed choice re: stocks.	
They have direct control over it unless, of course, they're publishing the wrong information.	
They have more access to material	
They have to know	
They are required to know those things	
They are privy to discussion	
They are insiders	
They know more about the company	
They have advance knowledge because they are privy to certain company rules and discussions	

Table14-a. – Do you know what insider trading is?

Yes	23
No	7

Table 14-b. – Explain.

YES	NO
Selling stocks before it is public	I have little knowledge
Unethical use of one's knowledge of sensitive information from an officer/director/broker in order to benefit or gain from such information	I don't have a clear picture of what it is.
Information a director or officer has available before a public disclosure which can influence equity prices positively/negatively	Sort of those prohibited by law
Information pertaining to the performance of stocks are released to private individuals beforehand before it becomes known to the public thereby giving said private individuals an opportunity to either buy/dump stocks well ahead of everyone. In this way, the private information are given advantage to make more money or minimize their loss which the rest of the public do not enjoy."	I can guess those who have inside knowledge on a particular stock's net value, use that knowledge to further their ends to the detriment of the public
Illegal trades	
I have a vague idea	
Making use of information otherwise not available to the public for personal gain or profit	
Inside information	
Knowing the trend before it happens	
Ugly clandestine methods to research how certain events influence the stock market and take advantage of it	
The practice of stock price manipulation from behind the view of the general public, mostly through speculation or under-the-table trading."	
I have read about it	
I have a vague idea. I think it's the selling of stocks before you're supposed to sell	
When you know a material fact re price determination which the public doesn't know	
Utilizing information illegally prior to disclosure	
Is getting insider information from an insider in a company and acting on it quickly for a nice quick profit.	

Table 15-a. - Do you think insider trading is prevalent in the Philippines?

Yes	20
No	6
Others Not sure	2

Table 15-b. – Explain.

YES	NO	OTHERS
Everything here is inside, only controlled by a few individuals	Lack of documentation, no paper trail, I think	I really can't tell
I have heard of some instances of insider trading	I don't know anything about insider trading	No proper basis to formulate an opinion
GOCCs, Foreign brokerages, dealers are players in a market with limited volume and liquidity		
Hear so many samples		
There have been various, numerous reports of this happening in TV and newspapers		
BW is just the tip of the iceberg. It's a cultural phenomenon in the Philippine Regulation needs to be upgraded		
I think every person does not want to lose his money rather make it bigger		
My friends say it is very rampant here		
Loose lips		
I heard it's prevalent here		
People find a way to get around the law		
Our stock market is based on price manipulation and insider trading.		

Table 16-a. – Do you think insider trading is prevalent in the world?

Yes	22
No	5
Maybe, possibly in United States	1
Others	2

Table 16-b. – Explain.

YES	NO	OTHERS
Not sure but maybe not as much as here in the Phil	Lack of documentation, no paper trail	"No basis to formulate an opinion"
No idea but I suspect it is	Not sure	I am not sure
I have heard and read of such instances	I think they have stricter laws	No idea
Markets can be influenced to benefit larger institutions and players that have vested interests		
When there's a will, there's a way		
As I have said, when it concerns money, people will go to great heights just to earn big bucks		
The Livedoor scandal of Japan and Enron issue in the US among others is indicative of this."		
But not as blatant as here in the Philippines		
In large economics, it's easy to find various trading techniques		
Loose lips		
Watching the TV shows		
The Queen of England is "immune" to inside trading. Example, ENRON		

Table 17-a. - Would you continue to invest in stocks if insider trading is not prohibited?

Yes	15
No	15

Table 17-b. – Explain.

YES	NO
I think I have enough information to survive even without the law	The market would be too volatile and subject to more manipulation
Diversify funds	It is unfair to these people who does not have inside information
I believe in survival of the fittest! End result should be profitable investments/decision to deploy capital	The non-regulation or prohibition of stocks/securities will lead to lack of integrity in the system and therefore, more risk for investors
Good returns	I want an even playing field
Only if I'm doing the insider trading"	It would be severely disadvantageous for those who do not have the proper connections and access to said information.
I would not even consider insider trading	It's unfair and scary to invest without regulation
Maybe I still would	
Will invest if I have inside information and will not get caught	
Because that is where the easy money is.	

Table 18-a. - Do you think that the laws on insider trading are enforced effectively?

Yes	1
No	26
Others	
I do not know	1
I can't give a knowledgeable comment at this time	1
No idea	1
Not sure	1

Table 18-b. – Explain.

YES	NO
	People don't care if it's prohibited
	There is only self-regulation
	No laws are enforced effectively in the good old Republic of the Philippines
	Lack of will and implementation; PSE/SEC is still structurally flawed due to the interests of those running these institutions
	A lot of people get away
	In our jurisdiction, no, I don't think the laws on insider trading are properly enforced because of lack of awareness of these laws and non-enforcement of sanctions when such laws are violated
	Whatever happened to the BW bad guys? Erap and Co? Need I say more?
	If it is enforced effectively, it would not happen, would it?
	There is little public knowledge about these things
	A lot of people still do it
	Have you ever heard of anyone in the Philippines convicted of it?
	Laws and enforcement are not that strict
	I have not heard of and news locally regarding this matter.
	Very few laws in our country are enforced efficiently. Laws can be "bought" in this country.

ANNEX D

SURVEY FOR NON-INVESTORS

Table 1-a. – Do you plan to invest in the Philippine stock market?

Yes	12
No	18

Table 1-b. Why?

YES	NO
Future plans	I don't know a thing about the stock market
Profit	too erratic
I want to diversify	not enough funds - 2
I want a reasonable return on my money, using a method which is legal	not my field of expertise
in the future, as another venue to make money	stock market is not good
I plan to spread my income among different options for increasing it	
good return	

Table 2. - How many stocks do you plan to invest in monthly?

Less than 10	6
10-25	2
25-50	1
50 above	1
Others	
No concrete idea	1
No working idea	1

Table 3. - How much do you plan to invest in monthly?

Less than 10,000	6
10,000-25,000	2
25,000-50,000	2
50,000-100,000	0
100,000-500,000	0
Above 500,000	1
Others	
No concrete plans	1

Table 4. - Why do you plan to invest in the stock market?

Quick profit	5
Long-term investment	8
Others	0

Table 5-a. - Do you plan to invest in stocks abroad?

Yes	5
No	23
Others Don't know yet	1

Table 5-b. - Why?

YES	NO
Depending on the strength of the foreign market, [I] will assume that foreign markets have a bigger chance of profit and tend to remain more stable	I don't have any idea as to how it works either
As another venue to make money	PSE is adequate for my needs
If resources are plenty, and I've the benefit of vast knowledge, I think the return would be greater	assures a greater fallback should businesses in the country flounder"
hassle to do so	I don't live abroad
	I don't have enough money - 4
	not my field
	not much knowledge

Table 6-a. - What foreign stocks do you plan to invest in?

Energy and electricity companies	1
Whatever is a good investment	1
Apple	1
Others I've no working idea	1

Table 6-b. – Why?

Energy and Electricity companies	Apple
As long as energy sources at present are the primary sources of energy, *may pera*	strong company and products

Table 7-a. - From what country are these foreign stocks?

GCCs	1
Europe	1
Japan	1
China	1
US	1
Others I've no working idea	1

Table 7-b. – Why there?

GCCs and Europe	Japan and China	USA
We've learned from the American recession haven't we?	No recession	Company based there

Table 8-a. - Would you invest more in Philippine stocks or foreign stocks?

Philippine stocks	4
Foreign stocks	2
Others Don't know yet	1

Table 8-b. – Why?

Philippine stocks	**Foreign stocks**
support your own	more security
it's more risky abroad, less direct knowledge also	I think there's a higher return

Table 9. - Who/What convinced you to invest in the stock market?

Friends	6
Relatives	3
Other brokers	1
Financial expert	4
Issuer	1
Director/officer	2
Majority stockholder	0
Government employee	0
Politician	0
Company employee	0
News	4
Fundamentals	1
Others	
Magazines, articles	1
Myself	1

Table 10-a. - Did you get adequate information on the stocks that you invest in?

Yes	3
No	7

Table 10-b. - Why?

YES	NO
people who advise me have experience and knowledge as regards stocks	no easily understandable materials to guide me
	I really don't know much, I plan to get a stockbroker
	just my friends and relatives
	just rely on my friends

Table 11. - From whom/what do you get these information?

Friends	8
Relatives	6
Other brokers	1
Financial expert	2
Issuer	1
Director/officer	3
Majority stockholder	0
Government employee	0
Politician	0
Company employee	0
News	5
Fundamentals	1
Others Reading materials	1

Table 12- When did you get the information regarding the stocks you would invest?

Before it is made public	0
After media reports	7
After company disclosures	3
Others	0

Table 13-a. - Do you think that directors, officers, majority stockholders, government employees, company employees have more knowledge/information regarding stocks?

Yes	11
No	0

Table 13-b. – Why?

YES	NO
they know the company better - whether it's doing okay or not	
I think it's inherent in the positions they hold, since they are familiar with such transactions	
they have inside information	
they know it before anybody else	
inside knowledge, greater access to information	
they have direct, material interest.	
it's the nature of their job	

Table 14-a. - Do you know what insider trading is?

Yes	17
No	13

Table 14-b. – Explain.

YES	NO
Basta nasa law yan. Basta conchabahan yan (It's in the law. It involves conspiring)	
It's the selling of stocks before public disclosure	
This occurs when a person with insider information uses such information to sell/buy stocks	I only know it's illegal
I think it's the sale of stocks before disclosure in the market	
It is the sale of stocks before public disclosure based on inside information	
selling stocks when not yet public	
stock trading before other people know it	
someone from the company knows events that will occur to affect stock prices	
benefiting from knowledge gained by virtue of one's position, etc.	
I saw it in an episode of "The Office", but I can't explain it properly	
manipulation of stock prices by stockbroker or dealer	
corporation law	
when owners of listed corporations try to manipulate the price of their stocks by creating a false demand or movement of their stocks	
trading of stocks before it is allowed	
sale/purchase of stocks before made public	

Table 15-a. - Do you think insider trading is prevalent in the Philippines?

Yes	20
No	4
Others	
I don't know	2
Not sure	1

Table 15-b. – Explain.

YES	NO
I have personal knowledge	I have no idea
mga Pinoy pa!	because I haven't heard of it here
I have acquaintances who do it	not as much as it is abroad
I heard from my insider friends	
many famous cases about it	
people want to get money fast	
Filipino attitude	
small community, not so strict on pursuing, punishing violations	
we like to cheat at everything	
when there's smoke, there's fire	
anything is possible in this country	
I have heard of stories	
I know of some instances	

Table 16-a. -Do you think insider trading is prevalent in the world?

Yes	18
No	4
Others I don't know	1

Table 16-b. – Explain.

YES	NO
but not as much as here in the Philippines	It's only prevalent in some countries
I believe that insider trading is prevalent in the world because it must exist, there are prohibitions regarding it.	Probably it's limited to corrupt countries like the Philippines
Probably so since there had to be a law to prevent it	the only time I heard of this was Martha Stewart's case
Even Martha Stewart did it. Plenty of people there who are prosecuted	stricter laws
many high-profile cases	
as long as there's a way to make more money, people do	
fast income	
depends on regulations available	
it seems relatively easy to do	
I have read of news articles	

Table 17-a. - Would you continue to invest in stocks if insider trading is not prohibited?

Yes	6
No	16
Others I don't know	1

Table 17-b. – Explain.

YES	NO
I would still invest in stocks regardless	I have no interest in stocks
I still want to invest in stocks legally	unfair
I have sources that could help me earn money	stock market would not be stable
more options	no interest in stocks
my friends would probably inform me	I have a policy against it
	the unfair dealing, others will have more information thus unfair advantage to others with access to same information
	Security of investment. Fairness considerations
	not really interested

Table 18-a. - Do you think that the laws on insider trading are enforced effectively?

Yes	2
No	19
Others No knowledge	2

Table 18-b. – Explain.

YES	NO
Probably the stock market has its own mechanism to prohibit insider trading	personal knowledge
I haven't heard anything	Laws are not strict enough, people here don't follow rules
	a lot of people still do it - 2
	plenty of corruption
	weak enforcement body
	I'm only assuming, but given our background, probably not
	they're that good at hiding, they're not caught
	a lot of laws are not enforced effectively here - 2
	not even our criminal laws are being enforced effectively
	there are a lot of people who still do it