AN OVERVIEW OF INSIDER TRADING IN NIGERIA: A LEGAL PERSPECTIVE*

Abstract

When someone trades in a 'security' 'on the basis of' significant nonpublic knowledge that they have gained by breaching a duty of trust or confidence, it is considered insider trading. One of the things that works against strong corporate governance is insider trading, which is also one of the most violent crimes committed against the principles of fair dealing in the capital market. Trading in a company's shares by an insider is not illegal in and of itself. Rather, it is forbidden when an insider violates a duty of trust or confidence by trading in the company's stock on the basis of confidential information that excludes others, including tipping. This article aims to investigate the legal and regulatory environment, the issue of insider trading in Nigeria, and the history of insider trading in Nigeria using the doctrinal method. This study also reveals that, in contrast to the CAMA 1990, which contained sections 614 to 624 expressly designed to address insider dealing until they were repealed and subsequently incorporated into the Investment and Securities Act (ISA) 2007, the Companies and Allied Matters Act (CAMA) 2020 contains no provisions at all pertaining to insider trading. The only law that was created expressly to prohibit insider trading is the ISA. This paper concludes by recommending that as outlined above in this work, the provisions of the ISA are not detailed enough to tackle the crime of insider dealing in Nigeria. CAMA 2020 should be amended to make room for the provisions of insider trading. The ISA too needs amendment to bring it on par with jurisdictions such as the US and the UK. This paper further recommends that mechanisms should be put in place to monitor primary and secondary insiders to ensure that inside information is not abused by the insiders who have access to the information to promote good corporate governance.

Keywords: Insider, trading, corporate, Nigeria

1. Introduction

One of the corporate evils that has existed since the creation of the abstract entity known as a company is insider trading.[1] Insider trading is defined as when corporate or private insiders purchase or sell stocks using confidential knowledge for their personal gain, either to avoid significant losses or to generate enormous profits. With the exception of industrial and trade secrets, insider trading was not sufficiently addressed by common law. Thus, making room for the vacancy to be filled by judicial interpretation. In Nigeria, insider trading was not considered a statutory violation until 1990. The Nigerian Law Reform Commission, which recognised insider trading as a major misconduct, initiated the process of outlawing and regulating insider trading in Nigeria.[2] The recommendation of the commission led to the enactment of provisions on insider trading prohibition in sections 614-620 of the Companies and Allied Matters Act 1990. The provisions are *in pari materia* with those of the English Company Securities (Insider Dealing) Act 1985. However, the above provisions of the Companies and Allied Matters Act 2020 (CAMA)[3] turned out to be inadequate and ineffective for purpose of combating insider trading, because for almost ten years after its inception, no person was successfully prosecuted under the sections. Consequently, the provisions under CAMA were repealed and replaced by the Investment and securities Act 1999. The Investment and Securities Act (ISA) 1999 has been repealed and replaced by the ISA 2017. With the repeal of sections 614 – 624 of CAMA 1990, the CAMA Cap C20, Laws of the Federation of Nigeria (LFN), 2004, until it was repealed and re-enacted by CAMA 2020 had no provisions on insider trading. it is useful to note that its position on insider trading is the same as that of the CAMA 1990 and the CAMA 2004. Put differently, with regard to insider dealing, the CAMA 2020 remains as silent as the CAMA 2004. Similar to their predecessors, the new restrictions are flawed in that no one has been found guilty of insider trading in Nigeria to date. However, there is still no evidence of corporate officers being charged with insider trading. The goal of this paper is to examine the concept of insider trading. In order to ensure that insider information is not misused by insiders who have access to it and to support good corporate governance, this paper's conclusion is that systems be put in place to monitor primary and secondary insiders.

***By Veronica EKUNDAYO, PhD,** Associate Professor of Corporate Governance, Department of Jurisprudence and Private Law, Babcock University, School of Law and Security Studies, Iperu Campus, Ogun State, Nigeria. Email: ekundayov@babcock.edu.ng;

***Oluwadamilare ADEYEMI, LLB (Hons) OAU, BL, LLM (Ibadan), PhD (In view),** Lecturer, Department of Private and Property Law, Adeleke University, Ede, Osun State. Email: adeyemioluwadamilarelaw@gmail.com Phone Number: 08054932801;

***Monday Onyekachi UBANI, LLB, LLM, BL, PhD (in view),** Legal Practitioner, Managing Partner, Ubani & Co. Email: ubangwa@gmail.com, Tel. 234-8033019746, and

***Olutosin Babajide ADEYEMI, LLB (Hons) (OAU), B.L, LL.M (OAU), PhD (In view),** Legal Practitioner, Olutosin Adeyemi & Co, Ede, Osun State. Email: olutosinadeyemi@gmail.com

[1] Opadola, Babatunde Emmanuel, 'Insider Trading and The Culpability of Corporate Officers under Nigerian Law' (2023) (17) (1) *Journal of Jurisprudence, International Law and Contemporary Legal Issues*

[2] Report on the Reform of Nigerian Company Law of 1988, 30

[3] Ibid.

2. Historical Background of Insider Trading

Insider trading first appeared in the US in 1792. As a result, the United States of America established severe laws against insider trading. It is crucial to comprehend insider trading from an American perspective as a result. This dates back to the 19th century, when the US Supreme Court decided in the Strong *v Repide*[4] case that it would be dishonest and fraudulent to sell shares of one's own company while concealing from buyers the actions he intended to take, given that a director could influence the value of the company's shares. In that instance, a US shareholder of a sugar company with operations in the Philippines was coerced into selling her shares to the general manager of the business. The buyer, who was an insider, persuaded the aforementioned shareholder to sell her shares since she knew the company was going into a profitable contract with the Philippine government. It's interesting to note that, despite the fact that this case served as the catalyst for insider trading legislation, the Securities and Exchange Act was not enacted by the US Congress until 1934, marking the start of statutory regulation.[5] Today, almost every nation has passed legislation prohibiting insider trading in order to protect investors from insiders being treated unfairly. The Securities and Exchange Act established the Securities and Exchange Commission (SEC) with the responsibility of regulating and supervising the secondary trading of securities[6] Insider trading was first criminalised in the UK, as opposed to the US, with the enactment of Part V of the Companies Act, 1980. The Company Securities (Insider Dealing) Act of 1985, however, reinstated the previous insider trading laws, which were then further modified by the Financial Service Act of 1986. Additionally, the Criminal Justice Act was passed in 1993. Additional laws, such the Financial Services Market Act, have been passed to control insider trading.

3. Meaning of Insider Trading

Insider trading is defined as when corporate or private insiders purchase or sell stocks using confidential knowledge for their personal gain, either to avoid significant losses or to generate enormous profits. Information that is not available to the general public but is advantageous, price-sensitive, or material is considered non-public information.[7] The act of buying or selling securities of a publicly traded corporation while in possession of material information that is not yet public knowledge is known as insider trading. Any and every information that could significantly influence an investor's choice to purchase or sell a security is referred to as material information. When we talk about non-public information, we mean that only a small number of persons who are closely connected to the material have access to it and that it is not legally in the public domain. A government employee or company executive who receives access to economic reports prior to their public distribution is an example of an insider.[8] The specific regulations pertaining to insider trading are intricate and typically differ across nations. diverse legal systems may have very diverse definitions of ‘insiders.’ On the other hand, some may also consider those connected to company executives to be ‘insiders.’ Some may adhere to a narrow definition and only classify as ‘insiders’ those who are directly involved in the business and have access to information.’[9] According to Gower and Davies, ‘Insider trading occurs when a person in possession of price-sensitive information about a company buys or sells securities in that company and so obtain better terms in the contract of sale that would have been the case had the counterparty been aware of the information in question’[10]‘Following this action, ‘the insider either avoids loss or makes a profit, depending on whether the information will cause the share price to rise or fall once it is made public [11]

It is important to remember that insider traders do not always have to be insiders, even though they usually are. For example, insider trading can happen ‘when a company director or any other related person has the knowledge that the company is in a bad or robust financial condition, buys or sells his shares in it before the piece of news is made public, with a view to avoiding a loss or making a higher profit[12] It is instructive to note that an insider trader does not have to be an insider even though they are in most cases. For example, a government official who knows that the company they work for is going to publish a negative report on it that will impact the share price. Insider trading can happen in the government bond market as well as in securities issued by businesses. [13]In the case of *R v De Berenger*[14] fraudsters posed as soldiers returning from France with news of Napoleon's defeat (this was prior to the event that actually resulted in Napoleon's defeat). The dissemination of false rumours caused the

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[4] 213 US 4 19 (1909)

[5] James H. Thompson, ‘A Global Comparison of Insider Trading Regulations’ (2013) (3) (1) *International Accounting and Financial Reporting* <www.ijafr.v3i1.3369> accessed 2 February, 2024

[6] Ibid.

[7] Veronica Ekundayo, Amurawaiye Adeoye & Olalekan Moyosore Lalude, ‘Insider Trading under the Nigerian Legal Framework’ [2020] (6) *Thomson Reuters and Contributors*, 375

[8] Eric Okojie, ‘Insider trading’: *The Law of Business Association*, 397

[9] *Ibid.*

[10] Paul L. Davis Gower and Davies, *Principles of Modern Company Law* (8th edn, Sweet & Maxwell 2008), 1084

[11] *Ibid* at 1083-1084

[12] A.A. Oluwabiyi, ‘A Comparative Legal Appraisal of the Problem of Insider Trading in Merger and Acquisition’ (2014) 2(1) *Frontiers of Legal Research* DOI: 10.3968/5747 accessed 2 February 2024

[13]Eric Okojie Insider Trading *op cit.*

[14] (1814) 3 M & S 68

price of British government bonds to increase, which allowed the accused to profitably sell their holdings. According to the definitions given above, insider trading is simply the abuse or misuse of confidential information by officers of a company and outsiders, such as lawyers who have access to restricted information due to their fiduciary relationship with the company.

4. Who is an Insider?

The Investments and Securities Act (ISA), 2007 of Nigeria defines an insider to mean:

> (a) any person who is or is connected with the company in one or more of the following capacities:
> (i) a director of the company or a related company;
> (ii) an officer of the company or a related company;
> (iii) an employer of the company or a related company;
> (iv) an employee of the company, involved in a professional or business relationship to the company
> (v) any shareholder of the company who owns 5% or more of any class of securities or any person who is or can be deemed to have any relationship with the company or member;
> (vi) Members of the audit committee of a company; and
> (b) any of the person listed in paragraph (a), who by virtue of having been connected with any such person or connected with company in any other way, possesses unpublished price sensitive information in relation to the securities of the company, and any reference to unpublished price sensitive information in relation to any securities of a company is a reference to the information which:
> (i) Relates to specific matters relating or of concern (directly or indirectly) to the company, that is, is not of general nature relating or of concern to that company, and
> (ii) Is not generally known to those persons who are accustomed to or would be likely to deal in those securities but which would, if it were generally known to them be likely materially to affect the prices of those securities[15]

Directors, officers, employers, employees[16], shareholders with 5% or more of any class of securities, and members of the company's audit committee are included in the section above. The aforementioned people are insiders by virtue of their positions, and they will be held accountable for insider trading if they purchase or sell securities based on access to confidential information about the company's financial standing—whether it be strong or weak—before the public is informed of this information.

The UK Financial Services and Markets Act, 2000 FSMA (as amended) [17]by virtue of Regulations 2005 defines an insider to mean:

> For the purpose of this Part an insider is person who has inside information-
> (a) as a result of his membership of an administrative management or supervisory body of an issuer of qualifying investments,
> (b) as a result of his holding in the capital of an issuer of qualifying investments,
> (c) as a result of having access to the information through the exercise of his employment, profession or duties,
> (d) as a result of his criminal activities, or
> (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information[18]

The aforementioned clauses add a new angle to learning insider information. From paragraphs (d) and (e), it is clear that inside information can be acquired without holding a directorship in a company, working for a corporation, or performing any official functions for a firm. That inside information, however, may be acquired as a result of a person's illegal activity in the capital market or by employing other 'fraudulent' methods to gain inside information that he knows or could reasonably know to be inside information.

5. Insider Trading and the Common Law

According to common law, an organization's officers and directors have an obligation to the company, not to its shareholders or other directors [19]. The officers and directors were free to trade their company's shares. However, using some secret information obtained as a result of their directorship for personal advantage constitutes a breach of fiduciary responsibility that is punishable under common law against a director or officer of a company. If the aforementioned is true, the directors are responsible for any profit made by the company, whether or not there

[15] ISA 2007 s315
[16] Here, it involves those employed by the company in a professional capacity such as lawyers.
[17] The FSMA was amended in 2012 by the Financial Services Act of 2012 which came into force on April 1 2013. The FSA repealed section 397 dealing on misleading statements, misleading impression, etc. and substituted it with sections 89 – 91. The FSA dissolved the Financial Services Authority owing to its inability to handle the market crisis of 2007 – 2008. It was replaced with the Financial Conduct Authority (FCA) Prudential Regulatory Authority (PRA). The FSMA was further amended by the Bank of England and Financial Service Act, 2016
[18] See the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005), regs. 1(2), 5, Sch. 2para. 1.
[19] *Percival v Wright* (1902) 2 Ch 401. This position is now codified in section 170 of the Company Act, 2006 of the UK

was a loss. In the *Diamond v Oreamuno's case*[20] corporate managers sold a sizable portion of their company's shares before the financial statement was made publicly available, while knowing that the company's net profitability had declined. In a derivative action brought by shareholders, the New York Court of Appeal determined that corporate managers could be held accountable to their corporations for profits obtained through insider trading under New York law, even in the absence of proof of actual harm to the company. By their actions, they were able to prevent the losses that would have arisen from the inevitable decline in the price of their shares upon the dissemination of the information. The managers' actions were considered a breach of fiduciary duty since they had taken advantage of a company resource—insider knowledge—for their own gain. As a result, the Diamond case established that directors and officers may be held common law accountable to their corporation for profits gained in securities trading that arise from the use of insider information, regardless of whether the corporation is harmed. In *Bropby v Cities Service Co*.[21] corporate officer's secretary made purchases for herself before the company was acquired, and the secretary was aware of the corporation's intentions to purchase its own shares in the market. Under the principle that an agent is not permitted to derive any secret profit from confidential information he had in the course of his agency, the company was able to recover the subsequent profits the secretary made from appreciation in the stock's price, regardless of whether it suffered a loss. The court ruled that officers who owed their firm fiduciary duties were free to transact on corporate stocks in the absence of exceptional circumstances. Nonetheless, the company's ambitions to buy market-based stocks satisfied those unique conditions. Since the action amounted to unjust enrichment, the company's loss did not serve as evidence.

6. Regulatory Approaches to Insider Trading and the Culpability of Corporate Officers in Nigeria

In Nigeria, insider trading was not considered a statutory violation until 1990. The Nigerian Law Reform Commission was the driving force behind the country's efforts to outlaw and regulate insider trading. They recognise insider trading as a significant misconduct.[22] The Companies and Allied Matters Act of 1990, specifically sections 614–620, has provisions prohibiting insider trading as a result of the commission's recommendation. The English Company Securities (Insider Dealing) Act of 1985 was the In addition to providing legislative remedies, Section 620(a) also grants a party who has been wronged a civil remedy. Section 21 stipulates that violators of sections 615 and 616 may face a sentence of two years in prison, a fine of N10, 000.00, or both. Section 62 stipulates that an insider who intentionally or recklessly violates any of the provisions of Part XVII may be imprisoned for five years, fined N10, 000.00, or both. The aforementioned provisions of CAMA 1990 were noteworthy because they addressed the gaps in sections 188, 189, and 190 of the Companies Act, 1968, which concerned the upkeep of a register of directors and the requirement to disclose directors' holdings.

The primary and exclusive purpose of the 1999 ISA was to regulate securities in the capital market. Sections 614-624 of the CAMA 1990 was repealed by the ISA. These clauses were transferred to ISA 1999. A new ISA 2007 was enacted in 2007 after the ISA 1999 was repealed[23]. Insider trading was not covered under CAMA Cap C20, Laws of the Federation of Nigeria (LFN), 2004 until it was repealed and re-enacted by CAMA 2020, following the repeal of sections 614–624 of CAMA 1990. Because the new CAMA 2020 contains no explicit rules regarding insider trading, it is useful to note that its position on insider trading is the same as that of the CAMA 1990 and the CAMA 2004. Put differently, with regard to insider dealing, the CAMA 2020 remains as silent as the CAMA 2004. Nonetheless, in accordance with section 305 of the CAMA 2020, which addresses the responsibilities of directors, a director has a fiduciary duty to the company and, as such, is required to act in the company's best interest at all times. The section states as follows:

> (1) A director of a company stands in a fiduciary relationship towards the company, and shall observe utmost good faith towards the company in any transaction with it or on its behalf.
> (2) A director owes fiduciary relationship with the company where-
> (a) a director is acting as agent of a particular shareholder; or
> (b) though, he is not an agent of any shareholder, such a shareholder or other person is dealing with the company's securities.
> (3) A director shall act at all times in what he believes to be the best interests of the company as a whole to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as faithful, diligent, careful and ordinarily skilful director would act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carried on business operations.
> (4) The matters to which a director of a company is to have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its members

[20] 24 NY 2d 494, 248 NE 2d 910, 301 NYS 2d 78 (1969)
[21] 31 Del. Ch. 241, 70 A.2d (Ch. 1949)
[22] Report on the Reform of Nigerian Company Law of 1988, 30
[23] ISA, s314. There is also the Securities and Exchange Commission Rules made pursuant to the ISA for the regulation the capital market generally.

(5) A director shall exercise his powers for the purpose for which he is specified and shall not do so for collateral purpose, and the power, if exercised for the right purpose, does not constitute breach of duty, if it, incidentally, affects a member adversely.
(6) A director shall not fetter his discretion to vote in a particular way.
(7) Where a director is allowed to delegate his powers in any under any provision of this Act, such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.
(8) No provision, whether contained in the articles, resolutions of a company, or any contract, shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.
(9) Any duty imposed on a director under this section is enforceable against a director by the company.

In light of the aforementioned, a director would be in breach of his fiduciary duties to the company if he used his position to trade securities in the capital market based on inside information. He is required to act in the best interests of the company at all times, and he would face appropriate punishment if found guilty of insider dealing. This clause stipulates that a director cannot serve as a tipster by providing insider information to another person so they can trade stocks; rather, they must refrain from using insider knowledge for their own trading purposes. Here, too, CAMA 2020 Section 306 is applicable. The clause states that a director's personal interests cannot clash with their obligations. He is not allowed to gain any unneeded advantages or generate any covert profits. Additionally, he has to give an explanation to the business if any secret profit or benefit is received in violation of sub section (2). [24]According to subsection (5), '[A] director or officer who resigns from the company is still accountable and may be restrained from misusing the information received by virtue of his previous position by an injunction. The duty not to misuse corporate information does not cease by that time.' Stated differently, even if a director leaves the firm, he remains liable to it and, as such, is not permitted to utilise any corporate knowledge he obtained during his tenure as a director. [25]. Today, the principal law regulating insider trading in Nigeria is ISA 2007. ISA 2007 prohibits insiders from dealing in securities. It states in section 111 thus:

(1) Subject to section 104 of this Act, a person who is an insider of a company shall not buy or sell, or otherwise deal in the securities of a company which are offered to the public for sale or subscription if he has information which he knows is unpublished price sensitive information in relation to those securities.
(2) The provisions of subsection (1) of this section applies where:
(a) a person has information which he knowingly obtains (directly or indirectly) from another person who:
(i) is connected with a particular company, or was at any time within six months preceding the obtaining of the information, so connected,
(ii) the former person knows about, or has reasonable cause to know that the latter individual holds, the information by virtue of being so connected; and
(b) the former person knows or has reasonable cause to believe that, because of the latter's connection and position, it would be reasonable to expect not to disclose the information except for the proper performance of the functions attached to that position.
(3) The former person mentioned in subsection (2) of this section:
(a) Shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities; and
(b) Shall not himself deal in securities of any other company if he knows that the information is unpublished price sensitive information in relation to those securities and it relates to any transaction (actual or contemplated) involving the first company, or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.
(4) Where a person is contemplating or has contemplated making (with or without another person) a take-over offer for a company in a particular capacity, that person shall not deal in securities of that company in another capacity if he knows that the offer is contemplated or is no longer contemplated and the offer is unpublished price sensitive information in relation to those securities.
(5) Where a person has knowingly obtained (directly or indirectly) from an individual to whom subsection (4) of this section applies, information that the offer referred to in that subsection is being contemplated is no longer contemplated, the former person shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities.
(6) A person who is for the time being prohibited by the provisions of this section from dealing on approved securities exchange or capital trade point in any securities shall not counsel or procure any other person to deal in those securities, knowing or having reasonable cause to believe that the person would deal in those securities.

[24] CAMA 2020, s306(3)
[25] These provisions are in impair material with sections 279 and 280 of the repealed CAMA Cap C20 LFN 2004

Abuse of information obtained in an official position is covered under Section 112. Information possessed by public officers or former public officers as a result of their current or previous positions is covered by this provision, as is information deliberately obtained, either directly or indirectly, from public officers or former public officers.

A public official or former public officer is forbidden under subsection (3) from misusing information while serving in their official role, and as such, they shall not:

(a) Deal in any relevant securities;

(b) counsel or procure any other person to deal in any such securities, knowingly or having reasonable cause to believe that other person, would deal in those securities; or

(c) communicate to any other person the information held in subsection (2) of this section if he knows or has reasonable cause to believe that he or some other person shall make use of the information for the purpose of dealing or of counselling or procuring any other person to deal on a securities exchange or capital trade point in any such securities.

It is noteworthy that by virtue of section 113, the following actions with regard to dealing in securities by insiders are not prohibited. Section 113 states: The provisions of sections 111 and 112 of this Act do not prohibit a person by reason of his having any information from:

(a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of a loss (whether for himself or ano6ther person) by the use of that information;

(b) entering into a transaction in the course of the exercise in good faith of his functions as a liquidator, receiver or trustee in bankruptcy;

(c) doing any particular thing if the information:

(i) was obtained by him in the course of a business of a stockbroker in which he was engaged or employed, or

(ii) was of a description which it would be reasonable to expect him obtain in the ordinary course of that business and he does that thing in good faith in the course of that business; or

(d) doing any particular in relation to any particular securities, if the information was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business and he does that thing in good faith in the course of that business.

The preceding section's main point is that someone who performs any of those actions because they have knowledge of something won't be held accountable for insider trading. Put differently, insider dealing would not apply to someone who uses price-sensitive knowledge while acting in good faith and fulfilling a task that they are typically required to perform because of their line of business. This is the ISA's section 111 and section 112 exemption. That is to say, provided a stockbroker acts in good faith and acquires price-sensitive knowledge during the course of his business, he will not be held accountable for insider dealing. The same holds true for a receiver, liquidator, or trustee in bankruptcy who, in the course of their lawful duties, comes into possession of information that affects prices. Section 1 of the ISA created the Securities and Exchange Commission (SEC) and gave it the authority to control the capital market as a whole, as stipulated in section 13. Some of these functions as provided in section 13 are to:

- regulate investments and securities business in Nigeria as defined in this Act;
- register and regulate securities exchanges, capital trade points, futures, options and derivatives exchange, commodity exchanges and any other recognised investment exchange;
- regulate all offers securities by public companies and entities;
- register securities of public companies; register and regulate corporate and individual capital market operators as defined in this Act;
- facilitate the establishment of a nationwide system for securities trading the Nigerian capital market in order to prevent investors and maintain fair and orderly markets;
- facilitate the linking of all markets in securities with information and communication technology facilities;
- act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end establish a nationwide trust scheme to compensate investors whose losses are not covered under the investor's protection funds administered by securities exchanges and capital trade points;
- protect the integrity of the securities market against all forms of abuses including insider dealings;
- authorize and regulate cross-border transactions;
- enter and seal up the premises of persons illegally carrying out capital market operations;
- in furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze the assets (including bank accounts) of any person whose assets were derived from the violation of the Act, or any securities law or regulation in Nigeria or other jurisdiction;

- conduct research into all or any aspect of the securities industry such as prevent fraudulent and unfair trade practices relating to the securities industry, disqualify persons considered unfit from being employed in any arm of the securities industry, etc.

These functions of SEC with regard to capital market regulation were emphasised by the Securities and Investment Tribunal in the case of *DVCF Oil & Gas Plc & 15 Ors v Securities and Exchange Commission.*[26]Sections 46 as well as 47 of the ISA empowers the SEC to carry out routine examination of the capital market operator and special examination and investigation of the book's capital market operator. According to section 46:

> The Commission shall, in the case of routine examination, forward a copy of the report arising from the examination together with the recommendations of the Commission, to the capital operator concerned with instruction that it be placed before the meeting of the board of directors of the capital market operator specially convened for the purpose of considering the report and the recommendations thereon.

With regard to special examination, section 47 states inter alia that

> The Commission shall order a special examination or investigation of the books and affairs of a capital market operator where it is satisfied that:
> (a) it is in the public interest to do so;
> (b) the capital market operator has been carrying on its business in a manner detrimental to the interest of its clients, beneficiaries and creditors;
> (c) the capital market has 'insufficient' assets to cover its liabilities to the clients. Beneficiaries and creditors;
> (d) the capital market operator has been contravening the provisions of this Act, etc.

These examinations are geared towards the sanity of the capital market operation generally. Similarly, in the case of Asset Plus Securities Limited & Anor v NSE,[27]the IST stated that:

> … [The] Securities and Exchange Commission, is [vests], amongst other powers to regulate activities in the Nigerian capital market. As the apex regulating organ, its functions include overseeing the operations, transactions and overall development of the capital market. Inherent in its powers is the power of sanctions where there are established cases of infraction of the laws and rules of capital market operators. The type of sanction meted out to offender depends largely on the type of violation and/or abuse[28].

It is fundamental that to have a thriving capital market, the rules governing it are adhered to strictly. This was the position of the IST in the case of the *Nigerian Stock Exchange v Apex Securities Limited*[29] where it thus: Revocation of licence without due process can create panic in the system and undermine confidence in the [capital] market …. Everyone wants to operate in a [capital] market by defined rules and regulations that will be enforced fairly and judiciously.

7. Sanctions for Violations

This concerns the question of who should be prosecuted for insider trading. Many laws that forbid insider trading have been passed by nations all over the world. Nigeria is among such nations, first by virtue of sections 614-624 of the CAMA 1990, which has since been repealed and replaced by the ISA 2007. It will be up to the individual involved and the benefits they stand to gain to determine who will be held accountable for breaking insider trading regulations. The company itself, a director, a shareholder, an officer, or an outsider (tipee) could be the source. Both civil and criminal responsibility are covered under the ISA. Any violation of sections 105–116 of PART XI, which deals with trading in securities, is considered a crime, as stated in section 115 of the ISA. The section states:

> Any person who contravenes any of the provisions of this part of this Act commits an offence and is liable on conviction:
> (a) in the case of a person not being a body corporate, to: (i) a fine not less than N500,000 or an amount equivalent to double the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the provisions of this part; or (ii) to imprisonment for a term not exceeding seven years; or
> (b) in the case of a person being a body corporate, to a fine not less than N1,000,000 or amount equivalent to twice the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the provisions of this part.

The aforementioned clauses make it clear that engaging in insider trading is illegal. As a result, anyone found guilty of breaking any of the clauses in this section of the Act faces a fine of at least N500, 000 or twice their profit. Additionally, in the event of a loss, the penalty would be double the amount of loss prevented by his use of

[26] *DVCFOil & Gas Plc & 15 Ors v SEC* unreported APPEAL NO.IST/LA/APP02/14
[27] *Asset Plus Securities Limited & Anor v NSE* (2009) 3 NISLR 72
[28] Ibid. R10. See also the case of *Grace Onyemowo v BGL Securities Ltd & 2 Ors* unreported Suit No. IST/OA/03/11
[29] *NSE v Apex Securities Limited* (2009) 9 NISLR 36 R1

insider knowledge of price-sensitive information that was not publicised and that he received in violation of the aforementioned requirements. If found guilty, a breaker of the aforementioned rules faces a maximum punishment of seven years in jail. In contrast, a corporation that violates these provisions with regard to securities faces a fine of at least N1, 000,000 or twice the profit that was made possible due to insider knowledge of unpublished, price-sensitive information that the violator obtained in violation of the said provisions. Additionally, the company would be penalised twice the amount of the loss avoided in relation to the securities if loss was prevented as a result of insider knowledge of unpublished price-sensitive information that he received in violation of the aforementioned requirements.

It is notable that there has only been one reported insider trading conviction in Nigeria to date. *Federal Republic of Nigeria v Sir Kingsley Ikpe & Anor* [30] where the 1st Defendant was sentenced to 151 years imprisonments for offences ranging from insider trading, forgery, stealing, conspiracy, etc. The Defendant dissatisfied with the trial court verdict, filed an appeal against his conviction to the Court of Appeal. The Court of Appeal in its judgement delivered on the appeal – *Sir Kingsley Ikpe v Federal Republic of Nigeria & Anor* [31], was heard by a Lagos High Court on June 7, 2005, under the direction of Oyewole J (now JCA). In this case, the first defendant was found guilty of charges including insider trading, forgery, stealing, conspiracy, and more, and was sentenced to 151 years in prison. The defendant appealed his conviction to the Court of Appeal because he was unhappy with the trial court's decision. In the ruling on the appeal in *Sir Kingsley Ikpe v. Federal Republic of Nigeria &* Anor, the Court of Appeal upheld the trial court's decision and denied the appealing party's appeal. According to Tijani Abubakar, the Court of Appeal said this:

> The law is well settled that unless the findings of facts made by a trial Court are found to be perverse and cannot reasonably be supported by the evidence generated at the trial thereby leading to injustice; an appellate Court will not ordinarily disturb or interfere with such findings. The Appellant Court (sic) has no business interfering with proper findings of facts unless there is obvious misapprehension of the facts by the trial Court, or the learned trial Judge, in arriving at a decision took irrelevant materials into account or omitted to consider relevant materials, thereby arriving at a wrong and inappropriate conclusion. Proper evaluation of evidence at the trial is within the province of the trial Court having had the opportunity of seeing, hearing and watching the demeanour of the witnesses.

It should be noted that the rules of Administrative Proceedings Committee (APC) of the SEC are not limited to only civil breaches but to criminal trial as well. This was the position of the IST in the case of *Gosord Securities Ltd v SEC*[32] , where the Tribunal held that: 'APC can handle matters bordering on market manipulation; insider dealing and such other serious market violations as may be determined by [C]omission from time to time'[33]. The IST further stated that the rules, particularly Rule 10(ix) of the APC 'empowers the APC to handle matters relating to unethical and professional practices, manipulation and use of deceptive devices or contrivances in securities challenges'[34] A number of people have been found guilty of insider trading in the UK. In 2016, businessman Andrew Hind and former managing director of Deutsche Bank Martyn Dodgson received sentences of three and a half years and four and a half years in jail, respectively, for conspiring to engage in 'insider trading.'[35]

8. Prevention of Insider Dealing through Corporate Governance

When directors engage in insider dealing as a lucrative commercial practice, the company suffers significant losses. The company's internal policies and applicable legal requirements must be thoroughly comprehended, upheld, and implemented in the management and operations of the business in order to prevent insider dealing, which damages the company's reputation, undermines investor confidence, and jeopardises prospects for growth. A culture of ethics and a code of conduct for the board of directors, chief executive officers, accounting officers, and auditors is introduced when the corporation implements the principles of corporate governance. Insider dealing is primarily motivated by access to the company's sensitive information, hence the board, in particular, has the ultimate duty for directing and overseeing the flow of such information within the organisation.[36] In order to prevent information asymmetry, which encourages insider dealing and reduces access to capital for investors, the board must also decide how share price-sensitive information is distributed to shareholders and the investing public in a timely and transparent manner. This will reduce liquidity and improve market efficiency. The 2018 Code of Corporate Governance in Nigeria suggests using the 'apply and explain' strategy, which is a variation of the UK's 'comply or explain.' According to the Nigerian method, organisations and directors must implement moral behaviour and abide by the Code's principles, or provide justification if they deviate from the established

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[30] Unreported (Suit No. ID/143C/04)
[31] (2018) LCN/11371 (CA)
[32] *Gosord Securities Ltd v SEC* (2009) 3 NISLR 133
[33] Ibid para. E @ 160
[34] Ibid para. F-A @ 160-161
[35] 'Banker given record sentence for insider dealing,' accessed November 12, 2020. See also Ben Chapman, 'FCA: City watchdog secures just 122 insider trading convictions in five years' *INDEPENDENT* (London, 19 January, 2018)
[36] S Claessens and BB Yurtoglu, 'Corporate Governance in Emerging Markets: A survey,' *Emerging Markets Review*, 2013, 15:1–3E.

course of action. In order to achieve transparency and accountability in safeguarding the wide interests of shareholders and other stakeholders, including employees, creditors, and the general public, directors are tasked with elucidating how the company's operations implement the Code's provisions.[37]

9. Lessons from some other Jurisdictions (UK and USA)

It is important to remember that court rulings have played a major role in the evolution of insider trading legislation in the US. A federal circuit court ruled in *SEC v. Texas Gulf Sulphur Co*.[38], that a person with insider knowledge is required to either disclose it or abstain from trading. The facts are rather clear-cut. The US SEC, the plaintiff in this case, filed a lawsuit against Texas Gulf Sulphur Co. as a result of the defendants' purchase of Texas Gulf stock while concealing favourable knowledge of the company's mining operations. The defendants were officers, workers at Texas Gulf, or had strong ties to workers there. Texas Gulf was exploring for minerals in Canada with the aid of a geological study. The scan identified one region, known as Kidd 55, as promising, therefore a hole was dug there, and the resulting core was examined. The results of the investigation demonstrated how incredibly rich in minerals the local minerals were. The results were confirmed by several more samples. The analysis' findings were kept a secret from outsiders, including fellow Texas Gulf officials, by the defendants. Once they were informed of the outcome, the defendants went on to buy calls and shares. Following trade activity and sample drilling, industry reports of a major discovery by Texas Gulf began to circulate. On April 12, 1964, defendants issued a false press statement in an attempt to quell the speculation. The true results of the samples were misrepresented in the press release. Defendants made the decision to appoint a person to oversee the public's viewing of the exhibits until April 16th, April 15. Until the news on April 12, defendants continued trading. The defendants contended that the information was immaterial to the company's worth and, as a result, they saw no need to make it public. Additionally, they claimed that since the news was officially made public at midnight on April 16, any trading that took place after that time was lawful. The defendants were determined to have acted on insider information when they bought their shares and calls on Texas Gulf stock, as they had concealed significant information from shareholders. The defendants' actions, which included buying a significant amount of Texas Gulf shares, keeping the information to themselves, and timing their purchases to coincide with their exclusive possession of it, were considered by the court as proof that the information was material. The Court held that the fact that there was still some uncertainty surrounding the ultimate outcome of the mineral mining did not matter; what mattered was whether a reasonable person would have believed that the information would have an impact on the stock price and that the defendants should not have acted on the information until it had been widely enough publicised to give the public a reasonable chance to act on it. The US law on insider trading basically aims to control those who are aware of significant non-public information about a company and requires them to declare it before dealing in the firm's stocks. Put another way, the law mandates that these people refrain from trading if they are unable or unable to make the necessary declaration. This duty has frequently been referred to as a duty to 'abstain or disclose.' Therefore, the US SEC has adopted the stance that trading while knowingly in possession of material non-public knowledge is sufficient to cause liability on its own, which is a significant distinction between insider trading as defined by the US SEC and certain other European countries. For example, in *SEC v. Baker*, the US SEC acknowledged the defendant's argument that he had chosen to trade before learning of relevant non-public information, yet the defendant was nonetheless subject to legal action. As a result, the defendant consented to pay a civil fine as well as to disgorge his trading gains plus interest.

The cornerstone of the UK's anti-insider dealing legislation is the Criminal Justice Act 1993 (CJA). It is important to note that the CJA creates three offences related to insider dealing, specifically: (a) Dealing while in possession of inside information; (b) Encouraging another to deal in such circumstances; and (c) Disclosing information other than in the proper performance of 58 one's employment However, it has been stated that private off-market transactions involving a professional intermediary are not covered by the CJA. The following are the components of committing an infraction in the UK:

(a) the individual must possess inside information which he knows is inside information;
(b) individual must know that the inside information is from an inside source;
(c) the inside information must be likely to have a significant effect on the price of the securities dealt in; and
(d) individual must deal in securities on a regulated market or rely on a professional intermediary or is himself acting as a professional intermediary.

Therefore, in order for an insider prosecution under the CJA to be successful, it must be demonstrated that both the material was inside information and that the accused knew (subjectively) that it was inside information.

[37] Babajide Shoroye 'Insider Dealing and Corporate Governance: Understanding the Legal Position of Directors', *NAUJILJ* 13 (1) 2022

[38] *SEC v Texas Gulf Sulphur,* 401 F. 2d833 (2nd Circuit, 1968), available at accessed 24 January 2024

10. Conclusion and Recommendations

Unlike the CAMA 1990, where sections 614 to 624 were explicitly designed to combat insider selling until they were repealed by the ISA 1999 and then merged into the said ISA, the CAMA 2020 contains no provisions at all dealing with insider trading. The CAMA 2020 is quiet on insider trading, with the exception of a few clauses (sections 305, 306, etc.) that make oblique references to insider dealing. The ISA is now the only law in Nigeria that has been expressly passed to control insider trading. The ISA's rules are insufficiently specific to address the crime of insider dealing in Nigeria, as previously mentioned in this study. The fact that only one person has been found guilty of insider trading in Nigeria to date may be the reason for the ISA's lack of thoroughness in this area. This is in contrast to the UK, where the capital market is governed by several laws. The number of convictions that have occurred in the UK is undoubtedly due to the fact that these laws have played a significant role in cleaning up the capital market. It is consequently recommended by this paper that the CAMA 2020 be modified to accommodate the insider trading restrictions. To match countries like the US and the UK, the ISA also has to be amended. This suggests further that in order to maintain investors' trust in the capital market, systems for monitoring primary and secondary insiders should be put in place to make sure that insider information is not misused by insiders who have access to it. Since investors make up the majority of market participants, anything that undermines their confidence will have a negative impact on both the capital market and, eventually, the economy. In order to address the issues, it is suggested that the Securities and Exchange Commission (SEC) require a complete makeover in order to effectively carry out its purpose. It is also recommended that proper whistle blowing mechanisms be put in place in Nigeria to ensure effective detection, investigation and prosecution of insider trading offences.