Derivative Products and Insider Trading

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Abstract

This article will consider cases occurring in Taiwan and other countries to explore legal impact of financial derivatives on capital market regulations, focusing on insider trading. Due to the nature of derivatives, they have been used as a vehicle to conduct insider trading. Therefore, there is a global trend to prohibit insider dealing by trading derivatives. This article will then recommend that Taiwan law should include derivatives trading as part of the prohibition against insider trading. In addition, Taiwan law should also refine the definition of financial derivatives, the jurisdiction of securities regulation and futures regulation, and civil liability attached to insider trading by derivatives in order to raise legal certainty for market participants and to ensure the derivatives market will function well for hedging, speculation or price discovery purposes.

Keywords: derivative product, insider trading, structured note, beneficial holdership, equity swap, beneficial owner, over-the-counter market

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