REGULATION OF INSIDER TRADING IN NIGERIA AND USA: A COMPARATIVE ANALYSIS*

Abstract

It cannot be over-emphasized that a congenial legal environment provides for and contributes to the effective development and functioning of capital market. As such, high standards of corporate governance and transparency are essential to the development of capital markets in Nigeria. Nevertheless, the disclosure of information regarding a company enables investors to take decisions regarding investments in securities of such a company and for prices of securities to accurately reflect information about a company; such information should be equally available to all market participants at the same time. However, persons in the company itself or otherwise concerned to the company are in possession of certain information before it is actually made public. The knowledge of this unpublished price sensitive information in hands of persons connected to the companies puts them in an advantageous position over others who lack it. However, the insider trading legislation have not been quite very effective in providing substantial comfort to investors. As such, there is little doubt that some reforms are needed on the deficiencies in the regulation of insider trading in Nigeria. From comparative perspective, this paper analyses the regulation of insider trading in Nigeria and USA. This is primarily to address certain flaws that are embedded in the regulation and to recommend, where necessary, possible recommendations that could be utilized by policy makers to enhance the combating of insider trading in Nigeria.

Keywords: Inside Trading, Regulation, Nigeria, USA

Introduction

The law of insider trading prohibits actual trading in corporate securities while in possession of unpublished price sensitive information. As such, the sine qua non for any insider trading claim is knowledge of unpublished price sensitive information. Information that is public cannot form the basis of an insider trading claim. Moreover, the principle of insider trading is an elongation of the duties of directors, shareholders and other persons concerned to protect any unpublished price sensitive information which is capable of negatively affecting corporate securities if leaked. The problem however is that not every investor has the opportunity of taking part directly in the governance or management of the business which he invested.[1] Thus, the management of the corporation is left to persons who may or may not have personal investment at all or those who are in control of majority of shares in the corporation.[2] Moreover, the adverse effect of insider trading on the investor, corporation and the capital market has necessitated the need for the regulation of insider trading in corporate securities. As such, the United States of America took a bold step and became the very first country to formally enact a legislation to regulate insider trading.[3] Taking inspiration from America, most jurisdictions around the world prohibit it. Nigeria also recognized the detrimental impact of insider trading and to address problems caused by insider trading legislation has also been passed to curtail the practice. This paper therefore from a comparative perspective carries out an analysis of insider trading regulation in Nigeria and USA with a view of proffering solutions to the problem of regulating insider trading in Nigeria.

2. What is Insider Trading?

Insider trading is said to occur when a person or group of persons who being in possession of some confidential and price sensitive information not generally available to the public, utilizes such information to buy and sell securities for the benefit of himself, itself or any person.[4] Furthermore, *Black's Law Dictionary* defined insider trading as the use of material, non-public information in trading the shares of a company by a corporate insider or other person who owes a fiduciary duty to the company.[5] The writer is of the view that this definition of insider trading is restricted to only those who owe a fiduciary duty to the company. In other words, it does not take cognizance of situation where an individual outside a company purchase or sell corporate securities while in possession of unpublished price sensitive information in a manner that did not involve an insider's breach of duty to the

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[1] A Abubakar, 'A Critical Analysis of the Laws and Practice of Insider Trading in Nigeria', dissertation submitted to the Faculty of Law, Usman Danfodio Univerisity, March 2013, p 5.

[2] *Ibid*.

[3] P A Aggarwal *et al*, 'Regulating Insider Trading – An Indian Perspective' (2014) 12 (1) *International Multidisciplinary Research Journal*, 1.

[4] ISA, s 315.

[5] B A Garner, *Black's Law Dictionary* (10th edn, Thomson Reuters, USA, 2014) p 915.

corporation. In effect, liability according to *Black's Law Dictionary* is predicated on a fiduciary relationship between the trader and the corporation thereby excluding liabilities of tippees and other non- insiders. Insider trading therefore involves dealing in the securities of a corporation on the basis of unpublished price sensitive information. Such unpublished price sensitive information, if had been published, would have affected the securities price of the corporation in a significant manner, and includes information relating to the major mergers and acquisitions, takeovers, any major project plan, contract, buy back of securities, bonus issues etcetera.

3. Rationale for Regulation

The primary reason for insider trading regulation is to foster confidence in the securities markets.[6] A party trading on material, nonpublic information deceives the counterparty who reasonably expects securities markets to be fair and not to condone insiders exploiting informational advantages. Investors deserve evenhanded markets and laws that provide every investor with an equal chance to prosper.[7] Thus, another important reason which contributes towards creating a conducive atmosphere in favour of regulation of insider trading is that, prevalence of insider trading results in diminishing of the confidence of investors in the securities market. The rationale being that investors will be reluctant to invest in a market where insiders trade on inside information to make undue profits or avoid losses. This notion of upholding the confidence of investors in securities market was put forward by Levitt in his address to the legal and investment community thus:

> Our markets are a success precisely because they enjoy the world's highest level of confidence. Investors put their capital to work – and put their fortunes at risk – because they trust that the marketplace is honest. They know that our securities laws require free, fair, and open transactions.[8]

This view was further supported by Scotland, who argued that insider trading regulation enhances public confidence and results in increased investor participation.[9] In effect, insider trading affects the confidence of investors in the corporate's securities, hence it discourages legitimate investments in corporate shares and allows the fiction of corporate entity to obstruct instead of advancing justice.[10] Furthermore, insider trading renders more likely the improper delay of disclosure of vital information about corporate securities. In fact, the main argument on insider trading prohibition is that the disclosure of information by the insider should take place before the information is traded upon by them. Hence, to allow insiders a completely free hand in this form of trading makes the undue delay of disclosure of vital information a greater likelihood.[11] In essence, insider trading usually leads to delays in the disclosure of material corporate information about a corporate's securities, and this could adversely affect the judgment and recommendations of directors most especially in matters touching on declaration of dividends and investments in other corporations. Moreover, it is unfair to allow an executive to use corporate information for personal gain. Such a practice would give rise to unfairness to the investors who are not insiders or have no access to the information. [12] As such, the use of inside information by the insider is no doubt unfair to those who deal with the insider and thus will benefit at the expense of the others.[13]

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[6] H Chitimira, *Market Abuse Regulation in South Africa, the United States of America and the United Kingdom* (USA: Vernon Press, 2018) p 5.

[7] K R Davis, 'Insider Trading Flaw: Towards a Fraud-on-the- Market Theory and Beyond', 2017 (66) 1 *American University Law Review*, 73

[8] A Levitt, 'A Question of Investor Integrity: Promoting Investor Confidence by Fighting Insider Trading' Address Before the "SEC Speaks" Conference, 27 February, 1998; *R v Glynatsis 87* (2013) NSWCCA 131.

[9] R A Schotland, 'Unsafe at Any Price: A Reply to Manne, Insider Trading and the Stock Market' (1967) 53(7) *Virginia Law Review*, 1427.

[10] O V C Okene, 'Insider Trading within Corporate System' (1994) 3 *Property Conveyancing and Contemporary Law Journal*, 92.

[11] *Ibid*, p 92.

[12] R Kadir and S Muhamad, 'Insider Trading in Malaysia; Sanctions and Enforcement', (2012) 6 (6) *Advances in Natural Applied Sciences*, 904, 904-908.

[13] A A Oluwabiyi, 'A Comparative Legal Appraisal of the Problem of Insider Trading in Mergers and Acquisitions' (2014) 2 *Frontiers of Legal Research*, p7.

4. Regulations against Insider Trading

4.1. Nigeria

The Investment and Securities Act[14] is the principal legislation regulating insider trading in Nigeria. Section 111(1) of ISA prohibits any person who is an insider of a company from buying, selling or otherwise dealing in the securities of the 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. Upon a reading of the following provisions, it may be right to say that for any person to contravene the provision of section 111(1) of ISA, the following conditions must be met:

1. The person in question must be an insider of a company;
2. The insider must have bought, sold or otherwise dealt in the securities of the corporation which are offered to the public for sale or subscription;
3. The insider must have had information which he knew was unpublished price sensitive information in relation to those securities which he bought, sold or otherwise dealt in which are offered to the public for sale or subscription.

Insiders

An insider of a company is any person who 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 five percent 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 audit committee of a company, and any person who is listed above, who by virtue of having been connected with any such person or connected with the company in any other way, possesses unpublished price sensitive information in relation to the securities of the company.

Indeed, insiders comprise both primary insiders, who are directly connected with the company and secondary insiders who are also connected with the company since they receive confidential information from a corporation while providing services to the corporation. The writer is of the view that the jurisprudential basis for the 'person-connected' approach of insider seems to be founded in the equitable notions of fiduciary duty. As such, the definition of insider is driven by the notion that a person in a fiduciary position should not use the privileged information for his or her own advantage. Be that as it may, the practical limitation of the 'person-connected' approach is chiefly the practical difficulties of ensuring that all people who trade on unpublished price sensitive information are caught. However, it may be quite difficult for the prosecution to show the existence of a 'connection', even when they can show that the secondary insider in question has been dealing and using the information. The secondary insider, who would have traded with an unfair informational advantage, may escape from being caught simply because there can be no trace of how he derived this information in the first place. The writer is of the opinion that this is because the information in question must have been obtained by the insider by reason of his connection with the company. Thus, in reality, much of the flow of the price-sensitive information often does not operate by way of such established networks of relational links between individuals. Very often, such price-sensitive information is communicated and spread out through very loosely connected and informal networks of brokers, clients and even between friends and through electronic networks etc. or an elaborate nexus of company official, brokers, traders. These individuals are very often privy to strategic policy decisions or developments that may influence the valuation of a company's scrip on the bonuses Hence, the writer is of the view that the test should be whether there is trading by a person while in possession of unpublished price-sensitive information, irrespective of his connection with the company. In other words, the 'Information Connection' approach should be followed rather than the 'Person Connection' approach.

Unpublished Price Sensitive Information

Indeed, insiders are prohibited from trading on corporate securities when in possession of unpublished price sensitive information. As such, for the purpose of insider trading liability under section 111(1) ISA, the precondition to be considered is that insiders actually possess information which they know is unpublished price sensitive information. The statutory phrase 'which he knows is unpublished price sensitive information' suggests that

[14] ISA, 2007.

possession of unpublished price sensitive information is required for insider trading liability to attach. Furthermore, for insider trading liability to occur, a necessary element is the defendant's knowledge of the nature of the information, more accurately, the knowledge that the possessed information is unpublished price sensitive information. Unpublished price sensitive information relates to specific matters or of concern (directly or indirectly) to the company, that is to say, is not of a general nature relating to or of concern to that company.[15] The section also, requires that the information is not generally known. This connotes that mere disclosure to the other party to the transaction does not suffice for in such case the information cannot be said to be generally known. There must be a public disclosure. Thus, one vital issue in Nigeria is whether the deposition of a document at the Corporate Affairs Commission can be regarded as public disclosure. Under the repealed Companies Act of 1968, if the document is one that requires filing, then this would amount to publication under the constructive notice rule.[16] But the constructive notice rule, to a large extent, is no longer part of the Nigerian Company Law, so that a person is not necessarily affected with notice by such deposition.[17] As such, the trader must know that the information is price sensitive and non-public.

Again, the trading on unpublished price sensitive information are restricted to securities which are offered to the public for sale or subscription.[18] In other words, section 111(1) ISA restricts insider trading in public companies only.[19] The writer is of the view that restricting insider trading to securities of public companies may be grounded in the perception that the prohibition against insider trading exists to promote the efficiency, fairness and integrity of the capital markets and is therefore, ill-suited to a transaction of securities that is not carried out on a stock exchange. Therefore, going by the 'market fairness' theory of insider trading which underpins the regulation of insider trading in public companies also highlights the need to expand the coverage of law to make it applicable to private companies as well. Moreover, maintaining market fairness has never been the sole rationale for the rule against insider trading. Insider trading was also perceived as a breach of the directors' fiduciary duty, the directors or officers of the company are 'fiduciaries' who are intended to have access to unpublished price sensitive information for a corporate purpose, and not for their personal benefit. In such a case, fairness necessitates that the person be precluded from misusing this corporate information to make an undue profit. This is irrespective of whether or not the transaction is taking place at a stock exchange.[20] As such, there is need to extend the prohibition of insider trading to private companies.

4.2. United States of America

The United States of America[21] was the first country to formally enact a legislation and has been one of the leading enforcers of insider trading provisions.[22] Thomas Newkirk and Melissa Robertson of the SEC summarize the development of USA insider trading laws as:

> Rooted in the common law tradition of England, on which our legal system is based, we have relied largely on our courts to develop the law prohibiting insider trading. While Congress gave us the mandate to protect investors and keep our markets free from fraud, it has been our jurists, albeit at the urging of the Commission and the United States Department of Justice, who have played the largest role in defining the law of insider trading.[23]

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[15] J O Orojo, *Company Law and Practice in Nigeria*, (5th edn, South Africa: LexisNexis Butterworths, 2008) p392.

[16] The rule was clear that anyone dealing with the company was deemed to have notice of the registered documents which were regarded as public documents; *Re JonBeauforte (London) Ltd* (1953) Ch.131; A A Ojo, 'A Legal Excursion into the Consequences and Effects of the Doctrine of Ultra Vires in Nigerian Corporate Governance', (2017) 65 Journal of Law, Policy and Globalization, P 224.

[17] CAMA, s 68; *Royal British Bank v Turquand* (1856) 119 ER 886, where the court states that outsiders dealing with a company are not bound to ensure that all the internal regulations of the company have in fact been complied with as regards the exercise and delegation of authority: but they are entitled to assume that all acts of internal management have been properly carried out in accordance with the maxim '*omnia praesumuntur rite et solemniter esse acta'* – 'all things have been done properly and solemnly which ought to have been done'.

[18] ISA, s111 (1).

[19] S 22(5) CAMA, provides to the effect that a private company shall not unless authorized by law invite the public to subscribe for any shares or debentures of the company.

[20] *Re Cady, Roberts & Co*., (1961) 40 SEC. 907.

[21] Hereinafter referred to as 'USA'.

[22] K Singh,'Insider Trading: Legal Position in India vis-à-vis the UK and the US',(2018) 4 (1) *The World Journal on Juristic Polity*, 1. Hereinafter referred to as 'SEA.

[23] T C Newkirk, 'Insider Trading- A US.Perspective'.<http://www.sec.gov/news/speech/speecharchive/1998/spch221.htm> accessed 18 January 2018.

Thus, the law regulating insider trading in the USA is an amalgamation of statute, SEC Rules and interpretation by the courts.

Regulation under Section 16b

This section provides that insiders may not both buy and sell their corporate securities in a six month period. Section 16(b) of the Securities Exchange Act provides as follows:

> For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase, sale and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months.

Section 16(b) of the Securities Exchange Act therefore authorizes the corporation to recover from such statutory insider any so-called short swing profits. If the corporation fails to act, section 16(b) authorizes any of its security holders to sue the statutory insider on its behalf to recover the profits from those trades. In other words, section 16b of the Act places sanctions on insiders who use inside information in making short- swing profits. The main provision of this section is to prohibit those insiders from getting rich at the expense of others with the help of the confidential information, which is the property of the corporation. Indeed, Section 16(b) was introduced to function only in a limited purpose; this is supported by the omission of 'tippee liability' from the section. This omission indicates that the purpose of introducing section 16(b) was to make it limited in scope and to make strict liability arise automatically when the section is breached.[24] The USA Supreme Court in *Blau v Lehman*[25] confronted the scope of the term 'beneficial ownership', but it declined to extend Section 16 (b) beyond the determined scope embodied by the explicit language of the statute. For purposes of section 16(b), an insider is defined as any person who is directly or indirectly the beneficial owner of more than 10% of any class of equity security which is registered or who is a director or an officer of the issuer.[26] Every person meeting the insider definition must file a report with the SEC at the time of the registration of the security on a national security exchange or by the effective date of a filed registration statement or within 10 days after he becomes a beneficial owner, director or officer. If there has been a change in the ownership of the equity securities, the insider must file the report before the end of the second business day following the day on which the transaction has been executed.[27] Moreover, to prevent the unfair use of inside information, section 16(b) permit the company or any security holder suing on behalf of the company to recover any profit which the person realizes from any purchase and sale or sale or purchase of any equity security of the company within a period of less than six months. The section targets specific transactions by only three categories of insiders: directors, officers and 10% shareholders that purchase and sell or sell and purchase equity securities of an issuer within six months. Any profit that these insiders make must be disgorged to the issuer. There is a private right of action to sue the insider on the company's behalf for violating section 16b's restriction on transactions within a 6month period.[28]

5. Comparative Analysis

Scope

Section 111(1) ISA affixes liability only where actual misuse of price sensitive information is proven, whereas section 16(b) of USA Securities Exchange Act 1934, is applied mechanically, irrespective of whether misuse of price sensitive information is shown. Indeed, section 16(b) of the USA Securities and Exchange Act 1934 is a technical provision that authorizes the recapture by a company of profits arising from short-swing trading in equity securities of the company by certain insiders. The provision gives publicly held companies the right to recover any profit made by an officer, director or controlling shareholders from purchase and sales that occur within six months. As such, it is not necessary to show an actual unfair use of inside information. However, an insider who does make

[24] R S Lincer, 'Beneficial Ownership' under Section 16(b) of the Securities Exchange Act of 1934' (1977) 77 (3) *Columbia Law Review,* 446.
[25] (1962) 368 US 403.
[26] SEA, s16 (a).
[27] *Ibid.*
[28] *Ibid*, s16 (b).

unfair use of inside information, but who waits more than the requisite six months before selling the securities, will not be caught by section 16(b). Similarly, the section is limited in scope in terms of which insiders are caught. Unlike ISA, it does not cover, for example, other employees or other persons with access to information, nor does it deal with tipping.[29] Nevertheless, section 10(b) of the USA Securities Exchange Act and Rule 10b-5 of the Act are the principal provisions used in insider trading cases in the USA. In fact, the section and the rule were not designed to deal with insider trading and therefore makes no reference to it. Rather, it was intended to prohibit fraudulent or manipulative practices in connection with the purchase and sale of securities. However, from section 10(b) and Rule 10b-5 have emanated expansive case law which deals with insider trading in USA and now regulates it tightly.[30]

Penalty

ISA provides for both criminal sanctions and civil remedies against persons who violate the insider trading provisions.

Criminal Sanctions

Section 115 of ISA provides to the effect that any person who contravenes any of the insider trading provisions commits an offence and is liable on conviction:

(a) in the case of a person not being a body corporate, to a fine of not less than N500,000 or an amount equivalent to double the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the insider trading provisions; or to imprisonment for a term not exceeding seven years; or

(b) in case of a person being a body corporate, to a fine not less than N1, 000,000.00 or an amount equivalent to twice the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the said provisions

Thus, any person who violates the provisions of sections 111(1) of ISA will be liable for a criminal offence. If convicted, such person may be sentenced to pay a fine equal to twice the amount of the profit made or loss avoided or to imprisonment for seven years or both. In other words, any person who contravenes the insider trading provisions can be punished with imprisonment or fine. This is unlike in USA where the criminal sanction for insider trading violation is a maximum fine of $5million for natural persons and 25million for juristic persons or maximum imprisonment of 20 years.[31] However, ISA does not expressly provide for ancillary criminal liability for accessories (aiders and abettors). Despite this, such accessories (aiders and abettors) who knowingly engage themselves in insider trading may still incur accessorial criminal liability in terms of the Criminal Code Act.[32] The Criminal Code Act stipulates that a person who aids, abets, counsels or procures the commission of an offence is regarded to have actually committed that offence and is sentenced accordingly even where the principal offender has not been prosecuted or convicted.[33] Moreover, the prosecution in a criminal case generally must prove the elements of the offence beyond a reasonable doubt.[34] This burden of proof makes imposing criminal sanctions for insider trading very difficult. Thus, because of emphasis on knowledge in the statutory provisions, there is the difficulty of establishing knowledge. Gower and Davies, recognized this difficulty and observes that, 'to prove that someone knows, unless he is willing to admit, is not only easy though sometimes the fact will raise an almost irresistible inference that he did not know.'[35] Added to the problem of proof is the standard of proof which is beyond reasonable doubt unlike in civil cases where liability is founded upon the preponderance of evidence.[36] The difficulty with criminal sanction is enormous when it is realized how difficult it is to secure direct evidence in order to secure conviction. Most of the time what is available is circumstantial evidence which may prove insufficient to ground conviction in most cases. However, in the case of *Akinbisade v State*[37] it was held that before a court can convict based upon circumstantial evidence, such evidence must be credible, cogent, consistent and unequivocal. . Be that as

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[29] ISA, ss 315 &

[30] *Chiarella v United States* (1980) 445 US 222, 232.; *Dirks v SEC, supra; United States v O' Hogan* (1997) 521 US 642; *Dura Pharm Inc v Broudo*, (2005) 544 US 336, 341–342.

[31] Sarbanes-Oxley Act, 2002, s306.

[32] S 7.

[33] *Ibid.*

[34] S 135 (1) of the Evidence Act No. 18, 2011; *Madu v State* (2012) 15 NWLR (Pt 1324) 454; *Udor v State* (2011) 11 NWLR (Pt 1259) 403; Bello *v State* (2007) 10 NWLR (Pt. 1043) P 564; *Agbo v State* (2006) 6 NWLR (Pt 977) 545; *Ubani v State* (2003) 18 NWLR (Pt 851) 224.

[35] P L Davies, *Gower and Davies' Principles of Modern Company Law*,(7th edn, London: Sweet and Maxwell, 2003) p 634.

[36] S 137 & 138 of the Evidence Act 2011; Eya v Olopade (2011) 11 NWLR (Pt 1259) 528.

[37] (2006) 17 NWLR (Pt 1007) 212; *Udor v State* (2011) 11 NWLR (Pt1259) 498.

it may, relevance is the main requirement for admissibility of any evidence under the law of evidence in Nigeria.[38]Perhaps, the writer is of the view that this problem may be solved by shifting the burden of proof on the person accused of insider trading to prove that he did not know of the existence of any price sensitive information. In the alternative, an objective test achievable is by substituting the requirement of knowledge for the requirement of showing that there was reasonable cause to believe that a person was in possession of price sensitive information. This may well ameliorate this stringent condition and help in achieving the objective of insider trading provision in the ISA.

Civil Remedy

A civil remedy is also available. Section 116(1) of ISA provides for civil liability and provides to the effect that a person who is liable under the insider trading provisions shall pay compensation at the order of the SEC or the Tribunal, as the case may be, to any aggrieved person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on behalf, suffers a loss by reason of the difference between the price at which the securities would have likely been dealt in such transaction at the time when the first-mentioned transaction took place if the contravention had not occurred. It appears that from the preceding provision, ISA cannot fine insider trading without a profit or loss. Subsection (2) provides that the amount of compensation for which a person is liable under subsection(1) of this section is the amount of loss sustained by the person claiming the compensation or any other amount as may be determined by the SEC or the Tribunal. For instance, any insider who trades while in possession of unpublished price sensitive information is liable to compensation. Thus, section 116 (1) of ISA enables a person to claim compensation on the order of the SEC or the Investment and Securities Tribunal. In USA, the SEC has the authority in a civil action against an entity that violates insider trading law to petition the court to grant injunctions, impose monetary penalties, and disgorge illegal profits. [39]Unlike administrative proceedings, where the agency or administrative law judge adjudicates claims, the SEC files these actions in a Federal district court, which has broad equitable discretion to craft a remedy under the Securities Exchange Act of 1934 Act. The SEC may seek a permanent or temporary injunction whenever it shall appear to the commission that any person is engaged or is about to engage in any acts or practices constituting a violation of the Act or any rules promulgated there under. [40] Also, any person who violates the terms of a SEC injunction will likely face contempt proceeding.[41] Additionally, Private right of action is available to contemporaneous purchasers or sellers of securities against insider trading offenders.[42] Affected persons may claim damages not exceeding the profit gain or loss avoided by the offenders.[43]The SEC may also claim treble civil damages from any person who violates it insider trading rules.[44] The damage may be up to three times the profit gained or loss avoided. This penalty is available in addition to disgorgement of profit.[45] Comparatively, the USA system of civil remedies for insider trading demands not only the disgorgement of the total amount involved in the relevant transaction, whether undue profits or avoided losses, but also injunctive reliefs.[46] Unlike what is found in USA, section 116 of ISA only provides the remedy of compensation. The writer is therefore of the view that the remedy provided under section 116 ISA is grossly inadequate since it is too limited in scope as it only provides for compensation which limits its scope, as this is not the only civil remedy that can be used to regulate the act of insider trading. As such, it is important that other forms of civil remedies be made available or else the provision will be futile.

6. Conclusion and Recommendations

The prohibition of insider trading is orchestrated by moral, social and economic considerations; but, more importantly, the acknowledgment that prosecuting insider trading is fundamental to the creation of a transparent and equal securities market for all participants. In keeping with this trend, various countries of the world have enacted laws and also established commissions to regulate insider trading. The United States of America obviously is at the forefront of the fight against this concept. This was made possible by the relentless effort of those in charge of its regulation. In the aforementioned country, the judiciary has contributed in no small measure towards the development of inside trading laws. It is unfortunate that in Nigeria there has been only a single case of a single

[38] *Suberu v The State* (2009) LPELR, 8716; s 1 of the Evidence Act 2011;
[39] SEA, s 21 (A).
[40] *Ibid*, s 21(d).
[41] *SEC* v *Dunlap* (2001) 253 F 3d 768.
[42] SEA, s 20A.Secu
[43]*FMC Corp v Boesky* (1988) 852 F2d 981; *Elkind v Liggelt & Myers Inc* (1980) 635 F2d 156.
[44] Rule 10b-5; 14e-3.
[45] S 16 of SEA requires the disgorgement of short-swing profits by named insiders- directors, officers and 10% shareholders.
[46] SEA, s 21(d).

case of insider trading liability.[47] Does it then mean that insider trading does not occur in Nigeria? The answers will certainly be in the negative. The insider trading regulatory framework has been found to be inadequate. The writer therefore recommends a standalone Act that covers all areas of insider trading activities from compliance, minimization mechanisms, penalties and enforcement activities. Provision for mandatory disclosure of price sensitive information by companies in respect of the securities they trade. This disclosure will assist in eliminating the material nature of the unpublished price sensitive information and will reduce the risk of insider trading occurring. The writer also recommends adequate awareness and education on insider trading to all relevant persons. Awareness and educational strategies are important to ensure that the public is aware of their rights and potential perpetrators of the effects of insider trading activity. Insider trading manual should be published by the SEC and be distributed to the relevant sections of the public. There is also the need for deployment of comprehensive civil remedies to complement present criminal sanctions. Provision for more civil remedies will also address the problem associated with the proof beyond reasonable doubt standard in criminal prosecution since a proof on the balance of probabilities is all that is required in a civil suit. Victims of insider trading should be able to seek appropriate redress in court of competent jurisdiction.

[47] SEC banned some officers of Oando's chief executive officers from being a director in any public company for five years, resigned board members and levied penalties. O Bayahbon, 'Oando Exceutives got Fair Hearing Says SEC', <http://www.thecable.ng> accessed 5 December 2019.