

Insider Trading: from the Perspective of Law and Economics and the Property Right Theory

Hsin-Ti Chang^{*}

Abstract

“Why should the law prohibit corporate insiders from insider trading?” In response to this question, scholars have provided various theories, including market integrity, equal access to information or fiduciary relationship, etc. This paper is trying to rethink this question from the perspective of law and economics. Two major reasons to support insider trading: first, insider trading is an efficient way to compensate managers; second, insider trading can increase the market efficiency. Also, from the standpoint of information asymmetry among investors, market professionals and insiders as well as the standpoint of protection of investors, insider trading is not necessary unfair. Therefore, scholars in law and economics provide another theory as the basis for prohibiting insider trading, namely, the property right in information theory. This theory suggests that the material non-public corporate information is the intangible property right of a company. Insiders can not use that property for the benefits of themselves or of the third party. In addition to discussing and analyzing the above property right theory, this paper also focuses on two issues regarding the scope of insiders: first, does a company itself fall within the definition of insiders? Second, when a government employee will be considered to be an insider by reason of occupational relationship? By applying the property right theory, this paper provides different approaches and answers to the above issues.

Keywords: insider trading, property right theory, law and economics, efficiency, insider

^{*} Associate Professor, National Taipei University Department of Law. Email: htchang@mail.ntpu.edu.tw